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►B ►M9 REGULATION (EU) No 575/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 ◄

►C2 (Text with EEA relevance) ◄

(OJ L 176, 27.6.2013, p. 1)

Amended by:

		Official Journal		
		No	page	date
►M1	Commission Delegated Regulation (EU) 2015/62 of 10 October 2014	L 11	37	17.1.2015
►M2	Regulation (EU) 2016/1014 of the European Parliament and of the Council of 8 June 2016	L 171	153	29.6.2016
►M3	Commission Delegated Regulation (EU) 2017/2188 of 11 August 2017	L 310	1	25.11.2017
►M4	Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017	L 345	27	27.12.2017
►M5	Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017	L 347	1	28.12.2017
►M6	Commission Delegated Regulation (EU) 2018/405 of 21 November 2017	L 74	3	16.3.2018
►M7	Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019	L 111	4	25.4.2019
►M8	Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019	L 150	1	7.6.2019
►M9	Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019	L 314	1	5.12.2019
►M10	Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019	L 328	1	18.12.2019
►M11	Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020	L 204	4	26.6.2020
►M12	Commission Delegated Regulation (EU) 2021/424 of 17 December 2019	L 84	1	11.3.2021
►M13	Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021	L 116	25	6.4.2021

►**M14**	Commission Implementing Regulation (EU) 2021/1043 of 24 June 2021	L 225	52	25.6.2021
►**M15**	Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022	L 275	1	25.10.2022

Corrected by:

►**C1** Corrigendum, OJ L 208, 2.8.2013, p. 68 (575/2013)
►**C2** Corrigendum, OJ L 321, 30.11.2013, p. 6 (575/2013)
►**C3** Corrigendum, OJ L 20, 25.1.2017, p. 2 (575/2013)
►**C4** Corrigendum, OJ L 335, 13.10.2020, p. 20 (2019/630)
►**C5** Corrigendum, OJ L 405, 2.12.2020, p. 79 (2019/2033)
►**C6** Corrigendum, OJ L 65, 25.2.2021, p. 61 (2019/876)
►**C7** Corrigendum, OJ L 398, 11.11.2021, p. 32 (2019/876)

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▼M9

REGULATION (EU) No 575/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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▼C2

(Text with EEA relevance)

PART ONE

GENERAL PROVISIONS

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

▼M8

Article 1

Scope

This Regulation lays down uniform rules concerning general prudential requirements that institutions, financial holding companies and mixed financial holding companies supervised under Directive 2013/36/EU shall comply with in relation to the following items:

(a) own funds requirements relating to entirely quantifiable, uniform and standardised elements of credit risk, market risk, operational risk, settlement risk and leverage;

(b) requirements limiting large exposures;

(c) liquidity requirements relating to entirely quantifiable, uniform and standardised elements of liquidity risk;

(d) reporting requirements related to points (a), (b) and (c);

(e) public disclosure requirements.

This Regulation lays down uniform rules concerning the own funds and eligible liabilities requirements that resolution entities that are global systemically important institutions (G-SIIs) or part of G-SIIs and material subsidiaries of non-EU G-SIIs shall comply with.

This Regulation does not govern publication requirements for competent authorities in the field of prudential regulation and supervision of institutions as set out in Directive 2013/36/EU.

Article 2

Supervisory powers

1. For the purpose of ensuring compliance with this Regulation, competent authorities shall have the powers and shall follow the procedures set out in Directive 2013/36/EU and in this Regulation.

▼M8

2. For the purpose of ensuring compliance with this Regulation, resolution authorities shall have the powers and shall follow the procedures set out in Directive 2014/59/EU of the European Parliament and of the Council ([1]) and in this Regulation.

3. For the purpose of ensuring compliance with the requirements concerning own funds and eligible liabilities, competent authorities and resolution authorities shall cooperate.

4. For the purpose of ensuring compliance within their respective competences, the Single Resolution Board established by Article 42 of Regulation (EU) No 806/2014 of the European Parliament and of the Council ([2]), and the European Central Bank with regard to matters relating to the tasks conferred on it by Council Regulation (EU) No 1024/2013 ([3]), shall ensure the regular and reliable exchange of relevant information.

▼M9

5. When applying the provisions laid down in Article 1(2) and 1(5) of Regulation (EU) 2019/2033 of the European Parliament and of the Council ([4]) with regard to investment firms referred to in those paragraphs, the competent authorities as defined in point (5) of Article 3(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council ([5]) shall treat those investment firms as if they were "institutions" under this Regulation.

▼C2

Article 3

Application of stricter requirements by institutions

This Regulation shall not prevent institutions from holding own funds and their components in excess of, or applying measures that are stricter than those required by this Regulation.

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

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

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

([4]) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

([5]) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

▼C2

Article 4

Definitions

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

▼M9

(1) ‘credit institution’ means an undertaking the business of which consists of any of the following:

(a) to take deposits or other repayable funds from the public and to grant credits for its own account;

(b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council [1], where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:

(i) the total value of the consolidated assets of the undertaking is equal to or exceeds EUR 30 billion;

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

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

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

(2) ‘investment firm’ means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU which is authorised under that Directive but excludes credit institutions;

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

▼M9

(3) ‘institution’ means a credit institution authorised under Article 8 of Directive 2013/36/EU or an undertaking as referred to in Article 8a(3) thereof;

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▼C2

(5) ‘insurance undertaking’ means insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]);

(6) ‘reinsurance undertaking’ means reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

▼M8

(7) ‘collective investment undertaking’ or ‘CIU’ means a UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council ([2]) or an alternative investment fund (AIF) as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council ([3]);

▼C2

(8) ‘public sector entity’ means a non-commercial administrative body responsible to central governments, regional governments or local authorities, or to authorities that exercise the same responsibilities as regional governments and local authorities, or a non-commercial undertaking that is owned by or set up and sponsored by central governments, regional governments or local authorities, and that has explicit guarantee arrangements, and may include self-administered bodies governed by law that are under public supervision;

(9) ‘management body’ means management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU;

(10) ‘senior management’ means senior management as defined in point (9) of Article 3(1) of Directive 2013/36/EU;

(11) ‘systemic risk’ means systemic risk as defined in point (10) of Article 3(1) of Directive 2013/36/EU;

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([3]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

▼C2

(12) ‘model risk’ means model risk as defined in point (11) of Article 3(1) of Directive 2013/36/EU;

▼M5

(13) ‘originator’ means an originator as defined in point (3) of Article 2 of Regulation (EU) 2017/2402 ([1]);

(14) ‘sponsor’ means a sponsor as defined in point (5) of Article 2 of Regulation (EU) 2017/2402;

(14a) ‘original lender’ means an original lender as defined in point (20) of Article 2 of Regulation (EU) 2017/2402;

▼C2

(15) ‘parent undertaking’ means:

(a) a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC;

(b) for the purposes of Section II of Chapters 3 and 4 of Title VII and Title VIII of Directive 2013/36/EU and Part Five of this Regulation, a parent undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking which effectively exercises a dominant influence over another undertaking;

(16) ‘subsidiary’ means:

(a) a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC;

(b) a subsidiary undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which a parent undertaking effectively exercises a dominant influence.

Subsidiaries of subsidiaries shall also be considered to be subsidiaries of the undertaking that is their original parent undertaking;

(17) ‘branch’ means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions;

(18) ‘ancillary services undertaking’ means an undertaking the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more institutions;

([1]) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

▼C2

(19) ‘asset management company’ means an asset management company as defined in point (5) of Article 2 of Directive 2002/87/EC or an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU, including, unless otherwise provided, third-country entities that carry out similar activities and that are subject to the laws of a third country which applies supervisory and regulatory requirements at least equivalent to those applied in the Union;

▼M8

(20) ‘financial holding company’ means a financial institution, the subsidiaries of which are exclusively or mainly institutions or financial institutions, and which is not a mixed financial holding company; the subsidiaries of a financial institution are mainly institutions or financial institutions where at least one of them is an institution and where more than 50 % of the financial institution's equity, consolidated assets, revenues, personnel or other indicator considered relevant by the competent authority are associated with subsidiaries that are institutions or financial institutions;

▼C2

(21) ‘mixed financial holding company’ means mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC;

(22) ‘mixed activity holding company’ means a parent undertaking, other than a financial holding company or an institution or a mixed financial holding company, the subsidiaries of which include at least one institution;

(23) ‘third-country insurance undertaking’ means third-country insurance undertaking as defined in point (3) of Article 13 of Directive 2009/138/EC;

(24) ‘third-country reinsurance undertaking’ means third-country reinsurance undertaking as defined in point (6) of Article 13 of Directive 2009/138/EC;

(25) ‘recognised third-country investment firm’ means a firm meeting all of the following conditions:

(a) if it were established within the Union, it would be covered by the definition of an investment firm;

(b) it is authorised in a third country;

(c) it is subject to and complies with prudential rules considered by the competent authorities at least as stringent as those laid down in this Regulation or in Directive 2013/36/EU;

▼M9

(26) ‘financial institution’ means an undertaking other than an institution and other than a pure industrial holding company, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, including an investment firm, a financial holding company, a mixed financial holding company, an investment holding company, a payment institution

▼M9

within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council [1], and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in points (f) and (g) of Article 212(1) of Directive 2009/138/EC;

▼C2

(27) ‘financial sector entity’ means any of the following:

(a) an institution;

(b) a financial institution;

(c) an ancillary services undertaking included in the consolidated financial situation of an institution;

(d) an insurance undertaking;

(e) a third-country insurance undertaking;

(f) a reinsurance undertaking;

(g) a third-country reinsurance undertaking;

(h) an insurance holding company as defined in point (f) of Article 212(1) of Directive 2009/138/EC;

(k) an undertaking excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive;

(l) a third-country undertaking with a main business comparable to any of the entities referred to in points (a) to (k);

▼M8

(28) ‘parent institution in a Member State’ means an institution in a Member State which has an institution, a financial institution or an ancillary services undertaking as a subsidiary or which holds a participation in an institution, financial institution or ancillary services undertaking, and which is not itself a subsidiary of another institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;

▼C2

(29) ‘EU parent institution’ means a parent institution in a Member State which is not a subsidiary of another institution authorised in any Member State, or of a financial holding company or mixed financial holding company set up in any Member State;

[1] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

▼M9

(29a) ‘parent investment firm in a Member State’ means a parent undertaking in a Member State that is an investment firm;

(29b) ‘EU parent investment firm’ means an EU parent undertaking that is an investment firm;

▼M8

(29c) ‘parent credit institution in a Member State’ means a parent institution in a Member State that is a credit institution;

(29d) ‘EU parent credit institution’ means an EU parent institution that is a credit institution;

▼C2

(30) ‘parent financial holding company in a Member State’ means a financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;

(31) ‘EU parent financial holding company’ means a parent financial holding company in a Member State which is not a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;

(32) ‘parent mixed financial holding company in a Member State’ means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in that same Member State;

(33) ‘EU parent mixed financial holding company’ means a parent mixed financial holding company in a Member State which is not a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;

(34) ‘central counterparty’ or ‘CCP’ means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;

(35) ‘participation’ means participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies [1], or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

(36) ‘qualifying holding’ means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

[1] OJ L 222, 14.8.1978, p. 11.

▼C2

(37) ‘control’ means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or the accounting standards to which an institution is subject under Regulation (EC) No 1606/2002, or a similar relationship between any natural or legal person and an undertaking;

(38) ‘close links’ means a situation in which two or more natural or legal persons are linked in any of the following ways:

(a) participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;

(b) control;

(c) a permanent link of both or all of them to the same third person by a control relationship;

(39) ‘group of connected clients’ means any of the following:

(a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others;

(b) two or more natural or legal persons between whom there is no relationship of control as described in point (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties.

Notwithstanding points (a) and (b), where a central government has direct control over or is directly interconnected with more than one natural or legal person, the set consisting of the central government and all of the natural or legal persons directly or indirectly controlled by it in accordance with point (a), or interconnected with it in accordance with point (b), may be considered as not constituting a group of connected clients. Instead the existence of a group of connected clients formed by the central government and other natural or legal persons may be assessed separately for each of the persons directly controlled by it in accordance with point (a), or directly interconnected with it in accordance with point (b), and all of the natural and legal persons which are controlled by that person according to point (a) or interconnected with that person in accordance with point (b), including the central government. The same applies in cases of regional governments or local authorities to which Article 115(2) applies.

▼M8

Two or more natural or legal persons who fulfil the conditions set out in point (a) or (b) because of their direct exposure to the same CCP for clearing activities purposes are not considered as constituting a group of connected clients;

▼C2

(40) ‘competent authority’ means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned;

▼M8

(41) ‘consolidating supervisor’ means a competent authority responsible for the exercise of supervision on a consolidated basis in accordance with Article 111 of Directive 2013/36/EU;

▼C2

(42) ‘authorisation’ means an instrument issued in any form by the authorities by which the right to carry out the business is granted;

(43) ‘home Member State’ means the Member State in which an institution has been granted authorisation;

(44) ‘host Member State’ means the Member State in which an institution has a branch or in which it provides services;

(45) ‘ESCB central banks’ means the national central banks that are members of the European System of Central Banks (ESCB), and the European Central Bank (ECB);

(46) ‘central banks’ means the ESCB central banks and the central banks of third countries;

(47) ‘consolidated situation’ means the situation that results from applying the requirements of this Regulation in accordance with Part One, Title II, Chapter 2 to an institution as if that institution formed, together with one or more other entities, a single institution;

(48) ‘consolidated basis’ means on the basis of the consolidated situation;

(49) ‘sub-consolidated basis’ means on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company, excluding a sub-group of entities, or on the basis of the consolidated situation of a parent institution, financial holding company or mixed financial holding company that is not the ultimate parent institution, financial holding company or mixed financial holding company;

(50) ‘financial instrument’ means any of the following:

(a) a contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party;

(b) an instrument specified in Section C of Annex I to Directive 2004/39/EC;

(c) a derivative financial instrument;

(d) a primary financial instrument;

(e) a cash instrument.

▼C2

The instruments referred to in points (a), (b) and (c) are only financial instruments if their value is derived from the price of an underlying financial instrument or another underlying item, a rate, or an index;

▼M9

(51) ‘initial capital’ means the amounts and types of own funds specified in Article 12 of Directive 2013/36/EU;

▼C2

(52) ‘operational risk’ means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, and includes legal risk;

(53) ‘dilution risk’ means the risk that an amount receivable is reduced through cash or non-cash credits to the obligor;

(54) ‘probability of default’ or ‘PD’ means the probability of default of a counterparty over a one-year period;

(55) ‘loss given default’ or ‘LGD’ means the ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default;

(56) ‘conversion factor’ means the ratio of the currently undrawn amount of a commitment that could be drawn and that would therefore be outstanding at default to the currently undrawn amount of the commitment, the extent of the commitment being determined by the advised limit, unless the unadvised limit is higher;

(57) ‘credit risk mitigation’ means a technique used by an institution to reduce the credit risk associated with an exposure or exposures which that institution continues to hold;

(58) ‘funded credit protection’ means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution derives from the right of that institution, in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty, to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the exposure to, or to replace it with, the amount of the difference between the amount of the exposure and the amount of a claim on the institution;

(59) ‘unfunded credit protection’ means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution derives from the obligation of a third party to pay an amount in the event of the default of the borrower or the occurrence of other specified credit events;

▼M9

(60) ‘cash assimilated instrument’ means a certificate of deposit, a bond, including a covered bond, or any other non-subordinated instrument, which has been issued by an institution or an investment firm, for which the institution or investment firm has already received full payment and which is to be unconditionally reimbursed by the institution or investment firm at its nominal value;

▼M5

(61) ‘securitisation’ means a securitisation as defined in point (1) of Article 2 of Regulation (EU) 2017/2402;

(62) ‘securitisation position’ means a securitisation position as defined in point (19) of Article 2 of Regulation (EU) 2017/2402;

(63) ‘resecuritisation’ means a resecuritisation as defined in point (4) of Article 2 of Regulation (EU) 2017/2402;

▼C2

(64) ‘re-securitisation position’ means an exposure to a re-securitisation;

(65) ‘credit enhancement’ means a contractual arrangement whereby the credit quality of a position in a securitisation is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior tranches in the securitisation and other types of credit protection;

▼M5

(66) ‘securitisation special purpose entity’ or ‘SSPE’ means a securitisation special purpose entity or SSPE as defined in point (2) of Article 2 of Regulation (EU) 2017/2402;

(67) ‘tranche’ means a tranche as defined in point (6) of Article 2 of Regulation (EU) 2017/2402;

▼C2

(68) ‘marking to market’ means the valuation of positions at readily available close out prices that are sourced independently, including exchange prices, screen prices or quotes from several independent reputable brokers;

(69) ‘marking to model’ means any valuation which has to be benchmarked, extrapolated or otherwise calculated from one or more market inputs;

(70) ‘independent price verification’ means a process by which market prices or marking to model inputs are regularly verified for accuracy and independence;

(71) ‘eligible capital’ means the following:

(a) for the purposes of Title III of Part Two it means the sum of the following:

(i) Tier 1 capital as referred to in Article 25, without applying the deduction in Article 36(1)(k)(i);

▼C2

(ii) Tier 2 capital as referred to in Article 71 that is equal to or less than one third of Tier 1 capital as calculated pursuant to point (i) of this point;

▼M8

(b) for the purposes of Article 97 it means the sum of the following:

▼C2

(i) Tier 1 capital as referred to in Article 25;

(ii) Tier 2 capital as referred to in Article 71 that is equal to or less than one third of Tier 1 capital;

(72) ‘recognised exchange’ means an exchange which meets all of the following conditions:

▼M9

(a) it is a regulated market or a third-country market that is considered to be equivalent to a regulated market in accordance with the procedure set out in point (a) of Article 25(4) of Directive 2014/65/EU;

▼C2

(b) it has a clearing mechanism whereby contracts listed in Annex II are subject to daily margin requirements which, in the opinion of the competent authorities, provide appropriate protection;

(73) ‘discretionary pension benefits’ means enhanced pension benefits granted on a discretionary basis by an institution to an employee as part of that employee's variable remuneration package, which do not include accrued benefits granted to an employee under the terms of the company pension scheme;

(74) ‘mortgage lending value’ means the value of immovable property as determined by a prudent assessment of the future marketability of the property taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property;

(75) ‘residential property’ means a residence which is occupied by the owner or the lessee of the residence, including the right to inhabit an apartment in housing cooperatives located in Sweden;

(76) ‘market value’ means, for the purposes of immovable property, the estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

(77) ‘applicable accounting framework’ means the accounting standards to which the institution is subject under Regulation (EC) No 1606/2002 or Directive 86/635/EEC;

▼C2

(78) ‘one-year default rate’ means the ratio between the number of defaults occurred during a period that starts from one year prior to a date T and the number of obligors assigned to this grade or pool one year prior to that date;

(79) ‘speculative immovable property financing’ means loans for the purposes of the acquisition of or development or construction on land in relation to immovable property, or of and in relation to such property, with the intention of reselling for profit;

(80) ‘trade finance’ means financing, including guarantees, connected to the exchange of goods and services through financial products of fixed short-term maturity, generally of less than one year, without automatic rollover;

(81) ‘officially supported export credits’ means loans or credits to finance the export of goods and services for which an official export credit agency provides guarantees, insurance or direct financing;

(82) ‘repurchase agreement’ and ‘reverse repurchase agreement’ mean any agreement in which an institution or its counterparty transfers securities or commodities or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counterparty at one time, subject to a commitment to repurchase them, or substituted securities or commodities of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the institution selling the securities or commodities and a reverse repurchase agreement for the institution buying them;

(83) ‘repurchase transaction’ means any transaction governed by a repurchase agreement or a reverse repurchase agreement;

(84) ‘simple repurchase agreement’ means a repurchase transaction of a single asset, or of similar, non-complex assets, as opposed to a basket of assets;

(85) ‘positions held with trading intent’ means any of the following:

(a) proprietary positions and positions arising from client servicing and market making;

(b) positions intended to be resold short term;

▼C2

(c) positions intended to benefit from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations;

▼M8

(86) ‘trading book’ means all positions in financial instruments and commodities held by an institution either with trading intent or to hedge positions held with trading intent in accordance with Article 104;

▼C2

(87) ‘multilateral trading facility’ means multilateral trading facility as defined in point 15 of Article 4 of Directive 2004/39/EC;

(88) ‘qualifying central counterparty’ or ‘QCCP’ means a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation;

(89) ‘default fund’ means a fund established by a CCP in accordance with Article 42 of Regulation (EU) No 648/2012 and used in accordance with Article 45 of that Regulation;

(90) ‘pre-funded contribution to the default fund of a CCP’ means a contribution to the default fund of a CCP that is paid in by an institution;

▼M8

(91) ‘trade exposure’ means a current exposure, including a variation margin due to the clearing member but not yet received, and any potential future exposure of a clearing member or a client, to a CCP arising from contracts and transactions listed in points (a), (b) and (c) of Article 301(1), as well as initial margin;

▼C2

(92) ‘regulated market’ means regulated market as defined in point (14) of Article 4 of Directive 2004/39/EC;

(93) ‘leverage’ means the relative size of an institution's assets, off-balance sheet obligations and contingent obligations to pay or to deliver or to provide collateral, including obligations from received funding, made commitments, derivatives or repurchase agreements, but excluding obligations which can only be enforced during the liquidation of an institution, compared to that institution's own funds;

(94) ‘risk of excessive leverage’ means the risk resulting from an institution's vulnerability due to leverage or contingent leverage that may require unintended corrective measures to its business plan, including distressed selling of assets which might result in losses or in valuation adjustments to its remaining assets;

▼C2

(95) ‘credit risk adjustment’ means the amount of specific and general loan loss provision for credit risks that has been recognised in the financial statements of the institution in accordance with the applicable accounting framework;

▼M8

(96) ‘internal hedge’ means a position that materially offsets the component risk elements between a trading book position and one or more non-trading book positions or between two trading desks;

▼C2

(97) ‘reference obligation’ means an obligation used for the purposes of determining the cash settlement value of a credit derivative;

(98) ‘external credit assessment institution’ or ‘ECAI’ means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ([1]) or a central bank issuing credit ratings which are exempt from the application of Regulation (EC) No 1060/2009;

(99) ‘nominated ECAI’ means an ECAI nominated by an institution;

(100) ‘accumulated other comprehensive income’ has the same meaning as under International Accounting Standard (IAS) 1, as applicable under Regulation (EC) No 1606/2002;

(101) ‘basic own funds’ means basic own funds within the meaning of Article 88 of Directive 2009/138/EC;

(102) ‘Tier 1 own-fund insurance items’ means basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 1 within the meaning of Directive 2009/138/EC in accordance with Article 94(1) of that Directive;

(103) ‘additional Tier 1 own-fund insurance items’ means basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 1 within the meaning of Directive 2009/138/EC in accordance with Article 94(1) of that Directive and the inclusion of those items is limited by the delegated acts adopted in accordance with Article 99 of that Directive;

(104) ‘Tier 2 own-fund insurance items’ means basic own-fund items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 2 within the meaning of Directive 2009/138/EC in accordance with Article 94(2) of that Directive;

([1]) OJ L 302, 17.11.2009, p. 1.

▼C2

(105) ‘Tier 3 own-fund insurance items’ means basic own-fund insurance items of undertakings subject to the requirements of Directive 2009/138/EC where those items are classified in Tier 3 within the meaning of Directive 2009/138/EC in accordance with Article 94(3) of that Directive;

(106) ‘deferred tax assets’ has the same meaning as under the applicable accounting framework;

(107) ‘deferred tax assets that rely on future profitability’ means deferred tax assets the future value of which may be realised only in the event the institution generates taxable profit in the future;

(108) ‘deferred tax liabilities’ has the same meaning as under the applicable accounting framework;

(109) ‘defined benefit pension fund assets’ means the assets of a defined pension fund or plan, as applicable, calculated after they have been reduced by the amount of obligations under the same fund or plan;

(110) ‘distributions’ means the payment of dividends or interest in any form;

(111) ‘financial undertaking’ has the same meaning as under points (25)(b) and (d) of Article 13 of Directive 2009/138/EC;

(112) ‘funds for general banking risk’ has the same meaning as under Article 38 of Directive 86/635/EEC;

(113) ‘goodwill’ has the same meaning as under the applicable accounting framework;

(114) ‘indirect holding’ means any exposure to an intermediate entity that has an exposure to capital instruments issued by a financial sector entity where, in the event the capital instruments issued by the financial sector entity were permanently written off, the loss that the institution would incur as a result would not be materially different from the loss the institution would incur from a direct holding of those capital instruments issued by the financial sector entity;

(115) ‘intangible assets’ has the same meaning as under the applicable accounting framework and includes goodwill;

(116) ‘other capital instruments’ means capital instruments issued by financial sector entities that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments or Tier 1 own-fund insurance items, additional Tier 1 own-fund insurance items, Tier 2 own-fund insurance items or Tier 3 own-fund insurance items;

(117) ‘other reserves’ means reserves within the meaning of the applicable accounting framework that are required to be disclosed under the applicable accounting standard, excluding any amounts already included in accumulated other comprehensive income or retained earnings;

▼C2

(118) ‘own funds’ means the sum of Tier 1 capital and Tier 2 capital;

(119) ‘own funds instruments’ means capital instruments issued by the institution that qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments;

(120) ‘minority interest’ means the amount of Common Equity Tier 1 capital of a subsidiary of an institution that is attributable to natural or legal persons other than those included in the prudential scope of consolidation of the institution;

(121) ‘profit’ has the same meaning as under the applicable accounting framework;

(122) ‘reciprocal cross holding’ means a holding by an institution of the own funds instruments or other capital instruments issued by financial sector entities where those entities also hold own funds instruments issued by the institution;

(123) ‘retained earnings’ means profits and losses brought forward as a result of the final application of profit or loss under the applicable accounting framework;

(124) ‘share premium account’ has the same meaning as under the applicable accounting framework;

(125) ‘temporary differences’ has the same meaning as under the applicable accounting framework;

(126) ‘synthetic holding’ means an investment by an institution in a financial instrument the value of which is directly linked to the value of the capital instruments issued by a financial sector entity;

(127) ‘cross-guarantee scheme’ means a scheme that meets all the following conditions:

▼M8

(a) the institutions fall within the same institutional protection scheme as referred to in Article 113(7) or are permanently affiliated with a network to a central body;

▼C2

(b) the institutions are fully consolidated in accordance with Article 1(1)(b), (c) or (d) or Article 1(2) of Directive 83/349/EEC and are included in the supervision on a consolidated basis of an institution which is a parent institution in a Member State in accordance with Part One, Title II, Chapter 2 of this Regulation and subject to own funds requirements;

(c) the parent institution in a Member State and the subsidiaries are established in the same Member State and are subject to authorisation and supervision by the same competent authority;

(d) the parent institution in a Member State and the subsidiaries have entered into a contractual or statutory liability arrangement which protects those institutions and in particular ensures their liquidity and solvency, in order to avoid bankruptcy in the case that it becomes necessary;

▼C2

(e) arrangements are in place to ensure the prompt provision of financial means in terms of capital and liquidity if required under the contractual or statutory liability arrangement referred to in point (d);

(f) the adequacy of the arrangements referred to in points (d) and (e) is monitored on a regular basis by the competent authority;

(g) the minimum period of notice for a voluntary exit of a subsidiary from the liability arrangement is 10 years;

(h) the competent authority is empowered to prohibit a voluntary exit of a subsidiary from the liability arrangement;

▼M8

(128) ‘distributable items’ means the amount of the profits at the end of the last financial year plus any profits brought forward and reserves available for that purpose, before distributions to holders of own funds instruments, less any losses brought forward, any profits which are non-distributable pursuant to Union or national law or the institution's by-laws and any sums placed in non-distributable reserves in accordance with national law or the statutes of the institution, in each case with respect to the specific category of own funds instruments to which Union or national law, institutions' by-laws, or statutes relate; such profits, losses and reserves being determined on the basis of the individual accounts of the institution and not on the basis of the consolidated accounts;

▼M5

(129) ‘servicer’ means a servicer as defined in point (13) of Article 2 of Regulation (EU) 2017/2402;

▼M8

(130) ‘resolution authority’ means a resolution authority as defined in point (18) of Article 2(1) of Directive 2014/59/EU;

▼M15

(130a) ‘relevant third-country authority’ means a third-country authority as defined in Article 2(1), point (90), of Directive 2014/59/EU;

▼M8

(131) ‘resolution entity’ means a resolution entity as defined in point (83a) of Article 2(1) of Directive 2014/59/EU;

(132) ‘resolution group’ means a resolution group as defined in point (83b) of Article 2(1) of Directive 2014/59/EU;

(133) ‘global systemically important institution’ or ‘G-SII’ means a G-SII that has been identified in accordance with Article 131(1) and (2) of Directive 2013/36/EU;

(134) ‘non-EU global systemically important institution’ or ‘non-EU G-SII’ means a global systemically important banking group or a bank (G-SIBs) that is not a G-SII and that is included in the list of G-SIBs published by the Financial Stability Board, as regularly updated;

(135) ‘material subsidiary’ means a subsidiary that on an individual or consolidated basis meets any of the following conditions:

▼M8

(a) the subsidiary holds more than 5 % of the consolidated risk-weighted assets of its original parent undertaking;

(b) the subsidiary generates more than 5 % of the total operating income of its original parent undertaking;

(c) the total exposure measure, referred to in Article 429(4) of this Regulation, of the subsidiary is more than 5 % of the consolidated total exposure measure of its original parent undertaking;

for the purpose of determining the material subsidiary, where Article 21b(2) of Directive 2013/36/EU applies, the two intermediate EU parent undertakings shall count as a single subsidiary on the basis of their consolidated situation;

(136) 'G-SII entity' means an entity with legal personality that is a G-SII or is part of a G-SII or of a non-EU G-SII;

(137) 'bail-in tool' means a bail-in tool as defined in point (57) of Article 2(1) of Directive 2014/59/EU;

(138) 'group' means a group of undertakings of which at least one is an institution and which consists of a parent undertaking and its subsidiaries, or of undertakings that are related to each other as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ([1]);

(139) 'securities financing transaction' means a repurchase transaction, a securities or commodities lending or borrowing transaction, or a margin lending transaction;

(140) 'initial margin' or 'IM' means any collateral, other than variation margin, collected from or posted to an entity to cover the current and potential future exposure of a transaction or of a portfolio of transactions in the period needed to liquidate those transactions, or to re-hedge their market risk, following the default of the counterparty to the transaction or portfolio of transactions;

(141) 'market risk' means the risk of losses arising from movements in market prices, including in foreign exchange rates or commodity prices;

(142) 'foreign exchange risk' means the risk of losses arising from movements in foreign exchange rates;

(143) 'commodity risk' means the risk of losses arising from movements in commodity prices;

(144) 'trading desk' means a well-identified group of dealers set up by the institution to jointly manage a portfolio of trading book

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

▼M8

positions in accordance with a well-defined and consistent business strategy and operating under the same risk management structure;

(145) ‘small and non-complex institution’ means an institution that meets all the following conditions:

(a) it is not a large institution;

(b) the total value of its assets on an individual basis or, where applicable, on a consolidated basis in accordance with this Regulation and Directive 2013/36/EU is on average equal to or less than the threshold of EUR 5 billion over the four-year period immediately preceding the current annual reporting period; Member States may lower that threshold;

(c) it is not subject to any obligations, or is subject to simplified obligations, in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;

(d) its trading book business is classified as small within the meaning of Article 94(1);

(e) the total value of its derivative positions held with trading intent does not exceed 2 % of its total on- and off-balance-sheet assets and the total value of its overall derivative positions does not exceed 5 %, both calculated in accordance with Article 273a(3);

(f) more than 75 % of both the institution's consolidated total assets and liabilities, excluding in both cases the intragroup exposures, relate to activities with counterparties located in the European Economic Area;

(g) the institution does not use internal models to meet the prudential requirements in accordance with this Regulation except for subsidiaries using internal models developed at the group level, provided that the group is subject to the disclosure requirements laid down in Article 433a or 433c on a consolidated basis;

(h) the institution has not communicated to the competent authority an objection to being classified as a small and non-complex institution;

(i) the competent authority has not decided that the institution is not to be considered a small and non-complex institution on the basis of an analysis of its size, interconnectedness, complexity or risk profile;

(146) ‘large institution’ means an institution that meets any of the following conditions:

(a) it is a G-SII;

(b) it has been identified as an other systemically important institution (O-SII) in accordance with Article 131(1) and (3) of Directive 2013/36/EU;

(c) it is, in the Member State in which it is established, one of the three largest institutions in terms of total value of assets;

▼M8

(d) the total value of its assets on an individual basis or, where applicable, on the basis of its consolidated situation in accordance with this Regulation and Directive 2013/36/EU is equal to or greater than EUR 30 billion;

(147) 'large subsidiary' means a subsidiary that qualifies as a large institution;

(148) 'non-listed institution' means an institution that has not issued securities that are admitted to trading on a regulated market of any Member State, within the meaning of point (21) of Article 4(1) of Directive 2014/65/EU;

(149) 'financial report' means, for the purposes of Part Eight, a financial report within the meaning of Articles 4 and 5 of Directive 2004/109/EC of the European Parliament and of the Council [1];

▼M9

(150) 'commodity and emission allowance dealer' means an undertaking the main business of which consists exclusively of the provision of investment services or activities in relation to commodity derivatives or commodity derivative contracts referred to in points (5), (6), (7), (9) and (10), derivatives of emission allowances referred to in point (4), or emission allowances referred to in point (11) of Section C of Annex I to Directive 2014/65/EU.

▼C2

2. Where reference in this Regulation is made to immovable property, to residential property or commercial immovable property or to a mortgage on such property, it shall include shares in Finnish residential housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation. Member States or their competent authorities may allow shares constituting an equivalent indirect holding of immovable property to be treated as a direct holding of immovable property provided that such an indirect holding is specifically regulated in the national law of the Member State concerned and that, when pledged as collateral, it provides equivalent protection to creditors.

3. Trade finance as referred to in point (80) of paragraph 1 is generally uncommitted and requires satisfactory supporting transactional documentation for each drawdown request enabling refusal of the finance in the event of any doubt about creditworthiness or the supporting transactional documentation. Repayment of trade finance exposures is usually independent of the borrower, the funds instead coming from cash received from importers or resulting from proceeds of the sales of the underlying goods.

▼M8

4. EBA shall develop draft regulatory technical standards specifying in which circumstances the conditions set out in point (39) of paragraph 1 are met.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2020.

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

▼M8

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

▼C2

Article 5

Definitions specific to capital requirements for credit risk

For the purposes of Part Three, Title II, the following definitions shall apply:

(1) ‘exposure’ means an asset or off-balance sheet item;

(2) ‘loss’ means economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument;

(3) ‘expected loss’ or ‘EL’ means the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one-year period to the amount outstanding at default.

TITLE II

LEVEL OF APPLICATION OF REQUIREMENTS

CHAPTER 1

Application of requirements on an individual basis

Article 6

General principles

▼M8

1. Institutions shall comply with the obligations laid down in Parts Two, Three, Four, Seven, Seven A and Eight of this Regulation and in Chapter 2 of Regulation (EU) 2017/2402 on an individual basis, with the exception of point (d) of Article 430(1) of this Regulation.

▼C7

1a. By way of derogation from paragraph 1 of this Article, only institutions identified as resolution entities that are also G-SII entities and that do not have subsidiaries shall comply with the requirements laid down in Article 92a on an individual basis.

▼M8

Material subsidiaries of a non-EU G-SII shall comply with Article 92b on an individual basis, where they meet all the following conditions:

(a) they are not resolution entities;

(b) they do not have subsidiaries;

(c) they are not the subsidiaries of an EU parent institution.

▼C2

2. No institution which is either a subsidiary in the Member State where it is authorised and supervised, or a parent undertaking, and no institution included in the consolidation pursuant to Article 18, shall be required to comply with the obligations laid down in Articles 89, 90 and 91 on an individual basis.

▼M8

3. No institution which is either a parent undertaking or a subsidiary, and no institution included in the consolidation pursuant to Article 18, shall be required to comply with the obligations laid down in Part Eight on an individual basis.

By way of derogation from the first subparagraph of this paragraph, the institutions referred to in paragraph 1a of this Article shall comply with Article 437a and point (h) of Article 447 on an individual basis.

▼M9

4. Institutions shall comply with the obligations laid down in Part Six and in point (d) of Article 430(1) of this Regulation on an individual basis.

The following institutions shall not be required to comply with Article 413(1) and the associated liquidity reporting requirements laid down in Part Seven A of this Regulation:

(a) institutions which are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012;

(b) institutions which are also authorised in accordance with Article 16 and point (a) of Article 54(2) of Regulation (EU) No 909/2014 of the European Parliament and of the Council [1], provided that they do not perform any significant maturity transformations; and

(c) institutions which are designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, provided that:

(i) their activities are limited to offering banking-type services, as referred to in Section C of the Annex to that Regulation, to central securities depositories authorised in accordance with Article 16 of that Regulation; and

(ii) they do not perform any significant maturity transformations.

5. Institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3) of this Regulation, and institutions which are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012, shall not be required to comply with the obligations laid down in Part Seven and the associated leverage ratio reporting requirements laid down in Part Seven A of this Regulation on an individual basis.

[1] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

▼C2

Article 7

Derogation from the application of prudential requirements on an individual basis

1. Competent authorities may waive the application of Article 6(1) to any subsidiary of an institution, where both the subsidiary and the institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately between the parent undertaking and the subsidiary:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;

(b) either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;

(c) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(d) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

2. Competent authorities may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or a mixed financial holding company set up in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over institutions, and in particular to the standards laid down in Article 11(1).

3. Competent authorities may waive the application of Article 6(1) to a parent institution in a Member State where that institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and all the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State;

(b) the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution in a Member State.

The competent authority which makes use of this paragraph shall inform the competent authorities of all other Member States.

▼C2

Article 8

Derogation from the application of liquidity requirements on an individual basis

1. The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries in the Union and supervise them as a single liquidity sub-group so long as they fulfil all of the following conditions:

(a) the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six;

▼M8

(b) the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions within the group or sub-group, that are subject to the waiver, monitors and has oversight at all times over the funding positions of all institutions within the group or sub-group where the net stable funding ratio (NSFR) requirement set out in Title IV of Part Six is waived, and ensures a sufficient level of liquidity, and of stable funding where the NSFR requirement set out in Title IV of Part Six is waived, for all of those institutions;

▼C2

(c) the institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they become due;

(d) there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in (c).

By 1 January 2014, the Commission shall report to the European Parliament and the Council on any legal obstacles which are capable of rendering impossible the application of point (c) of the first subparagraph and is invited to make a legislative proposal, if appropriate, by 31 December 2015, on which of those obstacles should be removed.

2. The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries where all institutions of the single liquidity sub-group are authorised in the same Member State and provided that the conditions in paragraph 1 are fulfilled.

3. Where institutions of the single liquidity sub-group are authorised in several Member States, paragraph 1 shall only be applied after following the procedure laid down in Article 21 and only to the institutions whose competent authorities agree about the following elements:

(a) their assessment of the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Article 86 of Directive 2013/36/EU across the single liquidity sub-group;

▼M8

(b) the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group, where the liquidity coverage ratio (LCR) requirement as laid down in the delegated act referred to in Article 460(1) is waived, and the distribution of amounts and location of available stable funding within the single liquidity sub-group, where the NSFR requirement set out in Title IV of Part Six is waived;

(c) the determination of minimum amounts of liquid assets to be held by institutions for which the application of the LCR requirement as laid down in the delegated act referred to in Article 460(1) is waived and the determination of minimum amounts of available stable funding to be held by institutions for which the application of the NSFR requirement set out in Title IV of Part Six is waived;

▼C2

(d) the need for stricter parameters than those set out in Part Six;

(e) unrestricted sharing of complete information between the competent authorities;

(f) a full understanding of the implications of such a waiver.

4. Competent authorities may also apply paragraphs 1, 2 and 3 to institutions which are members of the same institutional protection scheme as referred to in Article 113(7) provided that they meet all the conditions laid down therein, and to other institutions linked by a relationship referred to in Article 113(6) provided that they meet all the conditions laid down therein. Competent authorities shall in that case determine one of the institutions subject to the waiver to meet Part Six on the basis of the consolidated situation of all institutions of the single liquidity sub-group.

5. Where a waiver has been granted under paragraph 1 or paragraph 2, the competent authorities may also apply Article 86 of Directive 2013/36/EU, or parts thereof, at the level of the single liquidity sub-group and waive the application of Article 86 of Directive 2013/36/EU, or parts thereof, on an individual basis.

▼M8

6. Where, in accordance with this Article, a competent authority waives, in part or in full, the application of Part Six for an institution, it may also waive the application of the associated liquidity reporting requirements under point (d) of Article 430(1) for that institution.

▼C2

Article 9

Individual consolidation method

1. Subject to paragraphs 2 and 3 of this Article and to Article 144(3) of Directive 2013/36/EU, the competent authorities may permit on a case-by-case basis parent institutions to incorporate in the calculation of their

▼C2

requirement under Article 6(1), subsidiaries which meet the conditions laid down in points (c) and (d) of Article 7(1) and whose material exposures or material liabilities are to that parent institution.

2. The treatment set out in paragraph 1 shall be permitted only where the parent institution demonstrates fully to the competent authorities the circumstances and arrangements, including legal arrangements, by virtue of which there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds, or repayment of liabilities when due by the subsidiary to its parent undertaking.

3. Where a competent authority exercises the discretion laid down in paragraph 1, it shall on a regular basis and not less than once a year inform the competent authorities of all the other Member States of the use made of paragraph 1 and of the circumstances and arrangements referred to in paragraph 2. Where the subsidiary is in a third country, the competent authorities shall provide the same information to the competent authorities of that third country as well.

Article 10

Waiver for credit institutions permanently affiliated to a central body

▼M8

1. Competent authorities may, in accordance with national law, partially or fully waive the application of the requirements set out in Parts Two to Eight of this Regulation and Chapter 2 of Regulation (EU) 2017/2402 to one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, if the following conditions are met:

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(a) the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;

(b) the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions;

(c) the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

Member States may maintain and make use of existing national legislation regarding the application of the waiver referred to in the first subparagraph as long as it does not conflict with this Regulation or Directive 2013/36/EU.

2. Where the competent authorities are satisfied that the conditions set out in paragraph 1 are met, and where the liabilities or commitments of the central body are entirely guaranteed by the affiliated institutions, the competent authorities may waive the application of Parts Two to Eight to the central body on an individual basis.

▼C2

CHAPTER 2

Prudential consolidation

Section 1

Application of requirements on a consolidated basis

▼M9

Article 10a

Application of prudential requirements on a consolidated basis where investment firms are parent undertakings

For the purposes of the application of this Chapter, investment firms shall be considered to be parent financial holding companies in a Member State or Union parent financial holding companies where such investment firms are parent undertakings of an institution or of an investment firm subject to this Regulation that is referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033.

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Article 11

General treatment

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1. Parent institutions in a Member State shall comply, to the extent and in the manner set out in Article 18, with the obligations laid down in Parts Two, Three, Four, Seven and Seven A on the basis of their consolidated situation, with the exception of point (d) of Article 430(1). The parent undertakings and their subsidiaries that are subject to this Regulation shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded. In particular, they shall ensure that subsidiaries not subject to this Regulation implement arrangements, processes and mechanisms to ensure proper consolidation.

2. For the purpose of ensuring that the requirements of this Regulation are applied on a consolidated basis, the terms ‘institution’, ‘parent institution in a Member State’, ‘EU parent institution’ and ‘parent undertaking’, as the case may be, shall also refer to:

(a) a financial holding company or mixed financial holding company approved in accordance with Article 21a of Directive 2013/36/EU;

(b) a designated institution controlled by a parent financial holding company or parent mixed financial holding company where such a parent is not subject to approval in accordance with Article 21a(4) of Directive 2013/36/EU;

(c) a financial holding company, mixed financial holding company or institution designated in accordance with point (d) of Article 21a(6) of Directive 2013/36/EU.

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The consolidated situation of an undertaking referred to in point (b) of the first subparagraph of this paragraph shall be the consolidated situation of the parent financial holding company or the parent mixed financial holding company that is not subject to approval in accordance with Article 21a(4) of Directive 2013/36/EU. The consolidated situation of an undertaking referred to in point (c) of the first subparagraph of this paragraph shall be the consolidated situation of its parent financial holding company or parent mixed financial holding company.

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3a. By way of derogation from paragraph 1 of this Article, only parent institutions identified as resolution entities that are G-SII entities shall comply with Article 92a of this Regulation on a consolidated basis, to the extent and in the manner set out in Article 18 of this Regulation.

▼M8

Only EU parent undertakings that are a material subsidiary of a non-EU G-SII and are not resolution entities shall comply with Article 92b of this Regulation on a consolidated basis to the extent and in the manner set out in Article 18 of this Regulation. Where Article 21b(2) of Directive 2013/36/EU applies, the two intermediate EU parent undertakings jointly identified as a material subsidiary shall each comply with Article 92b of this Regulation on the basis of their consolidated situation.

▼M9

4. EU parent institutions shall comply with Part Six and point (d) of Article 430(1) of this Regulation on the basis of their consolidated situation where the group comprises one or more credit institutions or investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU.

Where a waiver has been granted under Article 8(1) to (5), the institutions and, where applicable, the financial holding companies or mixed financial holding companies that are part of a liquidity sub-group shall comply with Part Six and point (d) of Article 430(1) of this Regulation on a consolidated basis or on the sub-consolidated basis of the liquidity sub-group.

▼M8

5. Where Article 10 of this Regulation applies, the central body referred to in that Article shall comply with the requirements of Parts Two to Eight of this Regulation and Chapter 2 of Regulation (EU) 2017/2402 on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions.

▼M8

6. In addition to the requirements laid down in paragraphs 1 to 5 of this Article, and without prejudice to other provisions of this Regulation and Directive 2013/36/EU, when it is justified for supervisory purposes by the specificities of the risk or of the capital structure of an institution or where Member States adopt national laws requiring the structural separation of activities within a banking group, competent authorities may require an institution to comply with the obligations laid down in Parts Two to Eight of this Regulation and in Title VII of Directive 2013/36/EU on a sub-consolidated basis.

The application of the approach set out in the first subparagraph shall be without prejudice to effective supervision on a consolidated basis and shall neither entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole nor form or create an obstacle to the functioning of the internal market.

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Article 12a

Consolidated calculation for G-SIIs with multiple resolution entities

Where at least two G-SII entities that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the Union, the EU parent institution of that G-SII shall calculate the amount of own funds and eligible liabilities referred to in Article 92a(1), point (a):

(a) for each resolution entity or third-country entity that would be a resolution entity if it were established in the Union;

(b) for the EU parent institution as if it were the only resolution entity of the G-SII.

The calculation referred to in point (b) of the first subparagraph shall be undertaken on the basis of the consolidated situation of the EU parent institution.

Resolution authorities shall act in accordance with Article 45d(4) and Article 45h(2) of Directive 2014/59/EU.

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Article 13

Application of disclosure requirements on a consolidated basis

1. EU parent institutions shall comply with Part Eight on the basis of their consolidated situation.

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

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2. Institutions identified as resolution entities that are G-SII entities shall comply with Article 437a and point (h) of Article 447 on the basis of the consolidated situation of their resolution group.

▼M8

3. The first subparagraph of paragraph 1 shall not apply to EU parent institutions, EU parent financial holding companies, EU parent mixed financial holding companies or resolution entities where they are included in equivalent disclosures on a consolidated basis provided by a parent undertaking established in a third country.

The second subparagraph of paragraph 1 shall apply to subsidiaries of parent undertakings established in a third country where those subsidiaries qualify as large subsidiaries.

4. Where Article 10 applies, the central body referred to in that Article shall comply with Part Eight on the basis of the consolidated situation of the central body. Article 18(1) shall apply to the central body and the affiliated institutions shall be treated as subsidiaries of the central body.

Article 14

Application of requirements of Article 5 of Regulation (EU) 2017/2402 on a consolidated basis

1. Parent undertakings and their subsidiaries that are subject to this Regulation shall be required to meet the obligations laid down in Article 5 of Regulation (EU) 2017/2402 on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms required by those provisions are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that subsidiaries that are not subject to this Regulation implement arrangements, processes and mechanisms to ensure compliance with those provisions.

2. Institutions shall apply an additional risk weight in accordance with Article 270a of this Regulation when applying Article 92 of this Regulation on a consolidated or sub-consolidated basis if the requirements laid down in Article 5 of Regulation (EU) 2017/2402 are breached at the level of an entity established in a third country included in the consolidation in accordance with Article 18 of this Regulation if the breach is material in relation to the overall risk profile of the group.

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Section 2

Methods for prudential consolidation

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Article 18

Methods of prudential consolidation

1. Institutions, financial holding companies and mixed financial holding companies that are required to comply with the requirements referred to in Section 1 of this Chapter on the basis of their consolidated situation shall carry out a full consolidation of all institutions and financial institutions that are their subsidiaries. Paragraphs 3 to 6 and paragraph 9 of this Article shall not apply where Part Six and point (d) of Article 430(1) apply on the basis of the consolidated situation of an institution, financial holding company or mixed financial holding company or on the sub-consolidated situation of a liquidity sub-group as set out in Articles 8 and 10.

For the purposes of Article 11(3a), institutions that are required to comply with the requirements referred to in Article 92a or 92b on a consolidated basis shall carry out a full consolidation of all institutions and financial institutions that are their subsidiaries in the relevant resolution groups.

2. Ancillary services undertakings shall be included in consolidation in the cases, and in accordance with the methods, laid down in this Article.

3. Where undertakings are related within the meaning of Article 22(7) of Directive 2013/34/EU, competent authorities shall determine how consolidation is to be carried out.

4. The consolidating supervisor shall require the proportional consolidation according to the share of capital held of participations in institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where the liability of those undertakings is limited to the share of the capital they hold.

5. In the case of participations or capital ties other than those referred to in paragraphs 1 and 4, competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require the use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

6. Competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

(a) where, in the opinion of the competent authorities, an institution exercises a significant influence over one or more institutions or financial institutions, but without holding a participation or other capital ties in those institutions; and

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(b) where two or more institutions or financial institutions are placed under single management other than pursuant to a contract, clauses of their memoranda or articles of association.

In particular, competent authorities may permit or require the use of the method provided for in Article 22(7), (8) and (9) of Directive 2013/34/EU. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

7. Where an institution has a subsidiary which is an undertaking other than an institution, a financial institution or an ancillary services undertaking or holds a participation in such an undertaking, it shall apply to that subsidiary or participation the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

By way of derogation from the first subparagraph, competent authorities may allow or require institutions to apply a different method to such subsidiaries or participations, including the method required by the applicable accounting framework, provided that:

(a) the institution does not already apply the equity method on 28 December 2020;

(b) it would be unduly burdensome to apply the equity method or the equity method does not adequately reflect the risks that the undertaking referred to in the first subparagraph poses to the institution; and

(c) the method applied does not result in full or proportional consolidation of that undertaking.

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

(a) the undertaking is not an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or an undertaking excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive;

(b) there is a substantial risk that the institution decides to provide financial support to that undertaking in stressed conditions, in the absence of, or in excess of any contractual obligations to provide such support.

9. EBA shall develop draft regulatory technical standards to specify conditions in accordance with which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and paragraph 8.

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EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2020.

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

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Section 3

Scope of prudential consolidation

Article 19

Entities excluded from the scope of prudential consolidation

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

(a) EUR 10 million;

(b) 1 % of the total amount of assets and off-balance sheet items of the parent undertaking or the undertaking that holds the participation.

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

(a) where the undertaking concerned is situated in a third country where there are legal impediments to the transfer of the necessary information;

(b) where the undertaking concerned is of negligible interest only with respect to the objectives of monitoring institutions;

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(c) where, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking concerned would be inappropriate or misleading as far as the objectives of the supervision of institutions are concerned.

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3. Where, in the cases referred to in paragraph 1 and point (b) of paragraph 2, several undertakings meet the criteria set out therein, they shall nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the specified objectives.

Article 20

Joint decisions on prudential requirements

1. The competent authorities shall work together, in full consultation:

(a) in the case of applications for the permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2) and Article363 respectively submitted by an EU parent institution and its subsidiaries, or jointly by the subsidiaries of an EU parent

▼C2

financial holding company or EU parent mixed financial holding company, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject;

(b) for the purposes of determining whether the criteria for a specific intragroup treatment as referred to in Article 422(9) and Article 425(5) complemented by the EBA regulatory technical standards referred to in Article 422(10) and Article 425(6) are met.

Applications shall be submitted only to the consolidating supervisor.

The application referred to in Article 312(2), shall include a description of the methodology used for allocating operational risk capital between the different entities of the group. The application shall indicate whether and how diversification effects are intended to be factored in the risk measurement system.

2. The competent authorities shall do everything within their power to reach a joint decision within six months on:

(a) the application referred to in point (a) of paragraph 1;

(b) the assessment of the criteria and the determination of the specific treatment referred to in point (b) of paragraph 1.

This joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in paragraph 1.

3. The period referred to in paragraph 2 shall begin:

(a) on the date of receipt of the complete application referred to in point (a) of paragraph 1 by the consolidating supervisor. The consolidating supervisor shall forward the complete application to the other competent authorities without delay;

(b) on the date of receipt by competent authorities of a report prepared by the consolidating supervisor analysing intragroup commitments within the group.

4. In the absence of a joint decision between the competent authorities within six months, the consolidating supervisor shall make its own decision on point (a) of paragraph 1. The decision of the consolidating supervisor shall not limit the powers of the competent authorities under Article 105 of Directive 2013/36/EU.

The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six months period.

The decision shall be provided to the EU parent institution, the EU parent financial holding company or to the EU parent mixed financial holding company and the other competent authorities by the consolidating supervisor.

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If, at the end of the six-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision on point (a) of paragraph 1 of this Article and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

5. In the absence of a joint decision between the competent authorities within six months, the competent authority responsible for the supervision of the subsidiary on an individual basis shall make its own decision on point (b) of paragraph 1.

The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six-month period.

The decision shall be provided to the consolidating supervisor that informs the EU parent institution, the EU parent financial holding company or the EU parent mixed financial holding company.

If, at the end of the six-month period, the consolidating supervisor has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority responsible for the supervision of the subsidiary on an individual basis shall defer its decision on point (b) of paragraph 1 of this Article and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

6. Where an EU parent institution and its subsidiaries, the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach referred to in Article 312(2) or an IRB Approach referred to in Article 143 on a unified basis, the competent authorities shall allow the qualifying criteria set out in Articles 321 and 322 or in Part Three, Title II, Chapter 3, Section 6 respectively to be met by the parent and its subsidiaries considered together, in a way that is consistent with the structure of the group and its risk management systems, processes and methodologies.

7. The decisions referred to in paragraphs 2, 4 and 5 shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

8. EBA shall develop draft implementing technical standards to specify the joint decision process referred to in point (a) of paragraph 1 with regard to the applications for permissions referred to in Article 143(1), Article 151(4) and (9), Article 283, Article 312(2), and Article 363 with a view to facilitating joint decisions.

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EBA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

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

Article 21

Joint decisions on the level of application of liquidity requirements

1. Upon application of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company or a sub-consolidating subsidiary of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company, the consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company in a Member State shall do everything within their power to reach a joint decision on whether the conditions in points (a) to (d) of Article 8(1) are met and identifying a single liquidity sub-group for the application of Article 8.

The joint decision shall be reached within six months after submission by the consolidating supervisor of a report identifying single liquidity sub-groups on the basis of the criteria laid down in Article 8. In the event of disagreement during the six-month period, the consolidating supervisor shall consult EBA at the request of any of the other competent authorities concerned. The consolidating supervisor may consult EBA on its own initiative.

The joint decision may also impose constraints on the location and ownership of liquid assets and require minimum amounts of liquid assets to be held by institutions that are exempt from the application of Part Six.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be submitted to the parent institution of the liquidity subgroup by the consolidating supervisor.

2. In the absence of a joint decision within six months, each competent authority responsible for supervision on an individual basis shall take its own decision.

However, any competent authority may during the six-month period refer to EBA the question whether the conditions in points (a) to (d) of Article 8(1) are met. In that case, EBA may carry out its non-binding mediation in accordance with Article 31(c) of Regulation (EU) No 1093/2010 and all the competent authorities involved shall defer their decisions pending the conclusion of the non-binding mediation. Where, during the mediation, no agreement has been reached by the competent authorities within three months, each competent authority responsible for supervision on an individual basis shall take its own decision taking into account the proportionality of benefits and risks at the level of the Member State of the parent institution and the proportionality of benefits and risks at the level of the Member State of the subsidiary. The matter shall not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

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The joint decision referred to in paragraph 1 and the decisions referred to in the second subparagraph of this paragraph shall be binding.

3. Any relevant competent authority may also during the six-month period consult EBA in the event of a disagreement on the conditions in points (a) to (d) of Article 8(3). In that case, EBA may carry out its non-binding mediation in accordance with Article 31(c) of Regulation (EU) No 1093/2010, and all the competent authorities involved shall defer their decisions pending the conclusion of the non-binding mediation. Where, during the mediation, no agreement has been reached by the competent authorities within three months, each competent authority responsible for supervision on an individual basis shall take its own decision.

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Article 22

Sub-consolidation in case of entities in third countries

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

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

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Article 23

Undertakings in third countries

For the purposes of applying supervision on a consolidated basis in accordance with this Chapter, the terms ‘investment firm’, ‘credit institution’, financial institution', and ‘institution’ shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms in Article 4.

Article 24

Valuation of assets and off-balance sheet items

1. The valuation of assets and off-balance sheet items shall be effected in accordance with the applicable accounting framework.

2. By way of derogation from paragraph 1, competent authorities may require that institutions effect the valuation of assets and off-balance sheet items and the determination of own funds in accordance with the international accounting standards as applicable under Regulation (EC) No 1606/2002.

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PART TWO

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OWN FUNDS AND ELIGIBLE LIABILITIES

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TITLE I

ELEMENTS OF OWN FUNDS

CHAPTER 1

Tier 1 capital

Article 25

Tier 1 capital

The Tier 1 capital of an institution consists of the sum of the Common Equity Tier 1 capital and Additional Tier 1 capital of the institution.

CHAPTER 2

Common Equity Tier 1 capital

Section 1

Common Equity Tier 1 items and instruments

Article 26

Common Equity Tier 1 items

1. Common Equity Tier 1 items of institutions consist of the following:

(a) capital instruments, provided that the conditions laid down in Article 28 or, where applicable, Article 29 are met;

(b) share premium accounts related to the instruments referred to in point (a);

(c) retained earnings;

(d) accumulated other comprehensive income;

(e) other reserves;

(f) funds for general banking risk.

The items referred to in points (c) to (f) shall be recognised as Common Equity Tier 1 only where they are available to the institution for unrestricted and immediate use to cover risks or losses as soon as these occur.

2. For the purposes of point (c) of paragraph 1, institutions may include interim or year-end profits in Common Equity Tier 1 capital before the institution has taken a formal decision confirming the final profit or loss of the institution for the year only with the prior permission of the competent authority. The competent authority shall grant permission where the following conditions are met:

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(a) those profits have been verified by persons independent of the institution that are responsible for the auditing of the accounts of that institution;

(b) the institution has demonstrated to the satisfaction of the competent authority that any foreseeable charge or dividend has been deducted from the amount of those profits.

A verification of the interim or year-end profits of the institution shall provide an adequate level of assurance that those profits have been evaluated in accordance with the principles set out in the applicable accounting framework.

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3. Competent authorities shall evaluate whether issuances of capital instruments meet the criteria set out in Article 28 or, where applicable, Article 29. Institutions shall classify issuances of capital instruments as Common Equity Tier 1 instruments only after permission is granted by the competent authorities.

By way of derogation from the first subparagraph, institutions may classify as Common Equity Tier 1 instruments subsequent issuances of a form of Common Equity Tier 1 instruments for which they have already received that permission, provided that both of the following conditions are met:

(a) the provisions governing those subsequent issuances are substantially the same as the provisions governing those issuances for which the institutions have already received permission;

(b) institutions have notified those subsequent issuances to the competent authorities sufficiently in advance of their classification as Common Equity Tier 1 instruments.

Competent authorities shall consult EBA before granting permission for new forms of capital instruments to be classified as Common Equity Tier 1 instruments. Competent authorities shall have due regard to EBA's opinion and, where they decide to deviate from it, shall write to EBA within three months from the date of receipt of EBA's opinion setting out the rationale for deviating from the relevant opinion. This subparagraph does not apply to the capital instruments referred to in Article 31.

On the basis of information collected from competent authorities, EBA shall establish, maintain and publish a list of all forms of capital instruments in each Member State that qualify as Common Equity Tier 1 instruments. In accordance with Article 35 of Regulation (EU) No 1093/2010, EBA may collect any information in connection with Common Equity Tier 1 instruments that it considers necessary to establish compliance with the criteria set out in Article 28 or, where applicable, Article 29 of this Regulation and for the purpose of maintaining and updating the list referred to in this subparagraph.

Following the review process set out in Article 80 and where there is sufficient evidence that the relevant capital instruments do not meet or have ceased to meet the criteria set out in Article 28 or, where applicable, Article 29, EBA may decide not to add those instruments to the list referred to in the fourth subparagraph or remove them from that list, as the case may be. EBA shall make an announcement to that effect that shall also refer to the relevant competent authority's position on the matter. This subparagraph does not apply to the capital instruments referred to in Article 31.

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4. EBA shall develop draft regulatory technical standards to specify the meaning of foreseeable when determining whether any foreseeable charge or dividend has been deducted.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 27

Capital instruments of mutuals, cooperative societies, savings institutions or similar institutions in Common Equity Tier 1 items

1. Common Equity Tier 1 items shall include any capital instrument issued by an institution under its statutory terms provided that the following conditions are met:

(a) the institution is of a type that is defined under applicable national law and which competent authorities consider to qualify as any of the following:

(i) a mutual;

(ii) a cooperative society;

(iii) a savings institution;

(iv) a similar institution;

(v) a credit institution which is wholly owned by one of the institutions referred to in points (i) to (iv) and has approval from the relevant competent authority to make use of the provisions in this Article, provided that, and for as long as, 100 % of the ordinary shares in issue in the credit institution are held directly or indirectly by an institution referred to in those points;

(b) the conditions laid down in Articles 28 or, where applicable, Article 29, are met.

Those mutuals, cooperative societies or savings institutions recognised as such under applicable national law prior to 31 December 2012 shall continue to be classified as such for the purposes of this Part, provided that they continue to meet the criteria that determined such recognition.

2. EBA shall develop draft regulatory technical standards to specify the conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution for the purposes of this Part.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

▼C2

Article 28

Common Equity Tier 1 instruments

1. Capital instruments shall qualify as Common Equity Tier 1 instruments only if all the following conditions are met:

(a) the instruments are issued directly by the institution with the prior approval of the owners of the institution or, where permitted under applicable national law, the management body of the institution;

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(b) the instruments are fully paid up and the acquisition of ownership of those instruments is not funded directly or indirectly by the institution;

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(c) the instruments meet all the following conditions as regards their classification:

(i) they qualify as capital within the meaning of Article 22 of Directive 86/635/EEC;

(ii) they are classified as equity within the meaning of the applicable accounting framework;

(iii) they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law;

(d) the instruments are clearly and separately disclosed on the balance sheet in the financial statements of the institution;

(e) the instruments are perpetual;

(f) the principal amount of the instruments may not be reduced or repaid, except in either of the following cases:

(i) the liquidation of the institution;

(ii) discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior permission of the competent authority in accordance with Article 77;

(g) the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments, except in the case of instruments referred to in Article 27 where the refusal by the institution to redeem such instruments is prohibited under applicable national law;

(h) the instruments meet the following conditions as regards distributions:

(i) there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions;

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(ii) distributions to holders of the instruments may be paid only out of distributable items;

(iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 27;

(iv) the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 27;

(v) the conditions governing the instruments do not include any obligation for the institution to make distributions to their holders and the institution is not otherwise subject to such an obligation;

(vi) non-payment of distributions does not constitute an event of default of the institution;

(vii) the cancellation of distributions imposes no restrictions on the institution;

(i) compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments;

(j) the instruments rank below all other claims in the event of insolvency or liquidation of the institution;

(k) the instruments entitle their owners to a claim on the residual assets of the institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except in the case of the capital instruments referred to in Article 27;

(l) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any of the following:

(i) the institution or its subsidiaries;

(ii) the parent undertaking of the institution or its subsidiaries;

(iii) the parent financial holding company or its subsidiaries;

(iv) the mixed activity holding company or its subsidiaries;

(v) the mixed financial holding company and its subsidiaries;

(vi) any undertaking that has close links with the entities referred to in points (i) to (v);

(m) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation.

▼C2

The condition set out in point (j) of the first subparagraph shall be deemed to be met, notwithstanding the instruments are included in Additional Tier 1 or Tier 2 by virtue of Article 484(3), provided that they rank pari passu.

▼M8

For the purposes of point (b) of the first subparagraph, only the part of a capital instrument that is fully paid up shall be eligible to qualify as a Common Equity Tier 1 instrument.

▼C2

2. The conditions laid down in point (i) of paragraph 1 shall be deemed to be met notwithstanding a write down on a permanent basis of the principal amount of Additional Tier 1 or Tier 2 instruments.

The condition laid down in point (f) of paragraph 1 shall be deemed to be met notwithstanding the reduction of the principal amount of the capital instrument within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution.

The condition laid down in point (g) of paragraph 1 shall be deemed to be met notwithstanding the provisions governing the capital instrument indicating expressly or implicitly that the principal amount of the instrument would or might be reduced within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution.

3. The condition laid down in point (h)(iii) of paragraph 1 shall be deemed to be met notwithstanding the instrument paying a dividend multiple, provided that such a dividend multiple does not result in a distribution that causes a disproportionate drag on own funds.

▼M8

The condition set out in point (h)(v) of the first subparagraph of paragraph 1 shall be considered to be met notwithstanding a subsidiary being subject to a profit and loss transfer agreement with its parent undertaking, according to which the subsidiary is obliged to transfer, following the preparation of its annual financial statements, its annual result to the parent undertaking, where all the following conditions are met:

(a) the parent undertaking owns 90 % or more of the voting rights and capital of the subsidiary;

(b) the parent undertaking and the subsidiary are located in the same Member State;

(c) the agreement was concluded for legitimate taxation purposes;

(d) in preparing the annual financial statement, the subsidiary has discretion to decrease the amount of distributions by allocating a part or all of its profits to its own reserves or funds for general banking risk before making any payment to its parent undertaking;

(e) the parent undertaking is obliged under the agreement to fully compensate the subsidiary for all losses of the subsidiary;

(f) the agreement is subject to a notice period according to which the agreement can be terminated only by the end of an accounting year, with such termination taking effect no earlier than the beginning

▼M8

of the following accounting year, leaving the parent undertaking's obligation to fully compensate the subsidiary for all losses incurred during the current accounting year unchanged.

Where an institution has entered into a profit and loss transfer agreement, it shall notify the competent authority without delay and provide the competent authority with a copy of the agreement. The institution shall also notify the competent authority without delay of any changes to the profit and loss transfer agreement and the termination thereof. An institution shall not enter into more than one profit and loss transfer agreement.

▼C2

4. For the purposes of point (h)(i) of paragraph 1, differentiated distributions shall only reflect differentiated voting rights. In this respect, higher distributions shall only apply to Common Equity Tier 1 instruments with fewer or no voting rights.

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

(a) the applicable forms and nature of indirect funding of own funds instruments;

(b) whether and when multiple distributions would constitute a disproportionate drag on own funds;

(c) the meaning of preferential distributions.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 29

Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions

1. Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 28 with modifications resulting from the application of this Article are met.

2. The following conditions shall be met as regards redemption of the capital instruments:

(a) except where prohibited under applicable national law, the institution shall be able to refuse the redemption of the instruments;

(b) where the refusal by the institution of the redemption of instruments is prohibited under applicable national law, the provisions governing the instruments shall give the institution the ability to limit their redemption;

▼C2

(c) refusal to redeem the instruments, or the limitation of the redemption of the instruments where applicable, may not constitute an event of default of the institution.

3. The capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable national law or the statute of the institution.

4. Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other Common Equity Tier 1 instruments issued by that institution.

The condition laid down in the first subparagraph is without prejudice to the possibility for a mutual, cooperative society, savings institution or a similar institution to recognise within Common Equity Tier 1 instruments that do not afford voting rights to the holder and that meet all the following conditions:

(a) the claim of the holders of the non-voting instruments in the insolvency or liquidation of the institution is proportionate to the share of the total Common Equity Tier 1 instruments that those non-voting instruments represent;

(b) the instruments otherwise qualify as Common Equity Tier 1 instruments.

5. Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap, such a limitation shall apply to the same degree to all holders of all Common Equity Tier 1 instruments issued by the institution.

6. EBA shall develop draft regulatory technical standards to specify the nature of the limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 30

Consequences of the conditions for Common Equity Tier 1 instruments ceasing to be met

The following shall apply where, in the case of a Common Equity Tier 1 instrument, the conditions laid down in Article 28 or, where applicable, Article 29 cease to be met:

▼C2

(a) that instrument shall immediately cease to qualify as a Common Equity Tier 1 instrument;

(b) the share premium accounts that relate to that instrument shall immediately cease to qualify as Common Equity Tier 1 items.

Article 31

Capital instruments subscribed by public authorities in emergency situations

1. In emergency situations, competent authorities may permit institutions to include in Common Equity Tier 1 capital instruments that comply at least with the conditions laid down in points (b) to (e) of Article 28(1) where all the following conditions are met:

(a) the capital instruments are issued after 1 January 2014;

(b) the capital instruments are considered State aid by the Commission;

(c) the capital instruments are issued within the context of recapitalisation measures pursuant to State aid- rules existing at the time;

(d) the capital instruments are fully subscribed and held by the State or a relevant public authority or public-owned entity;

(e) the capital instruments are able to absorb losses;

(f) except for the capital instruments referred to in Article 27, in the event of liquidation, the capital instruments entitle their owners to a claim on the residual assets of the institution after the payment of all senior claims;

(g) there are adequate exit mechanisms of the State or, where applicable, a relevant public authority or public-owned entity;

(h) the competent authority has granted its prior permission and has published its decision together with an explanation of that decision.

2. Upon reasoned request by, and in cooperation with, the relevant competent authority, EBA shall consider the capital instruments referred to in paragraph 1 as equivalent to Common Equity Tier 1 instruments for the purposes of this Regulation.

Section 2

Prudential filters

Article 32

Securitised assets

1. An institution shall exclude from any element of own funds any increase in its equity under the applicable accounting framework that results from securitised assets, including the following:

(a) such an increase associated with future margin income that results in a gain on sale for the institution;

▼C2

(b) where the institution is the originator of a securitisation, net gains that arise from the capitalisation of future income from the securitised assets that provide credit enhancement to positions in the securitisation.

2. EBA shall develop draft regulatory technical standards to specify further the concept of a gain on sale referred to in point (a) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 33

Cash flow hedges and changes in the value of own liabilities

1. Institutions shall not include the following items in any element of own funds:

(a) the fair value reserves related to gains or losses on cash flow hedges of financial instruments that are not valued at fair value, including projected cash flows;

(b) gains or losses on liabilities of the institution that are valued at fair value that result from changes in the own credit standing of the institution;

▼M8

(c) fair value gains and losses on derivative liabilities of the institution that result from changes in the own credit risk of the institution.

▼C2

2. For the purposes of point (c) of paragraph 1, institutions shall not offset the fair value gains and losses arising from the institution's own credit risk with those arising from its counterparty credit risk.

3. Without prejudice to point (b) of paragraph 1, institutions may include the amount of gains and losses on their liabilities in own funds where all the following conditions are met:

(a) the liabilities are in the form of bonds as referred to in Article 52(4) of Directive 2009/65/EC;

(b) the changes in the value of the institution's assets and liabilities are due to the same changes in the institution's own credit standing;

(c) there is a close correspondence between the value of the bonds referred to in point (a) and the value of the institution's assets;

(d) it is possible to redeem the mortgage loans by buying back the bonds financing the mortgage loans at market or nominal value.

▼C2

4. EBA shall develop draft regulatory technical standards to specify what constitutes close correspondence between the value of the bonds and the value of the assets, as referred to in point (c) of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 30 September 2013.

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

Article 34

Additional value adjustments

Institutions shall apply the requirements of Article 105 to all their assets measured at fair value when calculating the amount of their own funds and shall deduct from Common Equity Tier 1 capital the amount of any additional value adjustments necessary.

Article 35

Unrealised gains and losses measured at fair value

Except in the case of the items referred to in Article 33, institutions shall not make adjustments to remove from their own funds unrealised gains or losses on their assets or liabilities measured at fair value.

Section 3

Deductions from Common Equity Tier 1 items, exemptions and alternatives

Sub-Section 1

Deductions from Common Equity Tier 1 items

Article 36

Deductions from Common Equity Tier 1 items

1. Institutions shall deduct the following from Common Equity Tier 1 items:

(a) losses for the current financial year;

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(b) intangible assets with the exception of prudently valued software assets the value of which is not negatively affected by resolution, insolvency or liquidation of the institution;

▼C2

(c) deferred tax assets that rely on future profitability;

▼C2

(d) for institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach (the IRB Approach), negative amounts resulting from the calculation of expected loss amounts laid down in Articles 158 and 159;

(e) defined benefit pension fund assets on the balance sheet of the institution;

(f) direct, indirect and synthetic holdings by an institution of own Common Equity Tier 1 instruments, including own Common Equity Tier 1 instruments that an institution is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;

(g) direct, indirect and synthetic holdings of the Common Equity Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the institution that the competent authority considers to have been designed to inflate artificially the own funds of the institution;

(h) the applicable amount of direct, indirect and synthetic holdings by the institution of Common Equity Tier 1 instruments of financial sector entities where the institution does not have a significant investment in those entities;

(i) the applicable amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of financial sector entities where the institution has a significant investment in those entities;

▼C3

(j) the amount of items required to be deducted from Additional Tier 1 items pursuant to Article 56 that exceeds the Additional Tier 1 items of the institution;

▼C2

(k) the exposure amount of the following items which qualify for a risk weight of 1 250 %, where the institution deducts that exposure amount from the amount of Common Equity Tier 1 items as an alternative to applying a risk weight of 1 250 %:

(i) qualifying holdings outside the financial sector;

▼M5

(ii) securitisation positions, in accordance with point (b) of Article 244(1), point (b) of Article 245(1) and Article 253;

▼C2

(iii) free deliveries, in accordance with Article 379(3);

(iv) positions in a basket for which an institution cannot determine the risk weight under the IRB Approach, in accordance with Article 153(8);

(v) equity exposures under an internal models approach, in accordance with Article 155(4).

(l) any tax charge relating to Common Equity Tier 1 items foreseeable at the moment of its calculation, except where the institution suitably adjusts the amount of Common Equity Tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses;

▼M7

(m) the applicable amount of insufficient coverage for non-performing exposures;

▼M8

(n) for a minimum value commitment referred to in Article 132c(2), any amount by which the current market value of the units or shares in CIUs underlying the minimum value commitment falls short of the present value of the minimum value commitment and for which the institution has not already recognised a reduction of Common Equity Tier 1 items.

▼C2

2. EBA shall develop draft regulatory technical standards to specify the application of the deductions referred to in points (a), (c), (e), (f), (h), (i) and (l) of paragraph 1 of this Article and related deductions referred to in points (a), (c), (d) and (f) of Article 56 and points (a), (c) and (d) of Article 66.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

3. EBA shall develop draft regulatory technical standards to specify the types of capital instruments of financial institutions and, in consultation with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 ([1]), of third country insurance and reinsurance undertakings, and of undertakings excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive that shall be deducted from the following elements of own funds:

(a) Common Equity Tier 1 items;

(b) Additional Tier 1 items;

(c) Tier 2 items.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

▼M8

4. EBA shall develop draft regulatory technical standards to specify the application of the deductions referred to in point (b) of paragraph 1, including the materiality of negative effects on the value which do not cause prudential concerns.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2020.

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

([1]) OJ L 331, 15.12.2010, p. 48.

▼C2

Article 37

Deduction of intangible assets

Institutions shall determine the amount of intangible assets to be deducted in accordance with the following:

(a) the amount to be deducted shall be reduced by the amount of associated deferred tax liabilities that would be extinguished if the intangible assets became impaired or were derecognised under the applicable accounting framework;

(b) the amount to be deducted shall include goodwill included in the valuation of significant investments of the institution;

▼M8

(c) the amount to be deducted shall be reduced by the amount of the accounting revaluation of the subsidiaries' intangible assets derived from the consolidation of subsidiaries attributable to persons other than the undertakings included in the consolidation pursuant to Chapter 2 of Title II of Part One.

▼C2

Article 38

Deduction of deferred tax assets that rely on future profitability

1. Institutions shall determine the amount of deferred tax assets that rely on future profitability that require deduction in accordance with this Article.

2. Except where the conditions laid down in paragraph 3 are met, the amount of deferred tax assets that rely on future profitability shall be calculated without reducing it by the amount of the associated deferred tax liabilities of the institution.

3. The amount of deferred tax assets that rely on future profitability may be reduced by the amount of the associated deferred tax liabilities of the institution, provided the following conditions are met:

(a) the entity has a legally enforceable right under applicable national law to set off those current tax assets against current tax liabilities;

(b) the deferred tax assets and the deferred tax liabilities relate to taxes levied by the same tax authority and on the same taxable entity.

4. Associated deferred tax liabilities of the institution used for the purposes of paragraph 3 may not include deferred tax liabilities that reduce the amount of intangible assets or defined benefit pension fund assets required to be deducted.

5. The amount of associated deferred tax liabilities referred to in paragraph 4 shall be allocated between the following:

(a) deferred tax assets that rely on future profitability and arise from temporary differences that are not deducted in accordance with Article 48(1);

▼C2

(b) all other deferred tax assets that rely on future profitability.

Institutions shall allocate the associated deferred tax liabilities according to the proportion of deferred tax assets that rely on future profitability that the items referred to in points (a) and (b) represent.

Article 39

Tax overpayments, tax loss carry backs and deferred tax assets that do not rely on future profitability

1. The following items shall not be deducted from own funds and shall be subject to a risk weight in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable:

(a) overpayments of tax by the institution for the current year;

(b) current year tax losses of the institution carried back to previous years that give rise to a claim on, or a receivable from, a central government, regional government or local tax authority.

2. ►M8 Deferred tax assets that do not rely on future profitability shall be limited to deferred tax assets which were created before 23 November 2016 and which arise from temporary differences, where all the following conditions are met: ◄

(a) they are automatically and mandatorily replaced without delay with a tax credit in the event that the institution reports a loss when the annual financial statements of the institution are formally approved, or in the event of liquidation or insolvency of the institution;

(b) an institution is able under the applicable national tax law to offset a tax credit referred to in point (a) against any tax liability of the institution or any other undertaking included in the same consolidation as the institution for tax purposes under that law or any other undertaking subject to the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One;

(c) where the amount of tax credits referred to in point (b) exceeds the tax liabilities referred to in that point, any such excess is replaced without delay with a direct claim on the central government of the Member State in which the institution is incorporated.

Institutions shall apply a risk weight of 100 % to deferred tax assets where the conditions laid down in points (a), (b) and (c) are met.

Article 40

Deduction of negative amounts resulting from the calculation of expected loss amounts

The amount to be deducted in accordance with point (d) of Article 36(1) shall not be reduced by a rise in the level of deferred tax assets that rely on future profitability, or other additional tax effects, that could occur if provisions were to rise to the level of expected losses referred to in Section 3 of Chapter 3 of Title II of Part Three.

▼C2

Article 41

Deduction of defined benefit pension fund assets

1. For the purposes of point (e) of Article 36(1), the amount of defined benefit pension fund assets to be deducted shall be reduced by the following:

(a) the amount of any associated deferred tax liability which could be extinguished if the assets became impaired or were derecognised under the applicable accounting framework;

(b) the amount of assets in the defined benefit pension fund which the institution has an unrestricted ability to use, provided that the institution has received the prior permission of the competent authority.

Those assets used to reduce the amount to be deducted shall receive a risk weight in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable.

2. EBA shall develop draft regulatory technical standards to specify the criteria according to which a competent authority shall permit an institution to reduce the amount of assets in the defined benefit pension fund as specified in point (b) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 42

Deduction of holdings of own Common Equity Tier 1 instruments

For the purposes of point (f) of Article 36(1), institutions shall calculate holdings of own Common Equity Tier 1 instruments on the basis of gross long positions subject to the following exceptions:

(a) institutions may calculate the amount of holdings of own Common Equity Tier 1 instruments on the basis of the net long position provided that both the following conditions are met:

  (i) the long and short positions are in the same underlying exposure and the short positions involve no counterparty risk;

  (ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;

(b) institutions shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to own Common Equity Tier 1 instruments included in those indices;

▼C2

(c) institutions may net gross long positions in own Common Equity Tier 1 instruments resulting from holdings of index securities against short positions in own Common Equity Tier 1 instruments resulting from short positions in the underlying indices, including where those short positions involve counterparty risk, provided that both the following conditions are met:

(i) the long and short positions are in the same underlying indices;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book.

Article 43

Significant investment in a financial sector entity

For the purposes of deduction, a significant investment of an institution in a financial sector entity shall arise where any of the following conditions is met:

(a) the institution owns more than 10 % of the Common Equity Tier 1 instruments issued by that entity;

(b) the institution has close links with that entity and owns Common Equity Tier 1 instruments issued by that entity;

(c) the institution owns Common Equity Tier 1 instruments issued by that entity and the entity is not included in consolidation pursuant to Chapter 2 of Title II of Part One but is included in the same accounting consolidation as the institution for the purposes of financial reporting under the applicable accounting framework.

Article 44

Deduction of holdings of Common Equity Tier 1 instruments of financial sector entities and where an institution has a reciprocal cross holding designed artificially to inflate own funds

Institutions shall make the deductions referred to in points (g), (h) and (i) of Article 36(1) in accordance with the following:

(a) holdings of Common Equity Tier 1 instruments and other capital instruments of financial sector entities shall be calculated on the basis of the gross long positions;

(b) Tier 1 own-fund insurance items shall be treated as holdings of Common Equity Tier 1 instruments for the purposes of deduction.

▼C2

Article 45

Deduction of holdings of Common Equity Tier 1 instruments of financial sector entities

Institutions shall make the deductions required by points (h) and (i) of Article 36(1) in accordance with the following provisions:

(a) they may calculate direct, indirect and synthetic holdings of Common Equity Tier 1 instruments of the financial sector entities on the basis of the net long position in the same underlying exposure provided that both the following conditions are met:

▼M8

(i) the maturity date of the short position is either the same as, or later than the maturity date of the long position or the residual maturity of the short position is at least one year;

▼C2

(ii) either both the long position and the short position are held in the trading book or both are held in the non-trading book;

(b) they shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to the capital instruments of the financial sector entities in those indices.

Article 46

Deduction of holdings of Common Equity Tier 1 instruments where an institution does not have a significant investment in a financial sector entity

1. For the purposes of point (h) of Article 36(1), institutions shall calculate the applicable amount to be deducted by multiplying the amount referred to in point (a) of this paragraph by the factor derived from the calculation referred to in point (b) of this paragraph:

(a) the aggregate amount by which the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities in which the institution does not have a significant investment exceeds 10 % of the aggregate amount of Common Equity Tier 1 items of the institution calculated after applying the following to Common Equity Tier 1 items:

(i) Articles 32 to 35;

(ii) the deductions referred to in points (a) to (g), points (k)(ii) to (v) and point (l) of Article 36(1), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;

(iii) Articles 44 and 45;

▼C2

(b) the amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of those financial sector entities in which the institution does not have a significant investment divided by the aggregate amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of those financial sector entities.

2. Institutions shall exclude underwriting positions held for five working days or fewer from the amount referred to in point (a) of paragraph 1 and from the calculation of the factor referred to in point (b) of paragraph 1.

3. The amount to be deducted pursuant to paragraph 1 shall be apportioned across all Common Equity Tier 1 instruments held. Institutions shall determine the amount of each Common Equity Tier 1 instrument that is deducted pursuant to paragraph 1 by multiplying the amount specified in point (a) of this paragraph by the proportion specified in point (b) of this paragraph:

(a) the amount of holdings required to be deducted pursuant to paragraph 1;

(b) the proportion of the aggregate amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of financial sector entities in which the institution does not have a significant investment represented by each Common Equity Tier 1 instrument held.

4. The amount of holdings referred to in point (h) of Article 36(1) that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i) to (iii) of paragraph 1 shall not be deducted and shall be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

5. Institutions shall determine the amount of each Common Equity Tier 1 instrument that is risk weighted pursuant to paragraph 4 by multiplying the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

(a) the amount of holdings required to be risk weighted pursuant to paragraph 4;

(b) the proportion resulting from the calculation in point (b) of paragraph 3.

▼C2

Article 47

Deduction of holdings of Common Equity Tier 1 instruments where an institution has a significant investment in a financial sector entity

For the purposes of point (i) of Article 36(1), the applicable amount to be deducted from Common Equity Tier 1 items shall exclude underwriting positions held for five working days or fewer and shall be determined in accordance with Articles 44 and 45 and Sub-section 2.

▼M7

Article 47a

Non-performing exposures

1. For the purposes of point (m) of Article 36(1), exposure shall include any of the following items, provided they are not included in the trading book of the institution:

(a) a debt instrument, including a debt security, a loan, an advance and a demand deposit;

(b) a loan commitment given, a financial guarantee given or any other commitment given, irrespective of whether it is revocable or irrevocable, with the exception of undrawn credit facilities that may be cancelled unconditionally at any time and without notice, or that effectively provide for automatic cancellation due to deterioration in the borrower's creditworthiness.

2. For the purposes of point (m) of Article 36(1), the exposure value of a debt instrument shall be its accounting value measured without taking into account any specific credit risk adjustments, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) of Article 36(1), other own funds reductions related to the exposure or partial write-offs made by the institution since the last time the exposure was classified as non-performing.

For the purposes of point (m) of Article 36(1), the exposure value of a debt instrument that was purchased at a price lower than the amount owed by the debtor shall include the difference between the purchase price and the amount owed by the debtor.

For the purposes of point (m) of Article 36(1), the exposure value of a loan commitment given, a financial guarantee given or any other commitment given as referred to in point (b) of paragraph 1 of this Article shall be its nominal value, which shall represent the institution's maximum exposure to credit risk without taking account of any funded or unfunded credit protection. The nominal value of a loan commitment given shall be the undrawn amount that the institution has committed to lend and the nominal value of a financial guarantee given shall be the maximum amount the entity could have to pay if the guarantee is called on.

The nominal value referred to in the third subparagraph of this paragraph shall not take into account any specific credit risk adjustment, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) of Article 36(1) or other own funds reductions related to the exposure.

▼M7

3. For the purposes of point (m) of Article 36(1), the following exposures shall be classified as non-performing:

(a) an exposure in respect of which a default is considered to have occurred in accordance with Article 178;

(b) an exposure which is considered to be impaired in accordance with the applicable accounting framework;

(c) an exposure under probation pursuant to paragraph 7, where additional forbearance measures are granted or where the exposure becomes more than 30 days past due;

(d) an exposure in the form of a commitment that, were it drawn down or otherwise used, would likely not be paid back in full without realisation of collateral;

(e) an exposure in form of a financial guarantee that is likely to be called by the guaranteed party, including where the underlying guaranteed exposure meets the criteria to be considered as non-performing.

For the purposes of point (a), where an institution has on-balance-sheet exposures to an obligor that are past due by more than 90 days and that represent more than 20 % of all on-balance-sheet exposures to that obligor, all on- and off-balance-sheet exposures to that obligor shall be considered to be non-performing.

4. Exposures that have not been subject to a forbearance measure shall cease to be classified as non-performing for the purposes of point (m) of Article 36(1) where all the following conditions are met:

(a) the exposure meets the exit criteria applied by the institution for the discontinuation of the classification as impaired in accordance with the applicable accounting framework and of the classification as defaulted in accordance with Article 178;

(b) the situation of the obligor has improved to the extent that the institution is satisfied that full and timely repayment is likely to be made;

(c) the obligor does not have any amount past due by more than 90 days.

5. The classification of a non-performing exposure as non-current asset held for sale in accordance with the applicable accounting framework shall not discontinue its classification as non-performing exposure for the purposes of point (m) of Article 36(1).

6. Non-performing exposures subject to forbearance measures shall cease to be classified as non-performing for the purposes of point (m) of Article 36(1) where all the following conditions are met:

(a) the exposures have ceased to be in a situation that would lead to their classification as non-performing under paragraph 3;

(b) at least one year has passed since the date on which the forbearance measures were granted and the date on which the exposures were classified as non-performing, whichever is later;

(c) there is no past-due amount following the forbearance measures and the institution, on the basis of the analysis of the obligor's financial situation, is satisfied about the likelihood of the full and timely repayment of the exposure.

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Full and timely repayment may be considered likely where the obligor has executed regular and timely payments of amounts equal to either of the following:

▼M7

(a) the amount that was past due before the forbearance measure was granted, where there were amounts past due;

(b) the amount that has been written-off under the forbearance measures granted, where there were no amounts past due.

7. Where a non-performing exposure has ceased to be classified as non-performing pursuant to paragraph 6, such exposure shall be under probation until all the following conditions are met:

(a) at least two years have passed since the date on which the exposure subject to forbearance measures was re-classified as performing;

(b) regular and timely payments have been made during at least half of the period that the exposure would be under probation, leading to the payment of a substantial aggregate amount of principal or interest;

(c) none of the exposures to the obligor is more than 30 days past due.

Article 47b

Forbearance measures

1. Forbearance measure is a concession by an institution towards an obligor that is experiencing or is likely to experience difficulties in meeting its financial commitments. A concession may entail a loss for the lender and shall refer to either of the following actions:

(a) a modification of the terms and conditions of a debt obligation, where such modification would not have been granted had the obligor not experienced difficulties in meeting its financial commitments;

(b) a total or partial refinancing of a debt obligation, where such refinancing would not have been granted had the obligor not experienced difficulties in meeting its financial commitments.

2. At least the following situations shall be considered forbearance measures:

(a) new contract terms are more favourable to the obligor than the previous contract terms, where the obligor is experiencing or is likely to experience difficulties in meeting its financial commitments;

(b) new contract terms are more favourable to the obligor than contract terms offered by the same institution to obligors with a similar risk profile at that time, where the obligor is experiencing or is likely to experience difficulties in meeting its financial commitments;

(c) the exposure under the initial contract terms was classified as non-performing before the modification to the contract terms or would have been classified as non-performing in the absence of modification to the contract terms;

(d) the measure results in a total or partial cancellation of the debt obligation;

(e) the institution approves the exercise of clauses that enable the obligor to modify the terms of the contract and the exposure was

▼M7

classified as non-performing before the exercise of those clauses, or would be classified as non-performing were those clauses not exercised;

(f) at or close to the time of the granting of debt, the obligor made payments of principal or interest on another debt obligation with the same institution, which was classified as a non-performing exposure or would have been classified as non-performing in the absence of those payments;

(g) the modification to the contract terms involves repayments made by taking possession of collateral, where such modification constitutes a concession.

3. The following circumstances are indicators that forbearance measures may have been adopted:

(a) the initial contract was past due by more than 30 days at least once during the three months prior to its modification or would be more than 30 days past due without modification;

(b) at or close to the time of concluding the credit agreement, the obligor made payments of principal or interest on another debt obligation with the same institution that was past due by 30 days at least once during the three months prior to the granting of new debt;

(c) the institution approves the exercise of clauses that enable the obligor to change the terms of the contract, and the exposure is 30 days past due or would be 30 days past due were those clauses not exercised.

4. For the purposes of this Article, the difficulties experienced by an obligor in meeting its financial commitments shall be assessed at obligor level, taking into account all the legal entities in the obligor's group which are included in the accounting consolidation of the group, and natural persons who control that group.

Article 47c

Deduction for non-performing exposures

1. For the purposes of point (m) of Article 36(1), institutions shall determine the applicable amount of insufficient coverage separately for each non-performing exposure to be deducted from Common Equity Tier 1 items by subtracting the amount determined in point (b) of this paragraph from the amount determined in point (a) of this paragraph, where the amount referred to in point (a) exceeds the amount referred to in point (b):

(a) the sum of:

(i) the unsecured part of each non-performing exposure, if any, multiplied by the applicable factor referred to in paragraph 2;

(ii) the secured part of each non-performing exposure, if any, multiplied by the applicable factor referred to in paragraph 3;

(b) the sum of the following items provided they relate to the same non-performing exposure:

(i) specific credit risk adjustments;

(ii) additional value adjustments in accordance with Articles 34 and 105;

▼M7

(iii) other own funds reductions;

(iv) for institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach, the absolute value of the amounts deducted pursuant to point (d) of Article 36(1) which relate to non-performing exposures, where the absolute value attributable to each non-performing exposure is determined by multiplying the amounts deducted pursuant to point (d) of Article 36(1) by the contribution of the expected loss amount for the non-performing exposure to total expected loss amounts for defaulted or non-defaulted exposures, as applicable;

(v) where a non-performing exposure is purchased at a price lower than the amount owed by the debtor, the difference between the purchase price and the amount owed by the debtor;

(vi) amounts written-off by the institution since the exposure was classified as non-performing.

The secured part of a non-performing exposure is that part of the exposure which, for the purpose of calculating own funds requirements pursuant to Title II of Part Three, is considered to be covered by a funded credit protection or unfunded credit protection or fully and completely secured by mortgages.

The unsecured part of a non-performing exposure corresponds to the difference, if any, between the value of the exposure as referred to in Article 47a(1) and the secured part of the exposure, if any.

2. For the purposes of point (a)(i) of paragraph 1, the following factors shall apply:

(a) 0,35 for the unsecured part of a non-performing exposure to be applied during the period between the first and the last day of the third year following its classification as non-performing;

(b) 1 for the unsecured part of a non-performing exposure to be applied as of the first day of the fourth year following its classification as non-performing.

3. For the purposes of point (a)(ii) of paragraph 1, the following factors shall apply:

(a) 0,25 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the fourth year following its classification as non-performing;

(b) 0,35 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the fifth year following its classification as non-performing;

(c) 0,55 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the sixth year following its classification as non-performing;

(d) 0,70 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the seventh year following its classification as non-performing;

▼M7

(e) 0,80 for the part of a non-performing exposure secured by other funded or unfunded credit protection pursuant to Title II of Part Three to be applied during the period between the first and the last day of the seventh year following its classification as non-performing;

(f) 0,80 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the eighth year following its classification as non-performing;

(g) 1 for the part of a non-performing exposure secured by other funded or unfunded credit protection pursuant to Title II of Part Three to be applied as of the first day of the eighth year following its classification as non-performing;

(h) 0,85 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the ninth year following its classification as non-performing;

(i) 1 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied as of the first day of the tenth year following its classification as non-performing.

▼M11

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

▼M7

(a) 0 for the secured part of the non-performing exposure to be applied during the period between one year and seven years following its classification as non-performing; and

(b) 1 for the secured part of the non-performing exposure to be applied as of the first day of the eighth year following its classification as non-performing.

5. EBA shall assess the range of practices applied for the valuation of secured non-performing exposures and may develop guidelines to specify a common methodology, including possible minimum requirements for re-valuation in terms of timing and ad hoc methods, for the prudential valuation of eligible forms of funded and unfunded credit protection, in particular regarding assumptions pertaining to their recoverability and enforceability. Those guidelines may also include a common methodology for the determination of the secured part of a non-performing exposure, as referred to in paragraph 1.

Those guidelines shall be issued in accordance with Article 16 of Regulation (EU) No 1093/2010.

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6. By way of derogation from paragraph 2, where an exposure has, between one year and two years following its classification as non-performing, been granted a forbearance measure, the factor applicable in accordance with paragraph 2 on the date on which the forbearance measure is granted shall be applicable for an additional period of one year.

By way of derogation from paragraph 3, where an exposure has, between two and six years following its classification as non-performing, been granted a forbearance measure, the factor applicable in accordance with paragraph 3 on the date on which the forbearance measure is granted shall be applicable for an additional period of one year.

This paragraph shall only apply in relation to the first forbearance measure that has been granted since the classification of the exposure as non-performing.

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Sub-Section 2

Exemptions from and alternatives to deduction from Common Equity Tier 1 items

Article 48

Threshold exemptions from deduction from Common Equity Tier 1 items

1. In making the deductions required pursuant to points (c) and (i) of Article 36(1), institutions are not required to deduct the amounts of the items listed in points (a) and (b) of this paragraph which in aggregate are equal to or less than the threshold amount referred to in paragraph 2:

(a) deferred tax assets that are dependent on future profitability and arise from temporary differences, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:

(i) Articles 32 to 35;

(ii) points (a) to (h), points (k)(ii) to (v) and point (l) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences.

(b) where an institution has a significant investment in a financial sector entity, the direct, indirect and synthetic holdings of that institution of the Common Equity Tier 1 instruments of those entities that in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:

(i) Article 32 to 35;

(ii) points (a) to (h), points (k)(ii) to (v) and point (l), of Article 36(1) excluding deferred tax assets that rely on future profitability and arise from temporary differences.

2. For the purposes of paragraph 1, the threshold amount shall be equal to the amount referred to in point (a) of this paragraph multiplied by the percentage referred to in point (b) of this paragraph:

▼C2

(a) the residual amount of Common Equity Tier 1 items after applying the adjustments and deductions in Articles 32 to 36 in full and without applying the threshold exemptions specified in this Article;

(b) 17,65 %.

3. For the purposes of paragraph 1, an institution shall determine the portion of deferred tax assets in the total amount of items that is not required to be deducted by dividing the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

(a) the amount of deferred tax assets that are dependent on future profitability and arise from temporary differences, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution;

(b) the sum of the following:

(i) the amount referred to in point (a);

(ii) the amount of direct, indirect and synthetic holdings by the institution of the own funds instruments of financial sector entities in which the institution has a significant investment, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution.

The proportion of significant investments in the total amount of items that is not required to be deducted is equal to one minus the proportion referred to in the first subparagraph.

4. The amounts of the items that are not deducted pursuant to paragraph 1 shall be risk weighted at 250 %.

Article 49

Requirement for deduction where consolidation, supplementary supervision or institutional protection schemes are applied

1. For the purposes of calculating own funds on an individual basis, a sub-consolidated basis and a consolidated basis, where the competent authorities require or permit institutions to apply method 1, 2 or 3 of Annex I to Directive 2002/87/EC, the competent authorities may permit institutions not to deduct the holdings of own funds instruments of a financial sector entity in which the parent institution, parent financial holding company or parent mixed financial holding company or institution has a significant investment, provided that the conditions laid down in points (a) to (e) of this paragraph are met:

(a) the financial sector entity is an insurance undertaking, a re-insurance undertaking or an insurance holding company;

(b) that insurance undertaking, re-insurance undertaking or insurance holding company is included in the same supplementary supervision under Directive 2002/87/EC as the parent institution, parent financial holding company or parent mixed financial holding company or institution that has the holding;

▼C2

(c) the institution has received the prior permission of the competent authorities;

(d) prior to granting the permission referred to in point (c), and on a continuing basis, the competent authorities are satisfied that the level of integrated management, risk management and internal control regarding the entities that would be included in the scope of consolidation under method 1, 2 or 3 is adequate;

(e) the holdings in the entity belong to one of the following:

(i) the parent credit institution;

(ii) the parent financial holding company;

(iii) the parent mixed financial holding company;

(iv) the institution;

(v) a subsidiary of one of the entities referred to in points (i) to (iv) that is included in the scope of consolidation pursuant to Chapter 2 of Title II of Part One.

The method chosen shall be applied in a consistent manner over time.

2. For the purposes of calculating own funds on an individual basis and a sub-consolidated basis, institutions subject to supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One shall not deduct holdings of own funds instruments issued by financial sector entities included in the scope of consolidated supervision, unless the competent authorities determine those deductions to be required for specific purposes, in particular structural separation of banking activities and resolution planning.

Applying the approach referred to in the first subparagraph shall not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole forming or creating an obstacle to the functioning of the internal market.

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This paragraph shall not apply when calculating own funds for the purposes of the requirements laid down in Articles 92a and 92b, which shall be calculated in accordance with the deduction framework set out in Article 72e(4).

▼C2

3. Competent authorities may, for the purposes of calculating own funds on an individual or sub-consolidated basis permit institutions not to deduct holdings of own funds instruments in the following cases:

(a) where an institution has a holding in another institution and the conditions referred to in points (i) to (v) are met:

(i) the institutions fall within the same institutional protection scheme referred to in Article 113(7);

(ii) the competent authorities have granted the permission referred to in Article 113(7);

▼C2

(iii) the conditions laid down in Article 113(7) are satisfied;

(iv) the institutional protection scheme draws up a consolidated balance sheet referred to in point (e) of Article 113(7) or, where it is not required to draw up consolidated accounts, an extended aggregated calculation that is, to the satisfaction of the competent authorities, equivalent to the provisions of Directive 86/635/EEC, which incorporates certain adaptations of the provisions of Directive 83/349/EEC or of Regulation (EC) No 1606/2002, governing the consolidated accounts of groups of credit institutions. The equivalence of that extended aggregated calculation shall be verified by an external auditor and in particular that the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the institutional protection scheme is eliminated in the calculation. ►M8 The consolidated balance sheet or the extended aggregated calculation shall be reported to the competent authorities with the frequency set out in the implementing technical standards referred to in Article 430(7) ◄;

►M8 (v) the institutions included in an institutional protection scheme meet together on a consolidated or extended aggregated basis the requirements laid down in Article 92 and carry out reporting of compliance with those requirements in accordance with Article 430. ◄ Within an institutional protection scheme the deduction of the interest owned by co-operative members or legal entities, which are not members of the institutional protection scheme, is not required, provided that the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the institutional protection scheme and the minority shareholder, when it is an institution, is eliminated.

(b) where a regional credit institution has a holding in its central or another regional credit institution and the conditions laid down in points (a)(i) to (v) are met.

4. The holdings in respect of which deduction is not made in accordance with paragraph 1, 2 or 3 shall qualify as exposures and shall be risk weighted in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable.

5. Where an institution applies method 1, 2 or 3 of Annex I to Directive 2002/87/EC, the institution shall disclose the supplementary own funds requirement and capital adequacy ratio of the financial conglomerate as calculated in accordance with Article 6 of and Annex I to that Directive.

6. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 ([1]) shall, through the Joint Committee, develop draft regulatory technical standards to specify for the purposes of this Article the conditions of application of the calculation methods listed in Annex I, Part II of Directive 2002/87/EC for the purposes of the alternatives to deduction referred to in paragraph 1 of this Article.

([1]) OJ L 331, 15.12.2010, p. 84.

▼C2

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

Section 4

Common Equity Tier 1 capital

Article 50

Common Equity Tier 1 capital

The Common Equity Tier 1 capital of an institution shall consist of Common Equity Tier 1 items after the application of the adjustments required by Articles 32 to 35, the deductions pursuant to Article 36 and the exemptions and alternatives laid down in Articles 48, 49 and 79.

CHAPTER 3

Additional Tier 1 capital

Section 1

Additional Tier 1 items and instruments

Article 51

Additional Tier 1 items

Additional Tier 1 items shall consist of the following:

(a) capital instruments, where the conditions laid down in Article 52(1) are met;

(b) the share premium accounts related to the instruments referred to in point (a).

Instruments included under point (a) shall not qualify as Common Equity Tier 1 or Tier 2 items.

Article 52

Additional Tier 1 instruments

1. Capital instruments shall qualify as Additional Tier 1 instruments only if the following conditions are met:

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(a) the instruments are directly issued by an institution and fully paid up;

(b) the instruments are not owned by any of the following:

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(i) the institution or its subsidiaries;

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(ii) an undertaking in which the institution has a participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;

▼M8

(c) the acquisition of ownership of the instruments is not funded directly or indirectly by the institution;

▼C2

(d) the instruments rank below Tier 2 instruments in the event of the insolvency of the institution;

(e) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claims by any of the following:

(i) the institution or its subsidiaries;

(ii) the parent undertaking of the institution or its subsidiaries;

(iii) the parent financial holding company or its subsidiaries;

(iv) the mixed activity holding company or its subsidiaries;

(v) the mixed financial holding company or its subsidiaries;

(vi) any undertaking that has close links with entities referred to in points (i) to (v);

(f) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claim under the instruments in insolvency or liquidation;

(g) the instruments are perpetual and the provisions governing them include no incentive for the institution to redeem them;

▼M8

(h) where the instruments include one or more early redemption options including call options, the options are exercisable at the sole discretion of the issuer;

▼C2

(i) the instruments may be called, redeemed or repurchased only where the conditions laid down in Article 77 are met, and not before five years after the date of issuance except where the conditions laid down in Article 78(4) are met;

▼M8

(j) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed or repurchased, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;

▼C2

(k) the institution does not indicate explicitly or implicitly that the competent authority would consent to a request to call, redeem or repurchase the instruments;

(l) distributions under the instruments meet the following conditions:

(i) they are paid out of distributable items;

▼C2

(ii) the level of distributions made on the instruments will not be amended on the basis of the credit standing of the institution or its parent undertaking;

(iii) the provisions governing the instruments give the institution full discretion at all times to cancel the distributions on the instruments for an unlimited period and on a non-cumulative basis, and the institution may use such cancelled payments without restriction to meet its obligations as they fall due;

(iv) cancellation of distributions does not constitute an event of default of the institution;

(v) the cancellation of distributions imposes no restrictions on the institution;

(m) the instruments do not contribute to a determination that the liabilities of an institution exceed its assets, where such a determination constitutes a test of insolvency under applicable national law;

(n) the provisions governing the instruments require that, upon the occurrence of a trigger event, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to Common Equity Tier 1 instruments;

(o) the provisions governing the instruments include no feature that could hinder the recapitalisation of the institution;

▼M8

(p) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the write-down and conversion powers referred to in Article 59 of that Directive, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to Common Equity Tier 1 instruments;

where the issuer is established in a third country and has not been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union, the law or contractual provisions governing the instruments require that, upon a decision by the relevant third-country authority, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted into Common Equity Tier 1 instruments;

(q) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the instruments may only be issued under, or be otherwise subject to the laws of a third country where, under those laws, the exercise of the write-down and conversion powers referred to in Article 59 of that Directive is effective and enforceable on the basis of statutory provisions or legally enforceable contractual provisions that recognise resolution or other write-down or conversion actions;

▼M8

(r) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses.

▼C2

The condition set out in point (d) of the first subparagraph shall be deemed to be met notwithstanding the fact that the instruments are included in Additional Tier 1 or Tier 2 by virtue of Article 484(3), provided that they rank pari passu.

▼M8

For the purposes of point (a) of the first subparagraph, only the part of a capital instrument that is fully paid up shall be eligible to qualify as an Additional Tier 1 instrument.

▼C2

2. EBA shall develop draft regulatory technical standards to specify all the following:

(a) the form and nature of incentives to redeem;

(b) the nature of any write up of the principal amount of an Additional Tier 1 instrument following a write down of its principal amount on a temporary basis;

(c) the procedures and timing for the following:

(i) determining that a trigger event has occurred;

(ii) writing up the principal amount of an Additional Tier 1 instrument following a write down of its principal amount on a temporary basis;

(d) features of instruments that could hinder the recapitalisation of the institution;

(e) the use of special purpose entities for indirect issuance of own funds instruments.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 53

Restrictions on the cancellation of distributions on Additional Tier 1 instruments and features that could hinder the recapitalisation of the institution

For the purposes of points (l)(v) and (o) of Article 52(1), the provisions governing Additional Tier 1 instruments shall, in particular, not include the following:

(a) a requirement for distributions on the instruments to be made in the event of a distribution being made on an instrument issued by the institution that ranks to the same degree as, or more junior than, an Additional Tier 1 instrument, including a Common Equity Tier 1 instrument;

(b) a requirement for the payment of distributions on Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments to be cancelled in the event that distributions are not made on those Additional Tier 1 instruments;

▼C2

(c) an obligation to substitute the payment of interest or dividend by a payment in any other form. The institution shall not otherwise be subject to such an obligation.

Article 54

Write down or conversion of Additional Tier 1 instruments

1. For the purposes of point (n) of Article 52(1), the following provisions shall apply to Additional Tier 1 instruments:

(a) a trigger event occurs when the Common Equity Tier 1 capital ratio of the institution referred to in point (a) of Article 92(1) falls below either of the following:

(i) 5,125 %;

(ii) a level higher than 5,125 %, where determined by the institution and specified in the provisions governing the instrument;

(b) institutions may specify in the provisions governing the instrument one or more trigger events in addition to that referred to in point (a);

(c) where the provisions governing the instruments require them to be converted into Common Equity Tier 1 instruments upon the occurrence of a trigger event, those provisions shall specify either of the following:

(i) the rate of such conversion and a limit on the permitted amount of conversion;

(ii) a range within which the instruments will convert into Common Equity Tier 1 instruments;

(d) where the provisions governing the instruments require their principal amount to be written down upon the occurrence of a trigger event, the write down shall reduce all the following:

(i) the claim of the holder of the instrument in the insolvency or liquidation of the institution;

(ii) the amount required to be paid in the event of the call or redemption of the instrument;

(iii) the distributions made on the instrument;

▼M8

(e) where the Additional Tier 1 instruments have been issued by a subsidiary undertaking established in a third country, the 5,125 % or higher trigger referred to in point (a) shall be calculated in accordance with the national law of that third country or contractual provisions governing the instruments, provided that the competent authority, after consulting EBA, is satisfied that those provisions are at least equivalent to the requirements set out in this Article.

▼C2

2. Write down or conversion of an Additional Tier 1 instrument shall, under the applicable accounting framework, generate items that qualify as Common Equity Tier 1 items.

▼C2

3. The amount of Additional Tier 1 instruments recognised in Additional Tier 1 items is limited to the minimum amount of Common Equity Tier 1 items that would be generated if the principal amount of the Additional Tier 1 instruments were fully written down or converted into Common Equity Tier 1 instruments.

4. The aggregate amount of Additional Tier 1 instruments that is required to be written down or converted upon the occurrence of a trigger event shall be no less than the lower of the following:

(a) the amount required to restore fully the Common Equity Tier 1 ratio of the institution to 5,125 %;

(b) the full principal amount of the instrument.

5. When a trigger event occurs institutions shall do the following:

(a) immediately inform the competent authorities;

(b) inform the holders of the Additional Tier 1 instruments;

(c) write down the principal amount of the instruments, or convert the instruments into Common Equity Tier 1 instruments without delay, but no later than within one month, in accordance with the requirement laid down in this Article.

6. An institution issuing Additional Tier 1 instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event shall ensure that its authorised share capital is at all times sufficient, for converting all such convertible Additional Tier 1 instruments into shares if a trigger event occurs. All necessary authorisations shall be obtained at the date of issuance of such convertible Additional Tier 1 instruments. The institution shall maintain at all times the necessary prior authorisation to issue the Common Equity Tier 1 instruments into which such Additional Tier 1 instruments would convert upon occurrence of a trigger event.

7. An institution issuing Additional Tier 1 instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event shall ensure that there are no procedural impediments to that conversion by virtue of its incorporation or statutes or contractual arrangements.

Article 55

Consequences of the conditions for Additional Tier 1 instruments ceasing to be met

The following shall apply where, in the case of an Additional Tier 1 instrument, the conditions laid down in Article 52(1) cease to be met:

(a) that instrument shall immediately cease to qualify as an Additional Tier 1 instrument;

▼C2

(b) the part of the share premium accounts that relates to that instrument shall immediately cease to qualify as an Additional Tier 1 item.

Section 2

Deductions from Additional Tier 1 items

Article 56

Deductions from Additional Tier 1 items

Institutions shall deduct the following from Additional Tier 1 items:

(a) direct, indirect and synthetic holdings by an institution of own Additional Tier 1 instruments, including own Additional Tier 1 instruments that an institution could be obliged to purchase as a result of existing contractual obligations;

(b) direct, indirect and synthetic holdings of the Additional Tier 1 instruments of financial sector entities with which the institution has reciprocal cross holdings that the competent authority considers to have been designed to inflate artificially the own funds of the institution;

(c) the applicable amount determined in accordance with Article 60 of direct, indirect and synthetic holdings of the Additional Tier 1 instruments of financial sector entities, where an institution does not have a significant investment in those entities;

(d) direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of financial sector entities where the institution has a significant investment in those entities, excluding underwriting positions held for five working days or fewer;

▼C3

(e) the amount of items required to be deducted from Tier 2 items pursuant to Article 66 that exceeds the Tier 2 items of the institution;

▼C2

(f) any tax charge relating to Additional Tier 1 items foreseeable at the moment of its calculation, except where the institution suitably adjusts the amount of Additional Tier 1 items insofar as such tax charges reduce the amount up to which those items may be applied to cover risks or losses.

▼C2

Article 57

Deductions of holdings of own Additional Tier 1 instruments

For the purposes of point (a) of Article 56, institutions shall calculate holdings of own Additional Tier 1 instruments on the basis of gross long positions subject to the following exceptions:

(a) institutions may calculate the amount of holdings of own Additional Tier 1 instruments on the basis of the net long position provided that both the following conditions are met:

(i) the long and short positions are in the same underlying exposure and the short positions involve no counterparty risk;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;

(b) institutions shall determine the amount to be deducted for direct, indirect or synthetic holdings of index securities by calculating the underlying exposure to own Additional Tier 1 instruments in those indices;

(c) institutions may net gross long positions in own Additional Tier 1 instruments resulting from holdings of index securities against short positions in own Additional Tier 1 instruments resulting from short positions in the underlying indices, including where those short positions involve counterparty risk, provided that both the following conditions are met:

(i) the long and short positions are in the same underlying indices;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;

Article 58

Deduction of holdings of Additional Tier 1 instruments of financial sector entities and where an institution has a reciprocal cross holding designed artificially to inflate own funds

Institutions shall make the deductions required by points (b), (c) and (d) of Article 56 in accordance with the following:

(a) holdings of Additional Tier 1 instruments shall be calculated on the basis of the gross long positions;

▼C2

(b) Additional Tier 1 own-fund insurance items shall be treated as holdings of Additional Tier 1 instruments for the purposes of deduction.

Article 59

Deduction of holdings of Additional Tier 1 instruments of financial sector entities

Institutions shall make the deductions required by points (c) and (d) of Article 56 in accordance with the following:

(a) they may calculate direct, indirect and synthetic holdings of Additional Tier 1 instruments of the financial sector entities on the basis of the net long position in the same underlying exposure provided that both the following conditions are met:

▼M8

(i) the maturity date of the short position is either the same as, or later than the maturity date of the long position or the residual maturity of the short position is at least one year;

▼C2

(ii) either both the short position and the long position are held in the trading book or both are held in the non-trading book.

(b) they shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to the capital instruments of the financial sector entities in those indices.

Article 60

Deduction of holdings of Additional Tier 1 instruments where an institution does not have a significant investment in a financial sector entity

1. For the purposes of point (c) of Article 56, institutions shall calculate the applicable amount to be deducted by multiplying the amount referred to in point (a) of this paragraph by the factor derived from the calculation referred to in point (b) of this paragraph:

(a) the aggregate amount by which the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities in which the institution does not have a significant investment exceeds 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:

(i) Article 32 to 35;

(ii) points (a) to (g), points (k)(ii) to (v) and point (l) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences;

(iii) Articles 44 and 45;

▼C2

(b) the amount of direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of those financial sector entities in which the institution does not have a significant investment divided by the aggregate amount of all direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of those financial sector entities.

2. Institutions shall exclude underwriting positions held for five working days or fewer from the amount referred to in point (a) of paragraph 1 and from the calculation of the factor referred to in point (b) of paragraph 1.

3. The amount to be deducted pursuant to paragraph 1 shall be apportioned across all Additional Tier 1 instruments held. Institutions shall determine the amount of each Additional Tier 1 instrument to be deducted pursuant to paragraph 1 by multiplying the amount specified in point (a) of this paragraph by the proportion specified in point (b) of this paragraph:

(a) the amount of holdings required to be deducted pursuant to paragraph 1;

(b) the proportion of the aggregate amount of direct, indirect and synthetic holdings by the institution of the Additional Tier 1 instruments of financial sector entities in which the institution does not have a significant investment represented by each Additional Tier 1 instrument held.

4. The amount of holdings referred to in point (c) of Article 56 that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i), (ii) and (iii) of paragraph 1 shall not be deducted and shall be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

5. Institutions shall determine the amount of each Additional Tier 1 instrument that is risk weighted pursuant to paragraph 4 by multiplying the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

(a) the amount of holdings required to be risk weighted pursuant to paragraph 4;

(b) the proportion resulting from the calculation in point (b) of paragraph 3.

▼C2

Section 3

Additional Tier 1 capital

Article 61

Additional Tier 1 capital

The Additional Tier 1 capital of an institution shall consist of Additional Tier 1 items after the deduction of the items referred to in Article 56 and the application of Article 79.

CHAPTER 4

Tier 2 capital

Section 1

Tier 2 items and instruments

Article 62

Tier 2 items

Tier 2 items shall consist of the following:

▼M8

(a) capital instruments where the conditions set out in Article 63 are met, and to the extent specified in Article 64;

▼C2

(b) the share premium accounts related to instruments referred to in point (a);

(c) for institutions calculating risk-weighted exposure amounts in accordance with Chapter 2 of Title II of Part Three, general credit risk adjustments, gross of tax effects, of up to 1,25 % of risk-weighted exposure amounts calculated in accordance with Chapter 2 of Title II of Part Three;

(d) for institutions calculating risk-weighted exposure amounts under Chapter 3 of Title II of Part Three, positive amounts, gross of tax effects, resulting from the calculation laid down in Articles 158 and 159 up to 0,6 % of risk-weighted exposure amounts calculated under Chapter 3 of Title II of Part Three.

Items included under point (a) shall not qualify as Common Equity Tier 1 or Additional Tier 1 items.

Article 63

Tier 2 instruments

▼M8

Capital instruments shall qualify as Tier 2 instruments, provided that the following conditions are met:

▼M8

(a) the instruments are directly issued by an institution and fully paid up;

(b) the instruments are not owned by any of the following:

▼C2

(i) the institution or its subsidiaries;

(ii) an undertaking in which the institution has participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;

▼M8

(c) the acquisition of ownership of the instruments is not funded directly or indirectly by the institution;

(d) the claim on the principal amount of the instruments under the provisions governing the instruments ranks below any claim from eligible liabilities instruments;

(e) the instruments are not secured or are not subject to a guarantee that enhances the seniority of the claim by any of the following:

▼C2

(i) the institution or its subsidiaries;

(ii) the parent undertaking of the institution or its subsidiaries;

(iii) the parent financial holding company or its subsidiaries;

(iv) the mixed activity holding company or its subsidiaries;

(v) the mixed financial holding company or its subsidiaries;

(vi) any undertaking that has close links with entities referred to in points (i) to (v);

▼M8

(f) the instruments are not subject to any arrangement that otherwise enhances the seniority of the claim under the instruments;

(g) the instruments have an original maturity of at least five years;

(h) the provisions governing the instruments do not include any incentive for their principal amount to be redeemed or repaid, as applicable by the institution prior to their maturity;

(i) where the instruments include one or more early repayment options, including call options, the options are exercisable at the sole discretion of the issuer;

(j) the instruments may be called, redeemed, repaid or repurchased early only where the conditions set out in Article 77 are met, and not before five years after the date of issuance, except where the conditions set out in Article 78(4) are met;

▼M8

(k) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed, repaid or repurchased early, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;

(l) the provisions governing the instruments do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the institution;

(m) the level of interest or dividends payments, as applicable, due on the instruments will not be amended on the basis of the credit standing of the institution or its parent undertaking;

(n) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the write-down and conversion powers referred to in Article 59 of that Directive, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to Common Equity Tier 1 instruments;

where the issuer is established in a third country and has not been designated in accordance with Article 12 of Directive 2014/59/EU as a part of a resolution group the resolution entity of which is established in the Union, the law or contractual provisions governing the instruments require that, upon a decision by the relevant third-country authority, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted into Common Equity Tier 1 instruments;

(o) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the instruments may only be issued under, or be otherwise subject to the laws of a third country where, under those laws, the exercise of the write-down and conversion powers referred to in Article 59 of that Directive is effective and enforceable on the basis of statutory provisions or legally enforceable contractual provisions that recognise resolution or other write-down or conversion actions;

(p) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses.

For the purposes of point (a) of the first paragraph, only the part of the capital instrument that is fully paid up shall be eligible to qualify as a Tier 2 instrument.

Article 64

Amortisation of Tier 2 instruments

1. The full amount of Tier 2 instruments with a residual maturity of more than five years shall qualify as Tier 2 items.

▼M8

2. The extent to which Tier 2 instruments qualify as Tier 2 items during the final five years of maturity of the instruments is calculated by multiplying the result derived from the calculation referred to in point (a) by the amount referred to in point (b) as follows:

(a) the carrying amount of the instruments on the first day of the final five-year period of their contractual maturity divided by the number of days in that period;

(b) the number of remaining days of contractual maturity of the instruments.

▼C2

Article 65

Consequences of the conditions for Tier 2 instruments ceasing to be met

Where in the case of a Tier 2 instrument the conditions laid down in Article 63 cease to be met, the following shall apply:

(a) that instrument shall immediately cease to qualify as a Tier 2 instrument;

(b) the part of the share premium accounts that relate to that instrument shall immediately cease to qualify as Tier 2 items.

Section 2

Deductions from Tier 2 items

Article 66

Deductions from Tier 2 items

The following shall be deducted from Tier 2 items:

(a) direct, indirect and synthetic holdings by an institution of own Tier 2 instruments, including own Tier 2 instruments that an institution could be obliged to purchase as a result of existing contractual obligations;

(b) direct, indirect and synthetic holdings of the Tier 2 instruments of financial sector entities with which the institution has reciprocal cross holdings that the competent authority considers to have been designed to inflate artificially the own funds of the institution;

(c) the applicable amount determined in accordance with Article 70 of direct, indirect and synthetic holdings of the Tier 2 instruments of financial sector entities, where an institution does not have a significant investment in those entities;

(d) direct, indirect and synthetic holdings by the institution of the Tier 2 instruments of financial sector entities where the institution has a significant investment in those entities, excluding underwriting positions held for fewer than five working days;

▼M8

(e) the amount of items required to be deducted from eligible liabilities items pursuant to Article 72e that exceeds the eligible liabilities items of the institution.

▼C2

Article 67

Deductions of holdings of own Tier 2 instruments

For the purposes of point (a) of Article 66, institutions shall calculate holdings on the basis of the gross long positions subject to the following exceptions:

(a) institutions may calculate the amount of holdings on the basis of the net long position provided that both the following conditions are met:

(i) the long and short positions are in the same underlying exposure and the short positions involve no counterparty risk;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;

(b) institutions shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to own Tier 2 instruments in those indices;

(c) institutions may net gross long positions in own Tier 2 instruments resulting from holdings of index securities against short positions in own Tier 2 instruments resulting from short positions in the underlying indices, including where those short positions involve counterparty risk, provided that both the following conditions are met:

(i) the long and short positions are in the same underlying indices;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book.

Article 68

Deduction of holdings of Tier 2 instruments of financial sector entities and where an institution has a reciprocal cross holding designed artificially to inflate own funds

Institutions shall make the deductions required by points (b), (c) and (d) of Article 66 in accordance with the following provisions:

(a) holdings of Tier 2 instruments shall be calculated on the basis of the gross long positions;

(b) holdings of Tier 2 own-fund insurance items and Tier 3 own-fund insurance items shall be treated as holdings of Tier 2 instruments for the purposes of deduction.

▼C2

Article 69

Deduction of holdings of Tier 2 instruments of financial sector entities

Institutions shall make the deductions required by points (c) and (d) of Article 66 in accordance with the following:

(a) they may calculate direct, indirect and synthetic holdings of Tier 2 instruments of the financial sector entities on the basis of the net long position in the same underlying exposure provided that both the following conditions are met:

▼M8

(i) the maturity date of the short position is either the same as, or later than the maturity date of the long position or the residual maturity of the short position is at least one year;

▼C2

(ii) either both the long position and the short position are held in the trading book or both are held in the non-trading book;

(b) they shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by looking through to the underlying exposure to the capital instruments of the financial sector entities in those indices.

Article 70

Deduction of Tier 2 instruments where an institution does not have a significant investment in a relevant entity

1. For the purposes of point (c) of Article 66, institutions shall calculate the applicable amount to be deducted by multiplying the amount referred to in point (a) of this paragraph by the factor derived from the calculation referred to in point (b) of this paragraph:

(a) the aggregate amount by which the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities in which the institution does not have a significant investment exceeds 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:

(i) Articles 32 to 35;

(ii) points (a) to (g), points (k)(ii) to (v) and point (l) of Article 36(1), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;

(iii) Articles 44 and 45;

(b) the amount of direct, indirect and synthetic holdings by the institution of the Tier 2 instruments of financial sector entities in which the institution does not have a significant investment divided by the aggregate amount of all direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of those financial sector entities.

▼C2

2. Institutions shall exclude underwriting positions held for five working days or fewer from the amount referred to in point (a) of paragraph 1 and from the calculation of the factor referred to in point (b) of paragraph 1.

3. The amount to be deducted pursuant to paragraph 1 shall be apportioned across each Tier 2 instrument held. Institutions shall determine the amount to be deducted from each Tier 2 instrument that is deducted pursuant to paragraph 1 by multiplying the amount specified in point (a) of this paragraph by the proportion specified in point (b) of this paragraph:

(a) the total amount of holdings required to be deducted pursuant to paragraph 1;

(b) the proportion of the aggregate amount of direct, indirect and synthetic holdings by the institution of the Tier 2 instruments of financial sector entities in which the institution does not have a significant investment represented by each Tier 2 instrument held.

4. The amount of holdings referred to in point (c) of Article 66(1) that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i) to (iii) of paragraph 1 shall not be deducted and shall be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

5. Institutions shall determine the amount of each Tier 2 instrument that is risk weighted pursuant to paragraph 4 by multiplying the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

(a) the amount of holdings required to be risk weighted pursuant to paragraph 4;

(b) the proportion resulting from the calculation in point (b) of paragraph 3.

Section 3

Tier 2 capital

Article 71

Tier 2 capital

The Tier 2 capital of an institution shall consist of the Tier 2 items of the institution after the deductions referred to in Article 66 and the application of Article 79.

▼C2

CHAPTER 5

Own funds

Article 72

Own funds

The own funds of an institution shall consist of the sum of its Tier 1 capital and Tier 2 capital.

▼M8

CHAPTER 5a

Eligible liabilities

Section 1

Eligible liabilities items and instruments

Article 72a

Eligible liabilities items

1. Eligible liabilities items shall consist of the following, unless they fall into any of the categories of excluded liabilities laid down in paragraph 2 of this Article, and to the extent specified in Article 72c:

(a) eligible liabilities instruments where the conditions set out in Article 72b are met, to the extent that they do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 items;

(b) Tier 2 instruments with a residual maturity of at least one year, to the extent that they do not qualify as Tier 2 items in accordance with Article 64.

2. The following liabilities shall be excluded from eligible liabilities items:

(a) covered deposits;

(b) sight deposits and short term deposits with an original maturity of less than one year;

(c) the part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level referred to in Article 6 of Directive 2014/49/EU of the European Parliament and of the Council [1];

(d) deposits that would be eligible deposits from natural persons, micro, small and medium–sized enterprises if they were not made through branches located outside the Union of institutions established in the Union;

(e) secured liabilities, including covered bonds and liabilities in the form of financial instruments used for hedging purposes that form an integral part of the cover pool and that in accordance with national law are secured in a manner similar to covered bonds, provided that all secured assets relating to a covered bond cover

[1] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

▼M8

pool remain unaffected, segregated and with enough funding and excluding any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured;

(f) any liability that arises by virtue of the holding of client assets or client money including client assets or client money held on behalf of collective investment undertakings, provided that such a client is protected under the applicable insolvency law;

(g) any liability that arises by virtue of a fiduciary relationship between the resolution entity or any of its subsidiaries (as fiduciary) and another person (as beneficiary), provided that such a beneficiary is protected under the applicable insolvency or civil law;

(h) liabilities to institutions, excluding liabilities to entities that are part of the same group, with an original maturity of less than seven days;

(i) liabilities with a remaining maturity of less than seven days, owed to:

(i) systems or system operators designated in accordance with Directive 98/26/EC of the European Parliament and of the Council ([1]);

(ii) participants in a system designated in accordance with Directive 98/26/EC and arising from the participation in such a system; or

(iii) third-country CCPs recognised in accordance with Article 25 of Regulation (EU) No 648/2012;

(j) a liability to any of the following:

(i) an employee in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of the remuneration that is not regulated by a collective bargaining agreement, and except for the variable component of the remuneration of material risk takers as referred to in Article 92(2) of Directive 2013/36/EU;

(ii) a commercial or trade creditor where the liability arises from the provision to the institution or the parent undertaking of goods or services that are critical to the daily functioning of the institution's or parent undertaking's operations, including IT services, utilities and the rental, servicing and upkeep of premises;

(iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;

([1]) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

▼M8

(iv) deposit guarantee schemes where the liability arises from contributions due in accordance with Directive 2014/49/EU;

(k) liabilities arising from derivatives;

(l) liabilities arising from debt instruments with embedded derivatives.

For the purposes of point (l) of the first subparagraph, debt instruments containing early redemption options exercisable at the discretion of the issuer or of the holder, and debt instruments with variable interests derived from a broadly used reference rate such as Euribor or Libor, shall not be considered as debt instruments with embedded derivatives solely because of such features.

Article 72b

Eligible liabilities instruments

1. Liabilities shall qualify as eligible liabilities instruments, provided that they comply with the conditions set out in this Article and only to the extent specified in this Article.

2. Liabilities shall qualify as eligible liabilities instruments, provided that all the following conditions are met:

(a) the liabilities are directly issued or raised, as applicable, by an institution and are fully paid up;

(b) the liabilities are not owned by any of the following:

(i) the institution or an entity included in the same resolution group;

(ii) an undertaking in which the institution has a direct or indirect participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;

(c) the acquisition of ownership of the liabilities is not funded directly or indirectly by the resolution entity;

(d) the claim on the principal amount of the liabilities under the provisions governing the instruments is wholly subordinated to claims arising from the excluded liabilities referred to in Article 72a(2); that subordination requirement shall be considered to be met in any of the following situations:

(i) the contractual provisions governing the liabilities specify that in the event of normal insolvency proceedings as defined in point (47) of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2) of this Regulation;

(ii) the applicable law specifies that in the event of normal insolvency proceedings as defined in point (47) of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2) of this Regulation;

▼M8

(iii) the instruments are issued by a resolution entity which does not have on its balance sheet any excluded liabilities as referred to in Article 72a(2) of this Regulation that rank *pari passu* or junior to eligible liabilities instruments;

(e) the liabilities are neither secured, nor subject to a guarantee or any other arrangement that enhances the seniority of the claim by any of the following:

(i) the institution or its subsidiaries;

(ii) the parent undertaking of the institution or its subsidiaries;

(iii) any undertaking that has close links with entities referred to in points (i) and (ii);

(f) the liabilities are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses in resolution;

(g) the provisions governing the liabilities do not include any incentive for their principal amount to be called, redeemed or repurchased prior to their maturity or repaid early by the institution, as applicable, except in the cases referred to in Article 72c(3);

(h) the liabilities are not redeemable by the holders of the instruments prior to their maturity, except in the cases referred to in Article 72c(2);

(i) subject to Article 72c(3) and (4), where the liabilities include one or more early repayment options, including call options, the options are exercisable at the sole discretion of the issuer, except in the cases referred to in Article 72c(2);

(j) the liabilities may only be called, redeemed, repaid or repurchased early where the conditions set out in Articles 77 and 78a are met;

(k) the provisions governing the liabilities do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early, as applicable by the resolution entity other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;

(l) the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the resolution entity;

(m) the level of interest or dividend payments, as applicable, due on the liabilities is not amended on the basis of the credit standing of the resolution entity or its parent undertaking;

(n) for instruments issued after 28 June 2021 the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the possible exercise of the write-down and conversion powers in accordance with Article 48 of Directive 2014/59/EU.

▼M8

For the purposes of point (a) of the first subparagraph, only the parts of liabilities that are fully paid up shall be eligible to qualify as eligible liabilities instruments.

For the purposes of point (d) of the first subparagraph of this Article, where some of the excluded liabilities referred to in Article 72a(2) are subordinated to ordinary unsecured claims under national insolvency law, inter alia, due to being held by a creditor who has close links with the debtor, by being or having been a shareholder, in a control or group relationship, a member of the management body or related to any of those persons, subordination shall not be assessed by reference to claims arising from such excluded liabilities.

▼M15

For the purposes of Article 92b, references to the resolution entity in points (c), (k), (l) and (m) of the first subparagraph of this paragraph shall also be understood as references to an institution that is a material subsidiary of a non-EU G-SII.

▼M8

3. In addition to the liabilities referred to in paragraph 2 of this Article, the resolution authority may permit liabilities to qualify as eligible liabilities instruments up to an aggregate amount that does not exceed 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3) and (4), provided that:

(a) all the conditions set out in paragraph 2 except for the condition set out in point (d) of the first subparagraph of paragraph 2 are met;

(b) the liabilities rank *pari passu* with the lowest ranking excluded liabilities referred to in Article 72a(2) with the exception of the excluded liabilities that are subordinated to ordinary unsecured claims under national insolvency law referred to in the third sub-paragraph of paragraph 2 of this Article; and

(c) the inclusion of those liabilities in eligible liabilities items would not give rise to a material risk of a successful legal challenge or of valid compensation claims as assessed by the resolution authority in relation to the principles referred to in point (g) of Article 34(1) and Article 75 of Directive 2014/59/EU.

4. The resolution authority may permit liabilities to qualify as eligible liabilities instruments in addition to the liabilities referred to in paragraph 2, provided that:

(a) the institution is not permitted to include in eligible liabilities items liabilities referred to in paragraph 3;

(b) all the conditions set out in paragraph 2, except for the condition set out in point (d) of the first subparagraph of paragraph 2, are met;

(c) the liabilities rank *pari passu* or are senior to the lowest ranking excluded liabilities referred to in Article 72a(2), with the exception of the excluded liabilities subordinated to ordinary unsecured claims under national insolvency law referred to in the third subparagraph of paragraph 2 of this Article;

(d) on the balance sheet of the institution, the amount of the excluded liabilities referred to in Article 72a(2) which rank *pari passu* or below those liabilities in insolvency does not exceed 5 % of the amount of the own funds and eligible liabilities of the institution;

▼M8

(e) the inclusion of those liabilities in eligible liabilities items would not give rise to a material risk of a successful legal challenge or of valid compensation claims as assessed by the resolution authority in relation to the principles referred to in point (g) of Article 34(1) and Article 75 of Directive 2014/59/EU.

5. The resolution authority may only permit an institution to include liabilities referred to either in paragraph 3 or 4 as eligible liabilities items.

6. The resolution authority shall consult the competent authority when examining whether the conditions set out in this Article are fulfilled.

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

(a) the applicable forms and nature of indirect funding of eligible liabilities instruments;

(b) the form and nature of incentives to redeem for the purposes of the condition set out in point (g) of the first subparagraph of paragraph 2 of this Article and Article 72c(3).

Those draft regulatory technical standards shall be fully aligned with the delegated act referred to in point (a) of Article 28(5) and in point (a) of Article 52(2).

EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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

Article 72c

Amortisation of eligible liabilities instruments

1. Eligible liabilities instruments with a residual maturity of at least one year shall fully qualify as eligible liabilities items.

Eligible liabilities instruments with a residual maturity of less than one year shall not qualify as eligible liabilities items.

2. For the purposes of paragraph 1, where a eligible liabilities instrument includes a holder redemption option exercisable prior to the original stated maturity of the instrument, the maturity of the instrument shall be defined as the earliest possible date on which the holder can exercise the redemption option and request redemption or repayment of the instrument.

3. For the purposes of paragraph 1, where an eligible liabilities instrument includes an incentive for the issuer to call, redeem, repay or repurchase the instrument prior to the original stated maturity of the instrument, the maturity of the instrument shall be defined as the earliest possible date on which the issuer can exercise that option and request redemption or repayment of the instrument.

▼M8

4. For the purposes of paragraph 1, where an eligible liabilities instrument includes early redemption options that are exercisable at the sole discretion of the issuer prior to the original stated maturity of the instrument, but where the provisions governing the instrument do not include any incentive for the instrument to be called, redeemed, repaid or repurchased prior to its maturity and do not include any option for redemption or repayment at the discretion of the holders, the maturity of the instrument shall be defined as the original stated maturity.

Article 72d

Consequences of the eligibility conditions ceasing to be met

Where, in the case of an eligible liabilities instrument, the applicable conditions set out in Article 72b cease to be met, the liabilities shall immediately cease to qualify as eligible liabilities instruments.

Liabilities referred to in Article 72b(2) may continue to count as eligible liabilities instruments as long as they qualify as eligible liabilities instruments under Article 72b(3) or (4).

Section 2

Deductions from eligible liabilities items

Article 72e

Deductions from eligible liabilities items

1. Institutions that are subject to Article 92a shall deduct the following from eligible liabilities items:

(a) direct, indirect and synthetic holdings by the institution of own eligible liabilities instruments, including own liabilities that that institution could be obliged to purchase as a result of existing contractual obligations;

(b) direct, indirect and synthetic holdings by the institution of eligible liabilities instruments of G-SII entities with which the institution has reciprocal cross holdings that the competent authority considers to have been designed to artificially inflate the loss absorption and recapitalisation capacity of the resolution entity;

(c) the applicable amount determined in accordance with Article 72i of direct, indirect and synthetic holdings of eligible liabilities instruments of G-SII entities, where the institution does not have a significant investment in those entities;

(d) direct, indirect and synthetic holdings by the institution of eligible liabilities instruments of G-SII entities, where the institution has a significant investment in those entities, excluding underwriting positions held for five business days or fewer.

2. For the purposes of this Section, all instruments ranking *pari passu* with eligible liabilities instruments shall be treated as eligible liabilities instruments, with the exception of instruments ranking *pari passu* with instruments recognised as eligible liabilities pursuant to Article 72b(3) and (4).

▼M8

3. For the purposes of this Section, institutions may calculate the amount of holdings of the eligible liabilities instruments referred to in Article 72b(3) as follows:

$$h = \sum_i \left(H_i \cdot \frac{l_i}{L_i} \right)$$

where:

h = the amount of holdings of the eligible liabilities instruments referred to in Article 72b(3);

i = the index denoting the issuing institution;

H_i = the total amount of holdings of eligible liabilities of the issuing institution i referred to in Article 72b(3);

l_i = the amount of liabilities included in eligible liabilities items by the issuing institution i within the limits specified in Article 72b(3) according to the latest disclosures by the issuing institution; and

L_i = the total amount of the outstanding liabilities of the issuing institution i referred to in Article 72b(3) according to the latest disclosures by the issuer.

▼M15

4. Where an EU parent institution or a parent institution in a Member State that is subject to Article 92a has direct, indirect or synthetic holdings of own funds instruments or eligible liabilities instruments of one or more subsidiaries which do not belong to the same resolution group as that parent institution, the resolution authority of that parent institution, after duly considering the opinion of the resolution authorities or relevant third-country authorities of any subsidiaries concerned, may permit the parent institution to deduct such holdings by deducting a lower amount specified by the resolution authority of that parent institution. That adjusted amount shall be at least equal to the amount (m) calculated as follows:

$$m_i = \max\{0;\ OP_i + LP_i - \max\{0;\ \beta \cdot [O_i + L_i - \max\{r_i \cdot aRWA_i;\ w_i \cdot aLRE_i\}]\}\}$$

where:

i = the index denoting the subsidiary;

OP_i = the amount of own funds instruments issued by subsidiary i and held by the parent institution;

LP_i = the amount of eligible liabilities instruments issued by subsidiary i and held by the parent institution;

β = percentage of own funds instruments and eligible liabilities instruments issued by subsidiary i and held by the parent undertaking, calculated as follows:

$$\beta = \frac{OP_i + LP_i}{\text{the amount of all own funds instruments and eligible liabilities instruments issued by subsidiary i}};$$

O_i = the amount of own funds of subsidiary i, not taking into account the deduction calculated in accordance with this paragraph;

▼M15

L_i = the amount of eligible liabilities of subsidiary i, not taking into account the deduction calculated in accordance with this paragraph;

r_i = the ratio applicable to subsidiary i at the level of its resolution group in accordance with Article 92a(1), point (a), of this Regulation and Article 45c(3), first subparagraph, point (a), of Directive 2014/59/EU or, for third-country subsidiaries, an equivalent resolution requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered own funds or eligible liabilities under this Regulation;

$aRWA_i$ = the total risk exposure amount of the G-SII entity i calculated in accordance with Article 92(3), taking into account the adjustments set out in Article 12a or, for third-country subsidiaries, calculated in accordance with the applicable local regulations;

w_i = the ratio applicable to subsidiary i at the level of its resolution group in accordance with Article 92a(1), point (b), of this Regulation and of Article 45c(3), first subparagraph, point (b), of Directive 2014/59/EU or, for third-country subsidiaries, an equivalent resolution requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered own funds or eligible liabilities under this Regulation;

$aLRE_i$ = the total exposure measure of the G-SII entity i calculated in accordance with Article 429(4) or, for third-country subsidiaries, calculated in accordance with the applicable local regulations.

Where the parent institution is allowed to deduct the adjusted amount in accordance with the first subparagraph, the difference between the amount of holdings of own funds instruments and eligible liabilities instruments referred to in the first subparagraph and that adjusted amount shall be deducted by the subsidiary.

▼M8

Article 72f

Deduction of holdings of own eligible liabilities instruments

For the purposes of point (a) of Article 72e(1), institutions shall calculate holdings on the basis of the gross long positions subject to the following exceptions:

(a) institutions may calculate the amount of holdings on the basis of the net long position, provided that both the following conditions are met:

(i) the long and short positions are in the same underlying exposure and the short positions involve no counterparty risk;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;

(b) institutions shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to own eligible liabilities instruments in those indices;

▼M8

(c) institutions may net gross long positions in own eligible liabilities instruments resulting from holdings of index securities against short positions in own eligible liabilities instruments resulting from short positions in underlying indices, including where those short positions involve counterparty risk, provided that both the following conditions are met:

(i) the long and short positions are in the same underlying indices;

(ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book.

Article 72g

Deduction base for eligible liabilities items

For the purposes of points (b), (c) and (d) of Article 72e(1), institutions shall deduct the gross long positions subject to the exceptions laid down in Articles 72h and 72i.

Article 72h

Deduction of holdings of eligible liabilities of other G-SII entities

Institutions not making use of the exception set out in Article 72j shall make the deductions referred to in points (c) and (d) of Article 72e(1) in accordance with the following:

(a) they may calculate direct, indirect and synthetic holdings of eligible liabilities instruments on the basis of the net long position in the same underlying exposure, provided that both the following conditions are met:

(i) the maturity date of the short position is either the same as, or later than the maturity date of the long position or the residual maturity of the short position is at least one year;

(ii) either both the long position and the short position are held in the trading book or both are held in the non-trading book;

(b) they shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by looking through to the underlying exposure to the eligible liabilities instruments in those indices.

Article 72i

Deduction of eligible liabilities where the institution does not have a significant investment in G-SII entities

1. For the purposes of point (c) of Article 72e(1), institutions shall calculate the applicable amount to be deducted by multiplying the amount referred to in point (a) of this paragraph by the factor derived from the calculation referred to in point (b) of this paragraph:

(a) the aggregate amount by which the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1, Tier 2 instruments of financial sector entities and eligible

▼M8

liabilities instruments of G-SII entities in none of which the institution has a significant investment exceeds 10 % of the Common Equity Tier 1 items of the institution after applying the following:

(i) Articles 32 to 35;

(ii) points (a) to (g), points (k)(ii) to (k)(v) and point (l) of Article 36(1), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;

(iii) Articles 44 and 45;

(b) the amount of direct, indirect and synthetic holdings by the institution of the eligible liabilities instruments of G-SII entities in which the institution does not have a significant investment divided by the aggregate amount of the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1, Tier 2 instruments of financial sector entities and eligible liabilities instruments of G-SII entities in none of which the resolution entity has a significant investment.

2. Institutions shall exclude underwriting positions held for five business days or fewer from the amounts referred to in point (a) of paragraph 1 and from the calculation of the factor in accordance with point (b) of paragraph 1.

3. The amount to be deducted pursuant to paragraph 1 shall be apportioned across each eligible liabilities instrument of a G-SII entity held by the institution. Institutions shall determine the amount of each eligible liabilities instrument that is deducted pursuant to paragraph 1 by multiplying the amount specified in point (a) of this paragraph by the proportion specified in point (b) of this paragraph:

(a) the amount of holdings required to be deducted pursuant to paragraph 1;

(b) the proportion of the aggregate amount of direct, indirect and synthetic holdings by the institution of the eligible liabilities instruments of G-SII entities in which the institution does not have a significant investment represented by each eligible liabilities instrument held by the institution.

4. The amount of holdings referred to in point (c) of Article 72e(1) that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i), (a)(ii) and (a)(iii) of paragraph 1 of this Article shall not be deducted and shall be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

5. Institutions shall determine the amount of each eligible liabilities instrument that is risk weighted pursuant to paragraph 4 by multiplying the amount of holdings required to be risk weighted pursuant to paragraph 4 by the proportion resulting from the calculation specified in point (b) of paragraph 3.

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Article 72j

Trading book exception from deductions from eligible liabilities items

1. Institutions may decide not to deduct a designated part of their direct, indirect and synthetic holdings of eligible liabilities instruments, that in aggregate and measured on a gross long basis is equal to or less than 5 % of the Common Equity Tier 1 items of the institution after applying Articles 32 to 36, provided that all the following conditions are met:

(a) the holdings are in the trading book;

(b) the eligible liabilities instruments are held for no longer than 30 business days.

2. The amounts of the items that are not deducted pursuant to paragraph 1 shall be subject to own funds requirements for items in the trading book.

3. Where, in the case of holdings not deducted in accordance with paragraph 1, the conditions set out in that paragraph cease to be met, the holdings shall be deducted in accordance with Article 72g without applying the exceptions laid down in Articles 72h and 72i.

Section 3

Own funds and eligible liabilities

Article 72k

Eligible liabilities

The eligible liabilities of an institution shall consist of the eligible liabilities items of the institution after the deductions referred to in Article 72e.

Article 72l

Own funds and eligible liabilities

The own funds and eligible liabilities of an institution shall consist of the sum of its own funds and its eligible liabilities.

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CHAPTER 6

▼M8

General requirements for own funds and eligible liabilities

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Article 73

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Distributions on instruments

1. Capital instruments and liabilities for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as Common Equity Tier 1, Additional Tier 1, Tier 2 or eligible liabilities instruments, unless the institution has received the prior permission of the competent authority.

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2. Competent authorities shall grant the prior permission referred to in paragraph 1 only where they consider all the following conditions to be met:

(a) the ability of the institution to cancel payments under the instrument would not be adversely affected by the discretion referred to in paragraph 1, or by the form in which distributions could be made;

(b) the ability of the capital instrument or of the liability to absorb losses would not be adversely affected by the discretion referred to in paragraph 1, or by the form in which distributions could be made;

(c) the quality of the capital instrument or liability would not otherwise be reduced by the discretion referred to in paragraph 1, or by the form in which distributions could be made.

The competent authority shall consult the resolution authority regarding an institution's compliance with those conditions before granting the prior permission referred to in paragraph 1.

3. Capital instruments and liabilities for which a legal person other than the institution issuing them has the discretion to decide or require that the payment of distributions on those instruments or liabilities shall be made in a form other than cash or own funds instruments shall not be eligible to qualify as Common Equity Tier 1, Additional Tier 1, Tier 2 or eligible liabilities instruments.

4. Institutions may use a broad market index as one of the bases for determining the level of distributions on Additional Tier 1, Tier 2 and eligible liabilities instruments.

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5. Paragraph 4 shall not apply where the institution is a reference entity in that broad market index unless both the following conditions are met:

(a) the institution considers movements in that broad market index not to be significantly correlated to the credit standing of the institution, its parent institution or parent financial holding company or parent mixed financial holding company or parent mixed activity holding company;

(b) the competent authority has not reached a different determination from that referred to in point (a).

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6. Institutions shall report and disclose the broad market indices on which their capital instruments and eligible liabilities instruments rely.

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7. EBA shall develop draft regulatory technical standards to specify the conditions according to which indices shall be deemed to qualify as broad market indices for the purposes of paragraph 4.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

▼C2

Article 74

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

Institutions shall not deduct from any element of own funds direct, indirect or synthetic holdings of capital instruments issued by a regulated financial sector entity that do not qualify as regulatory capital of that entity. Institutions shall apply risk weights to such holdings in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable.

Article 75

Deduction and maturity requirements for short positions

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The maturity requirements for short positions referred to in point (a) of Article 45, point (a) of Article 59, point (a) of Article 69 and point (a) of Article 72h shall be considered to be met in respect of positions held where all the following conditions are met:

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(a) the institution has the contractual right to sell on a specific future date to the counterparty providing the hedge the long position that is being hedged;

(b) the counterparty providing the hedge to the institution is contractually obliged to purchase from the institution on that specific future date the long position referred to in point (a).

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▼C7

Article 76

Index holdings of capital instruments and of liabilities

1. For the purposes of point (a) of Article 42, point (a) of Article 45, point (a) of Article 57, point (a) of Article 59, point (a) of Article 67, point (a) of Article 69, point (a) of Article 72f and point (a) of Article 72h, institutions may reduce the amount of a long position in a capital instrument or in a liability by the portion of an index that is made up of the same underlying exposure that is being hedged, provided that all the following conditions are met:

(a) either both the long position being hedged and the short position in an index used to hedge that long position are held in the trading book or both are held in the non-trading book;

(b) the positions referred to in point (a) are held at fair value on the balance sheet of the institution;

(c) the short position referred to in point (a) qualifies as an effective hedge under the internal control processes of the institution;

(d) the competent authorities assess the adequacy of the internal control processes referred to in point (c) on at least an annual basis and are satisfied with their continuing appropriateness.

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2. Where the competent authority has granted its prior permission, an institution may use a conservative estimate of the underlying exposure of the institution to capital instruments or to liabilities included in indices as an alternative to an institution calculating its exposure to the items referred to in one or more of the following points:

(a) own Common Equity Tier 1, Additional Tier 1, Tier 2 and eligible liabilities instruments included in indices;

(b) Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities, included in indices;

(c) eligible liabilities instruments of institutions, included in indices.

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3. Competent authorities shall grant the prior permission referred to in paragraph 2 only where the institution has demonstrated to their satisfaction that it would be operationally burdensome for the institution to monitor its underlying exposure to the items referred to in one or more of the points of paragraph 2, as applicable.

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

(a) when an estimate used as an alternative to the calculation of underlying exposure referred to in paragraph 2 is sufficiently conservative;

(b) the meaning of operationally burdensome for the purposes of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

▼M8

Article 77

Conditions for reducing own funds and eligible liabilities

1. An institution shall obtain the prior permission of the competent authority to do any of the following:

(a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law;

(b) reduce, distribute or reclassify as another own funds item the share premium accounts related to own funds instruments;

(c) effect the call, redemption, repayment or repurchase of Additional Tier 1 or Tier 2 instruments prior to the date of their contractual maturity.

2. An institution shall obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments that are not covered by paragraph 1, prior to the date of their contractual maturity.

▼M8

Article 78

Supervisory permission to reduce own funds

1. The competent authority shall grant permission for an institution to reduce, call, redeem, repay or repurchase Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments, or to reduce, distribute or reclassify related share premium accounts, where either of the following conditions is met:

(a) before or at the same time as any of the actions referred to in Article 77(1), the institution replaces the instruments or the related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution;

(b) the institution has demonstrated to the satisfaction of the competent authority that the own funds and eligible liabilities of the institution would, following the action referred to in Article 77(1) of this Regulation, exceed the requirements laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU by a margin that the competent authority considers necessary.

Where an institution provides sufficient safeguards as to its capacity to operate with own funds above the amounts required in this Regulation and in Directive 2013/36/EU, the competent authority may grant that institution a general prior permission to take any of the actions set out in Article 77(1) of this Regulation, subject to criteria that ensure that any such future action will be in accordance with the conditions set out in points (a) and (b) of this paragraph. That general prior permission shall be granted only for a specified period, which shall not exceed one year, after which it may be renewed. The general prior permission shall be granted for a certain predetermined amount, which shall be set by the competent authority. ►C7 In the case of Common Equity Tier 1 instruments, that predetermined amount shall not exceed 3 % of the relevant issue and shall not exceed 10 % of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements laid down in this Regulation, in Directives 2013/36/EU and 2014/59/EU and a margin that the competent authority considers necessary. ◄ In the case of Additional Tier 1 or Tier 2 instruments, that predetermined amount shall not exceed 10 % of the relevant issue and shall not exceed 3 % of the total amount of outstanding Additional Tier 1 or Tier 2 instruments, as applicable.

Competent authorities shall withdraw the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.

2. When assessing the sustainability of the replacement instruments for the income capacity of the institution referred to in point (a) of paragraph 1, competent authorities shall consider the extent to which those replacement capital instruments would be more costly for the institution than those capital instruments or share premium accounts they would replace.

3. Where an institution takes an action referred to in point (a) of Article 77(1) and the refusal of redemption of Common Equity Tier 1 instruments referred to in Article 27 is prohibited by applicable national law, the competent authority may waive the conditions set out in paragraph 1 of this Article, provided that the competent authority requires the institution to limit the redemption of such instruments on an appropriate basis.

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4. Competent authorities may permit institutions to call, redeem, repay or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance where the conditions set out in paragraph 1 and one of the following conditions is met:

(a) there is a change in the regulatory classification of those instruments that would be likely to result in their exclusion from own funds or reclassification as own funds of lower quality, and both the following conditions are met:

(i) the competent authority considers such a change to be sufficiently certain;

(ii) the institution demonstrates to the satisfaction of the competent authority that the regulatory reclassification of those instruments was not reasonably foreseeable at the time of their issuance;

(b) there is a change in the applicable tax treatment of those instruments which the institution demonstrates to the satisfaction of the competent authority is material and was not reasonably foreseeable at the time of their issuance;

(c) the instruments and related share premium accounts are grandfathered under Article 494b;

(d) before or at the same time as the action referred to in Article 77(1), the institution replaces the instruments or related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution and the competent authority has permitted that action on the basis of the determination that it would be beneficial from a prudential point of view and justified by exceptional circumstances;

(e) the Additional Tier 1 or Tier 2 instruments are repurchased for market making purposes.

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

(a) the meaning of ‘sustainable for the income capacity of the institution’;

(b) the appropriate bases of limitation of redemption referred to in paragraph 3;

(c) the process including the limits and procedures for granting approval in advance by competent authorities for an action listed in Article 77(1), and data requirements for an application by an institution for the permission of the competent authority to carry out an action listed therein, including the process to be applied in the case of redemption of shares issued to members of cooperative societies, and the time period for processing such an application.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 78a

Permission to reduce eligible liabilities instruments

1. The resolution authority shall grant permission for an institution to call, redeem, repay or repurchase eligible liabilities instruments where one of the following conditions is met:

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(a) before or at the same time as any of the actions referred to in Article 77(2), the institution replaces the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution;

(b) the institution has demonstrated to the satisfaction of the resolution authority that the own funds and eligible liabilities of the institution would, following the action referred to in Article 77(2) of this Regulation, exceed the requirements for own funds and eligible liabilities laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU by a margin that the resolution authority, in agreement with the competent authority, considers necessary;

(c) the institution has demonstrated to the satisfaction of the resolution authority that the partial or full replacement of the eligible liabilities with own funds instruments is necessary to ensure compliance with the own funds requirements laid down in this Regulation and in Directive 2013/36/EU for continuing authorisation.

Where an institution provides sufficient safeguards as to its capacity to operate with own funds and eligible liabilities above the amount of the requirements laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU, the resolution authority, after consulting the competent authority, may grant that institution a general prior permission to effect calls, redemptions, repayments or repurchases of eligible liabilities instruments, subject to criteria that ensure that any such future action will be in accordance with the conditions set out in points (a) and (b) of this paragraph. That general prior permission shall be granted only for a specified period, which shall not exceed one year, after which it may be renewed. The general prior permission shall be granted for a certain predetermined amount, which shall be set by the resolution authority. Resolution authorities shall inform the competent authorities about any general prior permission granted.

The resolution authority shall withdraw the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.

2. When assessing the sustainability of the replacement instruments for the income capacity of the institution referred to in point (a) of paragraph 1, resolution authorities shall consider the extent to which those replacement capital instruments or replacement eligible liabilities would be more costly for the institution than those they would replace.

3. EBA shall develop draft regulatory technical standards to specify the following:

(a) the process of cooperation between the competent authority and the resolution authority;

(b) the procedure, including the time limits and information requirements, for granting the permission in accordance with the first subparagraph of paragraph 1;

(c) the procedure, including the time limits and information requirements, for granting the general prior permission in accordance with the second subparagraph of paragraph 1;

(d) the meaning of ‘sustainable for the income capacity of the institution’.

For the purposes of point (d) of the first subparagraph of this paragraph, the draft regulatory technical standards shall be fully aligned with the delegated act referred to in Article 78.

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EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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

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Article 79

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Temporary waiver from deduction from own funds and eligible liabilities

1. Where an institution holds capital instruments or liabilities that qualify as own funds instruments in a financial sector entity or as eligible liabilities instruments in an institution and where the competent authority considers those holdings to be for the purposes of a financial assistance operation designed to reorganise and restore the viability of that entity or that institution, the competent authority may waive on a temporary basis the provisions on deduction that would otherwise apply to those instruments.

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2. EBA shall develop draft regulatory technical standards to specify the concept of temporary for the purposes of paragraph 1 and the conditions according to which a competent authority may deem those temporary holdings to be for the purposes of a financial assistance operation designed to reorganise and save a relevant entity.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

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Article 79a

Assessment of compliance with the conditions for own funds and eligible liabilities instruments

Institutions shall have regard to the substantial features of instruments and not only their legal form when assessing compliance with the requirements laid down in Part Two. The assessment of the substantial features of an instrument shall take into account all arrangements related to the instruments, even where those are not explicitly set out in the terms and conditions of the instruments themselves, for the purpose of determining that the combined economic effects of such arrangements are compliant with the objective of the relevant provisions.

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Article 80

▼M8

Continuing review of the quality of own funds and eligible liabilities instruments

1. EBA shall monitor the quality of own funds and eligible liabilities instruments issued by institutions across the Union and shall notify

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the Commission immediately where there is significant evidence that those instruments do not meet the respective eligibility criteria set out in this Regulation.

Competent authorities shall, without delay and upon request by EBA, forward all information to EBA that EBA considers relevant concerning new capital instruments or new types of liabilities issued in order to enable EBA to monitor the quality of own funds and eligible liabilities instruments issued by institutions across the Union.

▼C2

2. A notification shall include the following:

(a) a detailed explanation of the nature and extent of the shortfall identified;

(b) technical advice on the action by the Commission that EBA considers to be necessary;

(c) significant developments in the methodology of EBA for stress testing the solvency of institutions.

▼M8

3. EBA shall provide technical advice to the Commission on any significant changes it considers to be required to the definition of own funds and eligible liabilities as a result of any of the following:

▼C2

(a) relevant developments in market standards or practice;

(b) changes in relevant legal or accounting standards;

(c) significant developments in the methodology of EBA for stress testing the solvency of institutions.

4. EBA shall provide technical advice to the Commission by 1 January 2014 on possible treatments of unrealised gains measured at fair value other than including them in Common Equity Tier 1 without adjustment. Such recommendations shall take into account relevant developments in international accounting standards and in international agreements on prudential standards for banks.

TITLE II

MINORITY INTEREST AND ADDITIONAL TIER 1 AND TIER 2 INSTRUMENTS ISSUED BY SUBSIDIARIES

Article 81

Minority interests that qualify for inclusion in consolidated Common Equity Tier 1 capital

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1. Minority interests shall comprise the sum of Common Equity Tier 1 items of a subsidiary where the following conditions are met:

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(a) the subsidiary is one of the following:

(i) an institution;

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(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and of Directive 2013/36/EU;

(iii) an intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of this Regulation on a sub-consolidated basis, or an intermediate investment holding company that is subject to the requirements of Regulation (EU) 2019/2033 on a consolidated basis;

(iv) an investment firm;

(v) an intermediate financial holding company in a third country, provided that that intermediate financial holding company is subject to prudential requirements as stringent as those applied to credit institutions of that third country and provided that the Commission has adopted a decision in accordance with Article 107(4) determining that those prudential requirements are at least equivalent to those of this Regulation;

▼M8

(b) the subsidiary is included fully in the consolidation pursuant to Chapter 2 of Title II of Part One;

(c) the Common Equity Tier 1 items, referred to in the introductory part of this paragraph, are owned by persons other than the undertakings included in the consolidation pursuant to Chapter 2 of Title II of Part One.

▼C2

2. Minority interests that are funded directly or indirectly, through a special purpose entity or otherwise, by the parent undertaking of the institution, or its subsidiaries shall not qualify as consolidated Common Equity Tier 1 capital.

▼M8

▼C7

Article 82

Qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds

Qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds shall comprise the minority interest, Additional Tier 1 or Tier 2 instruments, as applicable, plus the related share premium accounts, of a subsidiary where the following conditions are met:

(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and of Directive 2013/36/EU;

(iii) an intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of this Regulation on a sub-consolidated basis, or an intermediate investment holding company that is subject to the requirements of Regulation (EU) 2019/2033 on a consolidated basis;

(iv) an investment firm;

▼C7

(v) an intermediate financial holding company in a third country, provided that that intermediate financial holding company is subject to prudential requirements as stringent as those applied to credit institutions of that third country and provided that the Commission has adopted a decision in accordance with Article 107(4) determining that those prudential requirements are at least equivalent to those of this Regulation;

(b) the subsidiary is included fully in the scope of consolidation pursuant to Chapter 2 of Title II of Part One;

(c) the Common Equity Tier 1 items, Additional Tier 1 items and Tier 2 items referred to in the introductory part of this paragraph, are owned by persons other than the undertakings included in the consolidation pursuant to Chapter 2 of Title II of Part One.

▼M8
▼C2

Article 83

Qualifying Additional Tier 1 and Tier 2 capital issued by a special purpose entity

▼M8

1. Additional Tier 1 and Tier 2 instruments issued by a special purpose entity, and the related share premium accounts, are included until 31 December 2021 in qualifying Additional Tier 1, Tier 1 or Tier 2 capital or qualifying own funds, as applicable, only where the following conditions are met:

▼C2

(a) the special purpose entity issuing those instruments is included fully in the consolidation pursuant to Chapter 2 of Title II of Part One;

(b) the instruments, and the related share premium accounts, are included in qualifying Additional Tier 1 capital only where the conditions laid down in Article 52(1) are satisfied;

(c) the instruments, and the related share premium accounts, are included in qualifying Tier 2 capital only where the conditions laid down in Article 63 are satisfied;

(d) the only asset of the special purpose entity is its investment in the own funds of the parent undertaking or a subsidiary thereof that is included fully in the consolidation pursuant to Chapter 2 of Title II of Part One, the form of which satisfies the relevant conditions laid down in Articles 52(1) or 63, as applicable.

Where the competent authority considers the assets of a special purpose entity other than its investment in the own funds of the parent undertaking or a subsidiary thereof that is included in the scope of consolidation pursuant to Chapter 2 of Title II of Part One, to be minimal and insignificant for such an entity, the competent authority may waive the condition specified in point (d) of the first subparagraph.

2. EBA shall develop draft regulatory technical standards to specify the types of assets that can relate to the operation of special purpose entities and the concepts of minimal and insignificant referred to in the second subparagraph of paragraph 1.

▼C2

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 84

Minority interests included in consolidated Common Equity Tier 1 capital

▼M9

1. Institutions shall determine the amount of minority interests of a subsidiary that is included in consolidated Common Equity Tier 1 capital by subtracting from the minority interests of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b) as follows:

▼C5

(a) the Common Equity Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the following:

— the sum of the requirement laid down in point (a) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital,

— where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034 and any additional local supervisory regulations in third countries, insofar as those requirements are to be met by Common Equity Tier 1 capital;

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

(b) the minority interests of the subsidiary expressed as a percentage of all Common Equity Tier 1 items of that undertaking.

▼C2

2. The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 81(1).

An institution may choose not to undertake this calculation for a subsidiary referred to in Article 81(1). Where an institution takes such a decision, the minority interest of that subsidiary may not be included in consolidated Common Equity Tier 1 capital.

▼M9

3. Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 of this Regulation or, as applicable, as laid down in Article 6 of Regulation (EU) 2019/2033, minority interests within the subsidiaries to which the waiver is applied shall not be recognised in own funds at the sub-consolidated or at the consolidated level, as applicable.

▼C2

4. EBA shall develop draft regulatory technical standards to specify the sub-consolidation calculation required in accordance with paragraph 2 of this Article, Articles 85 and 87.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

5. Competent authorities may grant a waiver from the application of this Article to a parent financial holding company that satisfies all the following conditions:

(a) its principal activity is to acquire holdings;

(b) it is subject to prudential supervision on a consolidated basis;

(c) it consolidates a subsidiary institution in which it has only a minority holding by virtue of the control relationship defined in Article 1 of Directive 83/349/EEC;

(d) more than 90 % of the consolidated required Common Equity Tier 1 capital arises from the subsidiary institution referred to in point c) calculated on a sub-consolidated basis.

Where, after 28 June 2013, a parent financial holding company that meets the conditions laid down in the first subparagraph becomes a parent mixed financial holding company, competent authorities may grant the waiver referred to in the first subparagraph to that parent mixed financial holding company provided that it meets the conditions laid down in that subparagraph.

▼C2

6. Where credit institutions permanently affiliated in a network to a central body and institutions established within an institutional protection scheme subject to the conditions laid down in Article 113(7) have set up a cross-guarantee scheme that provides that there is no current or foreseen material, practical or legal impediment to the transfer of the amount of own funds above the regulatory requirements from the counterparty to the credit institution, these institutions are exempted from the provisions of this Article regarding deductions and may recognise any minority interest arising within the cross-guarantee scheme in full.

Article 85

Qualifying Tier 1 instruments included in consolidated Tier 1 capital

▼M9

1. Institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated own funds by subtracting from the qualifying Tier 1 capital of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b) as follows:

▼C5

(a) the Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Tier 1 capital of the subsidiary required to meet the following:

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

— where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 capital;

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

▼C5

(b) the qualifying Tier 1 capital of the subsidiary expressed as a percentage of all Common Equity Tier 1 and Additional Tier 1 items of that undertaking.

▼C2

2. The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 81(1).

An institution may choose not to undertake this calculation for a subsidiary referred to in Article 81(1). Where an institution takes such a decision, the qualifying Tier 1 capital of that subsidiary may not be included in consolidated Tier 1 capital.

▼M9

3. Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 of this Regulation or, where applicable, as laid down in Article 6 of Regulation (EU) 2019/2033, Tier 1 instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.

▼C2

Article 86

Qualifying Tier 1 capital included in consolidated Additional Tier 1 capital

Without prejudice to Article 84 (5) or (6), institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated Additional Tier 1 capital by subtracting from the qualifying Tier 1 capital of that undertaking included in consolidated Tier 1 capital the minority interests of that undertaking that are included in consolidated Common Equity Tier 1 capital.

Article 87

Qualifying own funds included in consolidated own funds

▼M9

1. Institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b) as follows:

▼C5

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

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

▼C5

— the sum of the requirement laid down in point (c) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, and any additional local supervisory regulations in third countries,

— where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034, and any additional local supervisory regulations in third countries;

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

(b) the qualifying own funds of the undertaking, expressed as a percentage of the sum of all the Common Equity Tier 1 items, Additional Tier 1 items and Tier 2 items, excluding the amounts referred to in points (c) and (d) of Article 62, of that undertaking.

▼C2

2. The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 81(1).

An institution may choose not to undertake this calculation for a subsidiary referred to in Article 81(1). Where an institution takes such a decision, the qualifying own funds of that subsidiary may not be included in consolidated own funds.

▼M9

3. Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 of this Regulation or, as applicable, as laid down in Article 6 of Regulation (EU) 2019/2033, own funds instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.

▼C2

Article 88

Qualifying own funds instruments included in consolidated Tier 2 capital

Without prejudice to Article 84(5) or (6), institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated Tier 2 capital by subtracting from the qualifying own funds of that undertaking that are included in consolidated own funds the qualifying Tier 1 capital of that undertaking that is included in consolidated Tier 1 capital.

▼M8

Article 88a

Qualifying eligible liabilities instruments

Liabilities issued by a subsidiary established in the Union that belongs to the same resolution group as the resolution entity shall qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a, provided that all the following conditions are met:

(a) they are issued in accordance with point (a) of Article 45f(2) of Directive 2014/59/EU;

(b) they are bought by an existing shareholder that is not part of the same resolution group as long as the exercise of the write-down or conversion powers in accordance with Articles 59 to 62 of Directive 2014/59/EU does not affect the control of the subsidiary by the resolution entity;

(c) they do not exceed the amount determined by subtracting the amount referred to in point (i) from the amount referred to in point (ii):

  (i) the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds instruments issued in accordance with point (b) of Article 45f(2) of Directive 2014/59/EU;

  (ii) the amount required in accordance with Article 45f(1) of Directive 2014/59/EU.

▼C2

TITLE III

QUALIFYING HOLDINGS OUTSIDE THE FINANCIAL SECTOR

Article 89

Risk weighting and prohibition of qualifying holdings outside the financial sector

1. A qualifying holding, the amount of which exceeds 15 % of the eligible capital of the institution, in an undertaking which is not one of the following shall be subject to the provisions laid down in paragraph 3:

▼C2

(a) a financial sector entity;

(b) an undertaking, that is not a financial sector entity, carrying on activities which the competent authority considers to be any of the following:

(i) a direct extension of banking;

(ii) ancillary to banking;

(iii) leasing, factoring, the management of unit trusts, the management of data processing services or any other similar activity.

2. The total amount of the qualifying holdings of an institution in undertakings other than those referred to in points (a) and (b) of paragraph 1 that exceeds 60 % of its eligible capital shall be subject to the provisions laid down in paragraph 3.

3. Competent authorities shall apply the requirements laid down in point (a) or (b) to qualifying holdings of institutions referred to in paragraphs 1 and 2:

(a) for the purpose of calculating the capital requirement in accordance with Part Three, institutions shall apply a risk weight of 1 250 % to the greater of the following:

(i) the amount of qualifying holdings referred to in paragraph 1 in excess of 15 % of eligible capital;

(ii) the total amount of qualifying holdings referred to in paragraph 2 that exceed 60 % of the eligible capital of the institution;

(b) the competent authorities shall prohibit institutions from having qualifying holdings referred to in paragraphs 1 and 2 the amount of which exceeds the percentages of eligible capital laid down in those paragraphs.

Competent authorities shall publish their choice of (a) or (b).

4. For the purposes of point (b) of paragraph 1, EBA shall issue guidelines specifying the following concepts:

(a) activities that are a direct extension of banking;

(b) activities ancillary to banking;

(c) similar activities.

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 90

Alternative to 1 250 % risk weight

As an alternative to applying a 1 250 % risk weight to the amounts in excess of the limits specified in Article 89(1) and (2), institutions may deduct those amounts from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

▼C2

Article 91

Exceptions

1. Shares of undertakings not referred to in points (a) and (b) of Article 89(1) shall not be included in calculating the eligible capital limits specified in that Article where any of the following conditions is met:

(a) those shares are held temporarily during a financial assistance operation as referred to in Article 79;

(b) the holding of those shares is an underwriting position held for five working days or fewer;

(c) those shares are held in the own name of the institution and on behalf of others.

2. Shares which are not financial fixed assets as referred to in Article 35(2) of Directive 86/635/EEC shall not be included in the calculation specified in Article 89.

PART THREE

CAPITAL REQUIREMENTS

TITLE I

GENERAL REQUIREMENTS, VALUATION AND REPORTING

CHAPTER 1

Required level of own funds

Section 1

Own funds requirements for institutions

Article 92

Own funds requirements

1. Subject to Articles 93 and 94, institutions shall at all times satisfy the following own funds requirements:

(a) a Common Equity Tier 1 capital ratio of 4,5 %;

(b) a Tier 1 capital ratio of 6 %;

(c) a total capital ratio of 8 %;

▼M8

(d) a leverage ratio of 3 %.

▼C7

1a. In addition to the requirement laid down in point (d) of paragraph 1 of this Article, a G-SII shall maintain a leverage ratio buffer equal to the G-SIIs total exposure measure referred to in Article 429(4) of this Regulation multiplied by 50 % of the G-SII buffer rate applicable to the G-SII in accordance with Article 131 of Directive 2013/36/EU.

▼M8

A G-SII shall meet the leverage ratio buffer requirement with Tier 1 capital only. Tier 1 capital that is used to meet the leverage ratio buffer requirement shall not be used towards meeting any of the leverage based requirements set out in this Regulation and in Directive 2013/36/EU, unless explicitly otherwise provided therein.

▼M8

Where a G-SII does not meet the leverage ratio buffer requirement, it shall be subject to the capital conservation requirement in accordance with Article 141b of Directive 2013/36/EU.

Where a G-SII does not meet at the same time the leverage ratio buffer requirement and the combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU, it shall be subject to the higher of the capital conservation requirements in accordance with Articles 141 and 141b of that Directive.

▼C2

2. Institutions shall calculate their capital ratios as follows:

(a) the Common Equity Tier 1 capital ratio is the Common Equity Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount;

(b) the Tier 1 capital ratio is the Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount;

(c) the total capital ratio is the own funds of the institution expressed as a percentage of the total risk exposure amount.

3. Total risk exposure amount shall be calculated as the sum of points (a) to (f) of this paragraph after taking into account the provisions laid down in paragraph 4:

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

▼M8

(b) the own funds requirements for the trading-book business of an institution for the following:

(i) market risk as determined in accordance with Title IV of this Part, excluding the approaches set out in Chapters 1a and 1b of that Title;

(ii) large exposures exceeding the limits specified in Articles 395 to 401, to the extent that an institution is permitted to exceed those limits, as determined in accordance with Part Four;

(c) the own funds requirements for market risk as determined in Title IV of this Part, excluding the approaches set out in Chapters 1a and 1b of that Title, for all business activities that are subject to foreign exchange risk or commodity risk;

(ca) the own funds requirements calculated in accordance with Title V of this Part, with the exception of Article 379 for settlement risk;

▼C2

(d) the own funds requirements calculated in accordance with Title VI for credit valuation adjustment risk of OTC derivative instruments other than credit derivatives recognised to reduce risk-weighted exposure amounts for credit risk;

(e) the own funds requirements determined in accordance with Title III for operational risk;

(f) the risk-weighted exposure amounts determined in accordance with Title II for counterparty risk arising from the trading book business of the institution for the following types of transactions and agreements:

▼C2

(i) contracts listed in Annex II and credit derivatives;

(ii) repurchase transactions, securities or commodities lending or borrowing transactions based on securities or commodities;

(iii) margin lending transactions based on securities or commodities;

(iv) long settlement transactions.

4. The following provisions shall apply in the calculation of the total risk exposure amount referred to in paragraph 3:

(a) the own funds requirements referred to in points (c), (d) and (e) of that paragraph shall include those arising from all the business activities of an institution;

(b) institutions shall multiply the own funds requirements set out in points (b) to (e) of that paragraph by 12,5.

▼M8

Article 92a

Requirements for own funds and eligible liabilities for G-SIIs

▼C7

1. Subject to Articles 93 and 94 and to the exceptions set out in paragraph 2 of this Article, institutions identified as resolution entities and that are G-SII entities shall at all times satisfy the following requirements for own funds and eligible liabilities:

▼M8

(a) a risk-based ratio of 18 %, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) and (4);

(b) a non-risk-based ratio of 6,75 %, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Article 429(4).

2. The requirements laid down in paragraph 1 shall not apply in the following cases:

(a) within the three years following the date on which the institution or the group of which the institution is part has been identified as a G-SII;

(b) within the two years following the date on which the resolution authority has applied the bail-in tool in accordance with Directive 2014/59/EU;

(c) within the two years following the date on which the resolution entity has put in place an alternative private sector measure referred to in point (b) of Article 32(1) of Directive 2014/59/EU by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 items in order to recapitalise the resolution entity without the application of resolution tools.

▼M15

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▼M8

Article 92b

Requirement for own funds and eligible liabilities for non-EU G-SIIs

1. Institutions that are material subsidiaries of non-EU G-SIIs and that are not resolution entities shall at all times satisfy requirements for own funds and eligible liabilities equal to 90 % of the requirements for own funds and eligible liabilities laid down in Article 92a.

2. For the purpose of complying with paragraph 1, Additional Tier 1, Tier 2 and eligible liabilities instruments shall only be taken into account where those instruments are owned by the ultimate parent undertaking of the non-EU G-SII and have been issued directly or indirectly through other entities within the same group, provided that all such entities are established in the same third country as that ultimate parent undertaking or in a Member State.

3. An eligible liabilities instrument shall only be taken into account for the purpose of complying with paragraph 1 where it fulfils all the following additional conditions:

(a) in the event of normal insolvency proceedings as defined in point (47) of Article 2(1) of Directive 2014/59/EU, the claim resulting from the liability ranks below claims resulting from liabilities that do not fulfil the conditions set out in paragraph 2 of this Article and that do not qualify as own funds;

(b) it is subject to the write-down or conversion powers in accordance with Articles 59 to 62 of Directive 2014/59/EU.

▼C2

Article 93

Initial capital requirement on going concern

1. The own funds of an institution may not fall below the amount of initial capital required at the time of its authorisation.

2. Credit institutions that were already in existence on 1 January 1993, the amount of own funds of which do not attain the amount of initial capital required may continue to carry out their activities. In that event, the amount of own funds of those institutions may not fall below the highest level reached with effect from 22 December 1989.

▼M9

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4. Where control of an institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the amount of own funds of that institution shall attain the amount of initial capital required.

▼M9

5. Where there is a merger of two or more institutions falling within the category referred to in paragraph 2, the amount of own funds of the institution resulting from the merger shall not fall below the total own funds of the merged institutions at the time of the merger, as long as the amount of initial capital required has not been attained.

6. Where competent authorities consider it necessary to ensure the solvency of an institution that the requirement laid down in paragraph 1 be met, the provisions laid down in paragraphs 2, 4 and 5 shall not apply.

▼M8

Article 94

Derogation for small trading book business

1. By way of derogation from point (b) of Article 92(3), institutions may calculate the own funds requirement for their trading-book business in accordance with paragraph 2 of this Article, provided that the size of the institutions' on- and off-balance-sheet trading-book business is equal to or less than both of the following thresholds on the basis of an assessment carried out on a monthly basis using the data as of the last day of the month:

(a) 5 % of the institution's total assets;

(b) EUR 50 million.

2. Where both conditions set out in points (a) and (b) of paragraph 1 are met, institutions may calculate the own funds requirement for their trading-book business as follows:

(a) for the contracts listed in point 1 of Annex II, contracts relating to equities which are referred to in point 3 of that Annex and credit derivatives, institutions may exempt those positions from the own funds requirement referred to in point (b) of Article 92(3);

(b) for trading book positions other than those referred to in point (a) of this paragraph, institutions may replace the own funds requirement referred to in point (b) of Article 92(3) with the requirement calculated in accordance with point (a) of Article 92(3).

3. Institutions shall calculate the size of their on- and off-balance-sheet trading book business on the basis of data as of the last day of each month for the purposes of paragraph 1 in accordance with the following requirements:

(a) all the positions assigned to the trading book in accordance with Article 104 shall be included in the calculation except for the following:

(i) positions concerning foreign exchange and commodities;

(ii) positions in credit derivatives that are recognised as internal hedges against non-trading book credit risk exposures or counterparty risk exposures and the credit derivate transactions that perfectly offset the market risk of those internal hedges as referred to in Article 106(3);

▼M8

(b) all positions included in the calculation in accordance with point (a) shall be valued at their market value on that given date; where the market value of a position is not available on a given date, institutions shall take a fair value for the position on that date; where the market value and fair value of a position are not available on a given date, institutions shall take the most recent of the market value or fair value for that position;

(c) the absolute value of long positions shall be summed with the absolute value of short positions.

4. Where both conditions set out in points (a) and (b) of paragraph 1 of this Article are met, irrespective of the obligations set out in Articles 74 and 83 of Directive 2013/36/EU, Article 102(3) and (4), Articles 103 and 104b of this Regulation shall not apply.

5. Institutions shall notify the competent authorities when they calculate, or cease to calculate, the own funds requirements of their trading-book business in accordance with paragraph 2.

6. An institution that no longer meets one or more of the conditions set out in paragraph 1 shall immediately notify the competent authority thereof.

7. An institution shall cease to calculate the own funds requirements of its trading-book business in accordance with paragraph 2 within three months of one of the following occurring:

(a) the institution does not meet the conditions set out in point (a) or (b) of paragraph 1 for three consecutive months;

(b) the institution does not meet the conditions set out in point (a) or (b) of paragraph 1 during more than 6 out of the last 12 months.

8. Where an institution has ceased to calculate the own funds requirements of its trading-book business in accordance with this Article, it shall only be permitted to calculate the own funds requirements of its trading-book business in accordance with this Article where it demonstrates to the competent authority that all the conditions set out in paragraph 1 have been met for an uninterrupted full-year period.

9. Institutions shall not enter into, buy or sell a trading-book position for the sole purpose of complying with any of the conditions set out in paragraph 1 during the monthly assessment.

▼C2

Section 2

Own funds requirements for investment firms with limited authorisation to provide investment services

Article 95

Own funds requirements for investment firms with limited authorisation to provide investment services

1. For the purposes of Article 92(3), investment firms that are not authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall use the calculation of the total risk exposure amount specified in paragraph 2.

2. Investment firms referred to in paragraph 1 of this Article and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall calculate the total risk exposure amount as the higher of the following:

(a) the sum of the items referred to in points (a) to (d) and (f) of Article 92(3) after applying Article 92(4);

(b) 12,5 multiplied by the amount specified in Article 97.

Firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall meet the requirements in Article 92(1) and (2) based on the total risk exposure amount referred to in the first subparagraph.

Competent authorities may set the own funds requirements for firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC as the own funds requirements that would be binding on those firms according to the national transposition measures in force on 31 December 2013 for Directives 2006/49/EC and 2006/48/EC.

3. Investment firms referred to in paragraph 1 are subject to all other provisions regarding operational risk laid down in Title VII, Chapter 2, Section II, Sub-section 2 of Directive 2013/36/EU.

Article 96

Own funds requirements for investment firms which hold initial capital as laid down in Article 28(2) of Directive 2013/36/EU

1. For the purposes of Article 92(3), the following categories of investment firm which hold initial capital in accordance with Article 28(2) of Directive 2013/36/EU shall use the calculation of the total risk exposure amount specified in paragraph 2 of this Article:

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(a) investment firms that deal on own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order;

(b) investment firms that meet all the following conditions:

(i) they do not hold client money or securities;

(ii) they undertake only dealing on own account;

(iii) they have no external customers;

(iv) their execution and settlement transactions take place under the responsibility of a clearing institution and are guaranteed by that clearing institution.

2. For investment firms referred to in paragraph 1, total risk exposure amount shall be calculated as the sum of the following:

(a) points (a) to (d) and (f) of Article 92(3) after applying Article 92(4);

(b) the amount referred to in Article 97 multiplied by 12,5.

3. Investment firms referred to in paragraph 1 are subject to all other provisions regarding operational risk laid down in Title VII, Chapter 3, Section II, Sub-section 1 of Directive 2013/36/EU.

Article 97

Own Funds based on Fixed Overheads

1. In accordance with Articles 95 and 96, an investment firm and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.

2. Where there is a change in the business of an investment firm since the preceding year that the competent authority considers to be material, the competent authority may adjust the requirement laid down in paragraph 1.

3. Where an investment firm has not completed business for one year, starting from the day it starts up, an investment firm shall hold eligible capital of at least one quarter of the fixed overheads projected in its business plan, except where the competent authority requires the business plan to be adjusted.

4. EBA in consultation with ESMA shall develop draft regulatory technical standards to specify in greater detail the following:

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(a) the calculation of the requirement to hold eligible capital of at least one quarter of the fixed overheads of the previous year;

(b) the conditions for the adjustment by the competent authority of the requirement to hold eligible capital of at least one quarter of the fixed overheads of the previous year;

(c) the calculation of projected fixed overheads in the case of an investment firm that has not completed business for one year.

EBA shall submit those draft regulatory technical standards to the Commission by 1 March 2014.

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

Article 98

Own funds for investment firms on a consolidated basis

1. In the case of the investment firms referred to in Article 95(1) in a group, where that group does not include credit institutions, a parent investment firm in a Member State shall apply Article 92 at a consolidated level as follows:

(a) using the calculation of total risk exposure amount specified in Article 95(2);

(b) own funds calculated on the basis of the consolidated situation of the parent investment firm or that of the financial holding company or mixed financial holding company, as applicable.

2. In the case of investment firms referred to in Article 96(1) in a group, where that group does not include credit institutions, a parent investment firm in a Member State and an investment firm controlled by a financial holding company or mixed financial holding company shall apply Article 92 on a consolidated basis as follows:

(a) it shall use the calculation of total risk exposure amount specified in Article 96(2);

(b) it shall use own funds calculated on the basis of the consolidated situation of the parent investment firm or that of the financial holding company or mixed financial holding company, as applicable, and in compliance with Chapter 2 of Title II of Part One.

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CHAPTER 3

Trading book

Article 102

Requirements for the trading book

1. Positions in the trading book shall be either free of restrictions on their tradability or able to be hedged.

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2. Trading intent shall be evidenced on the basis of the strategies, policies and procedures set up by the institution to manage the position or portfolio in accordance with Articles 103, 104 and 104a.

3. Institutions shall establish and maintain systems and controls to manage their trading book in accordance with Article 103.

4. For the purposes of the reporting requirements set out in Article 430b(3), trading book positions shall be assigned to trading desks established in accordance with Article 104b.

5. Positions in the trading book shall be subject to the requirements for prudent valuation specified in Article 105.

6. Institutions shall treat internal hedges in accordance with Article 106.

Article 103

Management of the trading book

1. Institutions shall have in place clearly defined policies and procedures for the overall management of the trading book. Those policies and procedures shall at least address:

(a) the activities which the institution considers to be trading business and as constituting part of the trading book for own funds requirement purposes;

(b) the extent to which a position can be marked-to-market daily by reference to an active, liquid two-way market;

(c) for positions that are marked-to-model, the extent to which the institution can:

(i) identify all material risks of the position;

(ii) hedge all material risks of the position with instruments for which an active, liquid two-way market exists;

(iii) derive reliable estimates for the key assumptions and parameters used in the model;

(d) the extent to which the institution can, and is required to, generate valuations for the position that can be validated externally in a consistent manner;

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(e) the extent to which legal restrictions or other operational requirements would impede the institution's ability to effect a liquidation or hedge of the position in the short term;

(f) the extent to which the institution can, and is required to, actively manage the risks of positions within its trading operation;

(g) the extent to which the institution may reclassify risk or positions between the non-trading and trading books and the requirements for such reclassifications as referred to in Article 104a.

2. In managing its positions or portfolios of positions in the trading book, the institution shall comply with all the following requirements:

(a) the institution shall have in place a clearly documented trading strategy for the position or portfolios in the trading book, which shall be approved by senior management and include the expected holding period;

(b) the institution shall have in place clearly defined policies and procedures for the active management of positions or portfolios in the trading book; those policies and procedures shall include the following:

(i) which positions or portfolios of positions may be entered into by each trading desk or, as the case may be, by designated dealers;

(ii) the setting of position limits and monitoring them for appropriateness;

(iii) ensuring that dealers have the autonomy to enter into and manage the position within agreed limits and according to the approved strategy;

(iv) ensuring that positions are reported to senior management as an integral part of the institution's risk management process;

(v) ensuring that positions are actively monitored with reference to market information sources and an assessment is made of the marketability or hedgeability of the position or its component risks, including the assessment, the quality and availability of market inputs to the valuation process, level of market turnover, sizes of positions traded in the market;

(vi) active anti-fraud procedures and controls;

(c) the institution shall have in place clearly defined policies and procedures to monitor the positions against the institution's trading strategy, including the monitoring of turnover and positions for which the originally intended holding period has been exceeded.

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Article 104

Inclusion in the trading book

1. Institutions shall have in place clearly defined policies and procedures for determining which position to include in the trading book for the purposes of calculating their capital requirements, in accordance with the requirements set out in Article 102 and the definition of trading book in accordance with point (86) of Article 4(1), taking

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into account the institution's risk management capabilities and practices. The institution shall fully document its compliance with these policies and procedures and shall subject them to periodic internal audit.

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Article 104b

Requirements for trading desk

1. For the purposes of the reporting requirements set out in Article 430b(3), institutions shall establish trading desks and shall assign each of their trading book positions to one of those trading desks. Trading book positions shall be attributed to the same trading desk only where they satisfy the agreed business strategy for the trading desk and are consistently managed and monitored in accordance with paragraph 2 of this Article.

2. Institutions' trading desks shall at all times meet all the following requirements:

(a) each trading desk shall have a clear and distinctive business strategy and a risk management structure that is adequate for its business strategy;

(b) each trading desk shall have a clear organisational structure; positions in a given trading desk shall be managed by designated dealers within the institution; each dealer shall have dedicated functions in the trading desk; each dealer shall be assigned to one trading desk only;

(c) position limits shall be set within each trading desk according to the business strategy of that trading desk;

(d) reports on the activities, profitability, risk management and regulatory requirements at the trading desk level shall be produced at least on a weekly basis and communicated to the management body on a regular basis;

(e) each trading desk shall have a clear annual business plan including a well-defined remuneration policy on the basis of sound criteria used for performance measurement;

(f) reports on maturing positions, intra-day trading limit breaches, daily trading limit breaches and actions taken by the institution to address those breaches, as well as assessments of market liquidity, shall be prepared for each trading desk on a monthly basis and made available to the competent authorities.

3. By way of derogation from point (b) of paragraph 2, an institution may assign a dealer to more than one trading desk, provided that the institution demonstrates to the satisfaction of its competent authority that the assignment has been made due to business or resource considerations and the assignment preserves the other qualitative requirements set out in this Article applicable to dealers and trading desks.

4. Institutions shall notify the competent authorities of the manner in which they comply with paragraph 2. Competent authorities may require an institution to change the structure or organisation of its trading desks to comply with this Article.

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Article 105

Requirements for prudent valuation

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1. All trading book positions and non-trading book positions measured at fair value shall be subject to the standards for prudent valuation specified in this Article. Institutions shall in particular ensure that the prudent valuation of their trading book positions achieves an appropriate degree of certainty having regard to the dynamic nature of trading book positions and non-trading book positions measured at fair value, the demands of prudential soundness and the mode of operation and purpose of capital requirements in respect of trading book positions and non-trading book positions measured at fair value.

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2. Institutions shall establish and maintain systems and controls sufficient to provide prudent and reliable valuation estimates. Those systems and controls shall include at least the following elements:

(a) documented policies and procedures for the process of valuation, including clearly defined responsibilities of the various areas involved in the determination of the valuation, sources of market information and review of their appropriateness, guidelines for the use of unobservable inputs reflecting the institution's assumptions of what market participants would use in pricing the position, frequency of independent valuation, timing of closing prices, procedures for adjusting valuations, month end and ad-hoc verification procedures;

(b) reporting lines for the department accountable for the valuation process that are clear and independent of the front office, which shall ultimately be to the management body.

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3. Institutions shall revalue trading book positions at fair value at least on a daily basis. Changes in the value of those positions shall be reported in the profit and loss account of the institution.

4. Institutions shall mark their trading book positions and non-trading book positions measured at fair value to market whenever possible, including when applying the relevant capital treatment to those positions.

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5. When marking to market, an institution shall use the more prudent side of bid and offer unless the institution can close out at mid market. Where institutions make use of this derogation, they shall every six months inform their competent authorities of the positions concerned and furnish evidence that they can close out at mid-market.

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6. Where marking to market is not possible, institutions shall conservatively mark to model their positions and portfolios, including when calculating own funds requirements for positions in the trading book and positions measured at fair value in the non-trading book.

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7. Institutions shall comply with the following requirements when marking to model:

(a) senior management shall be aware of the elements of the trading book or of other fair-valued positions which are subject to mark to model and shall understand the materiality of the uncertainty thereby created in the reporting of the risk/performance of the business;

(b) institutions shall source market inputs, where possible, in line with market prices, and shall assess the appropriateness of the market inputs of the particular position being valued and the parameters of the model on a frequent basis;

(c) where available, institutions shall use valuation methodologies which are accepted market practice for particular financial instruments or commodities;

(d) where the model is developed by the institution itself, it shall be based on appropriate assumptions, which have been assessed and challenged by suitably qualified parties independent of the development process;

(e) institutions shall have in place formal change control procedures and shall hold a secure copy of the model and use it periodically to check valuations;

(f) risk management shall be aware of the weaknesses of the models used and how best to reflect those in the valuation output; and

(g) institutions' models shall be subject to periodic review to determine the accuracy of their performance, which shall include assessing the continued appropriateness of assumptions, analysis of profit and loss versus risk factors, and comparison of actual close out values to model outputs.

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For the purposes of point (d) of the first subparagraph, the model shall be developed or approved independently of the trading desks and shall be independently tested, including validation of the mathematics, assumptions and software implementation.

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8. Institutions shall perform independent price verification in addition to daily marking to market or marking to model. Verification of market prices and model inputs shall be performed by a person or unit independent from persons or units that benefit from the trading book, at least monthly, or more frequently depending on the nature of the market or trading activity. Where independent pricing sources are not available or pricing sources are more subjective, prudent measures such as valuation adjustments may be appropriate.

9. Institutions shall establish and maintain procedures for considering valuation adjustments.

10. Institutions shall formally consider the following valuation adjustments: unearned credit spreads, close-out costs, operational risks, market price uncertainty, early termination, investing and funding costs, future administrative costs and, where relevant, model risk.

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11. Institutions shall establish and maintain procedures for calculating an adjustment to the current valuation of any less liquid positions, which can in particular arise from market events or institution-related situations such as concentrated positions and/or positions for which the originally intended holding period has been exceeded. Institutions shall, where necessary, make such adjustments in addition to any changes to the value of the position required for financial reporting purposes and shall design such adjustments to reflect the illiquidity of the position. Under those procedures, institutions shall consider several factors when determining whether a valuation adjustment is necessary for less liquid positions. Those factors include the following:

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(a) the additional amount of time it would take to hedge out the position or the risks within the position beyond the liquidity horizons that have been assigned to the risk factors of the position in accordance with Article 325bd;

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(b) the volatility and average of bid/offer spreads;

(c) the availability of market quotes (number and identity of market makers) and the volatility and average of trading volumes including trading volumes during periods of market stress;

(d) market concentrations;

(e) the ageing of positions;

(f) the extent to which valuation relies on marking-to-model;

(g) the impact of other model risks.

12. When using third party valuations or marking to model, institutions shall consider whether to apply a valuation adjustment. In addition, institutions shall consider the need to establish adjustments for less liquid positions and on an ongoing basis review their continued suitability. Institutions shall also explicitly assess the need for valuation adjustments relating to the uncertainty of parameter inputs used by models.

13. With regard to complex products, including securitisation exposures and n-th-to-default credit derivatives, institutions shall explicitly assess the need for valuation adjustments to reflect the model risk associated with using a possibly incorrect valuation methodology and the model risk associated with using unobservable (and possibly incorrect) calibration parameters in the valuation model.

14. EBA shall develop draft regulatory technical standards to specify the conditions according to which the requirements of Article 105 shall be applied for the purposes of paragraph 1 of this Article.

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EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 106

Internal Hedges

1. An internal hedge shall in particular meet the following requirements:

(a) it shall not be primarily intended to avoid or reduce own funds requirements;

(b) it shall be properly documented and subject to particular internal approval and audit procedures;

(c) it shall be dealt with at market conditions;

(d) the market risk that is generated by the internal hedge shall be dynamically managed in the trading book within the authorised limits;

(e) it shall be carefully monitored in accordance with adequate procedures.

2. The requirements of paragraph 1 apply without prejudice to the requirements applicable to the hedged position in the non-trading book.

3. By way of derogation from paragraphs 1 and 2, when an institution hedges a non-trading book credit risk exposure or counterparty risk exposure using a credit derivative booked in its trading book using an internal hedge, the non-trading book exposure or counterparty risk exposure shall not be deemed to be hedged for the purposes of calculating risk-weighted exposure amounts unless the institution purchases from an eligible third party protection provider a corresponding credit derivative meeting the requirements for unfunded credit protection in the non-trading book. Without prejudice to point (h) of Article 299(2), where such third party protection is purchased and recognised as a hedge of a non-trading book exposure for the purposes of calculating capital requirements, neither the internal nor external credit derivative hedge shall be included in the trading book for the purposes of calculating capital requirements.

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TITLE II

CAPITAL REQUIREMENTS FOR CREDIT RISK

CHAPTER 1

General principles

Article 107

Approaches to credit risk

1. Institutions shall apply either the Standardised Approach provided for in Chapter 2 or, if permitted by the competent authorities in accordance with Article 143, the Internal Ratings Based Approach provided for in Chapter 3 to calculate their risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3).

2. For trade exposures and for default fund contributions to a central counterparty, institutions shall apply the treatment set out in Chapter 6, Section 9 to calculate their risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3). For all other types of exposures to a central counterparty, institutions shall treat those exposures as follows:

(a) as exposures to an institution for other types of exposures to a qualifying CCP;

(b) as exposures to a corporate for other types of exposures to a non-qualifying CCP.

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3. For the purposes of this Regulation, exposures to a third-country investment firm, a third-country credit institution and a third-country exchange shall be treated as exposures to an institution only where the third country applies prudential and supervisory requirements to that entity that are at least equivalent to those applied in the Union.

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4. For the purposes of paragraph 3, the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union. In the absence of such a decision, until 1 January 2015, institutions may continue to treat exposures to the entities referred to in paragraph 3 as exposures to institutions provided that the relevant competent authorities have approved the third country as eligible for that treatment before 1 January 2014.

Article 108

Use of credit risk mitigation technique under the Standardised Approach and the IRB Approach

1. For an exposure to which an institution applies the Standardised Approach under Chapter 2 or applies the IRB Approach under Chapter 3 but without using its own estimates of loss given default (LGD) and

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conversion factors under Article 151, the institution may use credit risk mitigation in accordance with Chapter 4 in the calculation of risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3) or, as relevant, expected loss amounts for the purposes of the calculation referred to in point (d) of Article 36(1) and point (c) of Article 62.

2. For an exposure to which an institution applies the IRB Approach by using their own estimates of LGD and conversion factors under Article 151, the institution may use credit risk mitigation in accordance with Chapter 3.

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Article 109

Treatment of securitisation positions

Institutions shall calculate the risk-weighted exposure amount for a position they hold in a securitisation in accordance with Chapter 5.

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Article 110

Treatment of credit risk adjustment

1. Institutions applying the Standardised Approach shall treat general credit risk adjustments in accordance with Article 62(c).

2. Institutions applying the IRB Approach shall treat general credit risk adjustments in accordance with Article 159, Article 62(d) and Article 36(1)(d).

For the purposes of this Article and Chapters 2 and 3, general and specific credit risk adjustments shall exclude funds for general banking risk.

3. Institutions using the IRB Approach that apply the Standardised Approach for a part of their exposures on consolidated or individual basis, in accordance with Articles 148 and 150 shall determine the part of general credit risk adjustment that shall be assigned to the treatment of general credit risk adjustment under the Standardised Approach and to the treatment of general credit risk adjustment under the IRB Approach as follows:

(a) where applicable, when an institution included in the consolidation exclusively applies the IRB Approach, general credit risk adjustments of this institution shall be assigned to the treatment set out in paragraph 2;

(b) where applicable, when an institution included in the consolidation exclusively applies the Standardised Approach, general credit risk adjustment of this institution shall be assigned to the treatment set out in paragraph 1;

(c) the remainder of credit risk adjustment shall be assigned on a pro rata basis according to the proportion of risk weighted exposure amounts subject to the Standardised Approach and subject to the IRB Approach.

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4. EBA shall develop draft regulatory technical standards to specify the calculation of specific credit risk adjustments and general credit risk adjustments under the applicable accounting framework for the following:

(a) exposure value under the Standardised Approach referred to in Article 111;

(b) exposure value under the IRB Approach referred to in Articles 166 to 168;

(c) treatment of expected loss amounts referred to in Article 159;

(d) exposure value for the calculation of the risk-weighted exposure amounts for securitisation position referred to in Articles 246 and 266;

(e) the determination of default under Article 178.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

CHAPTER 2

Standardised approach

Section 1

General principles

Article 111

Exposure value

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1. The exposure value of an asset item shall be its accounting value remaining after specific credit risk adjustments in accordance with Article 110, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) Article 36(1) and other own funds reductions related to the asset item have been applied. The exposure value of an off-balance sheet item listed in Annex I shall be the following percentage of its nominal value after reduction of specific credit risk adjustments and amounts deducted in accordance with point (m) Article 36(1):

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(a) 100 % if it is a full-risk item;

(b) 50 % if it is a medium-risk item;

(c) 20 % if it is a medium/low-risk item;

(d) 0 % if it is a low-risk item.

The off-balance sheet items referred to in the second sentence of the first subparagraph shall be assigned to risk categories as indicated in Annex I.

When an institution is using the Financial Collateral Comprehensive Method under Article 223, the exposure value of securities or commodities sold, posted or lent under a repurchase transaction or under a securities or commodities lending or borrowing transaction,

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and margin lending transactions shall be increased by the volatility adjustment appropriate to such securities or commodities as prescribed in Articles 223 to 225.

2. The exposure value of a derivative instrument listed in Annex II shall be determined in accordance with Chapter 6 with the effects of contracts of novation and other netting agreements taken into account for the purposes of those methods in accordance with Chapter 6. The exposure value of repurchase transaction, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions may be determined either in accordance with Chapter 6 or Chapter 4.

3. Where an exposure is subject to funded credit protection, the exposure value applicable to that item may be amended in accordance with Chapter 4.

Article 112

Exposure classes

Each exposure shall be assigned to one of the following exposure classes:

(a) exposures to central governments or central banks;

(b) exposures to regional governments or local authorities;

(c) exposures to public sector entities;

(d) exposures to multilateral development banks;

(e) exposures to international organisations;

(f) exposures to institutions;

(g) exposures to corporates;

(h) retail exposures;

(i) exposures secured by mortgages on immovable property;

(j) exposures in default;

(k) exposures associated with particularly high risk;

(l) exposures in the form of covered bonds;

(m) items representing securitisation positions;

(n) exposures to institutions and corporates with a short-term credit assessment;

(o) exposures in the form of units or shares in collective investment undertakings (‘CIUs’);

(p) equity exposures;

(q) other items.

Article 113

Calculation of risk-weighted exposure amounts

1. To calculate risk-weighted exposure amounts, risk weights shall be applied to all exposures, unless deducted from own funds, in accordance with the provisions of Section 2. The application of risk weights shall be based on the exposure class to which the exposure is assigned and, to

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the extent specified in Section 2, its credit quality. Credit quality may be determined by reference to the credit assessments of ECAIs or the credit assessments of export credit agencies in accordance with Section 3.

2. For the purposes of applying a risk weight, as referred to in paragraph 1, the exposure value shall be multiplied by the risk weight specified or determined in accordance with Section 2.

3. Where an exposure is subject to credit protection the risk weight applicable to that item may be amended in accordance with Chapter 4.

4. Risk-weighted exposure amounts for securitised exposures shall be calculated in accordance with Chapter 5.

5. Exposures for which no calculation is provided in Section 2 shall be assigned a risk-weight of 100 %.

6. With the exception of exposures giving rise to Common Equity Tier 1, Additional Tier 1 or Tier 2 items, an institution may, subject to the prior approval of the competent authorities, decide not to apply the requirements of paragraph 1 of this Article to the exposures of that institution to a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC. Competent authorities are empowered to grant approval if the following conditions are fulfilled:

(a) the counterparty is an institution, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;

(b) the counterparty is included in the same consolidation as the institution on a full basis;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the institution;

(d) the counterparty is established in the same Member State as the institution;

(e) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the institution.

Where the institution, in accordance with this paragraph, is authorised not to apply the requirements of paragraph 1, it may assign a risk weight of 0 %.

7. With the exception of exposures giving rise to Common Equity Tier 1, Additional Tier 1 and Tier 2 items, institutions may, subject to the prior permission of the competent authorities, not apply the requirements of paragraph 1 of this Article to exposures to counterparties with which the institution has entered into an institutional protection scheme that is a contractual or statutory liability arrangement which protects those institutions and in particular ensures their liquidity and solvency to avoid bankruptcy where necessary. Competent authorities are empowered to grant permission if the following conditions are fulfilled:

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(a) the requirements set out in points (a), (d) and (e) of paragraph 6 are met;

(b) the arrangements ensure that the institutional protection scheme is able to grant support necessary under its commitment from funds readily available to it;

(c) the institutional protection scheme disposes of suitable and uniformly stipulated systems for the monitoring and classification of risk, which gives a complete overview of the risk situations of all the individual members and the institutional protection scheme as a whole, with corresponding possibilities to take influence; those systems shall suitably monitor defaulted exposures in accordance with Article 178(1);

(d) the institutional protection scheme conducts its own risk review which is communicated to the individual members;

(e) the institutional protection scheme draws up and publishes on an annual basis, a consolidated report comprising the balance sheet, the profit-and-loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole, or a report comprising the aggregated balance sheet, the aggregated profit-and-loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole;

(f) members of the institutional protection scheme are obliged to give advance notice of at least 24 months if they wish to end the institutional protection scheme;

(g) the multiple use of elements eligible for the calculation of own funds (hereinafter referred to as ‘multiple gearing’) as well as any inappropriate creation of own funds between the members of the institutional protection scheme shall be eliminated;

(h) the institutional protection scheme shall be based on a broad membership of credit institutions of a predominantly homogeneous business profile;

(i) the adequacy of the systems referred to in points (c) and (d) is approved and monitored at regular intervals by the relevant competent authorities.

Where the institution, in accordance with this paragraph, decides not to apply the requirements of paragraph 1, it may assign a risk weight of 0 %.

Section 2

Risk weights

Article 114

Exposures to central governments or central banks

1. Exposures to central governments and central banks shall be assigned a 100 % risk weight, unless the treatments set out in paragraphs 2 to 7 apply.

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2. Exposures to central governments and central banks for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 1 which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 1

Credit quality step	1	2	3	4	5	6
Risk weight	0 %	20 %	50 %	100 %	100 %	150 %

3. Exposures to the ECB shall be assigned a 0 % risk weight.

4. Exposures to Member States' central governments, and central banks denominated and funded in the domestic currency of that central government and central bank shall be assigned a risk weight of 0 %.

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7. When the competent authorities of a third country which apply supervisory and regulatory arrangements at least equivalent to those applied in the Union assign a risk weight which is lower than that indicated in paragraphs 1 and 2 to exposures to their central government and central bank denominated and funded in the domestic currency, institutions may risk weight such exposures in the same manner.

For the purposes of this paragraph, the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies supervisory and regulatory arrangements at least equivalent to those applied in the Union. In the absence of such a decision, until 1 January 2015, institutions may continue to apply the treatment set out in this paragraph to the exposures to the central government or central bank of the third country where the relevant competent authorities had approved the third country as eligible for that treatment before 1 January 2014.

Article 115

Exposures to regional governments or local authorities

1. Exposures to regional governments or local authorities shall be risk-weighted as exposures to institutions unless they are treated as

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exposures to central governments under paragraphs 2 or 4 or receive a risk weight as specified in paragraph 5. The preferential treatment for short-term exposures specified in Article 119(2) and Article 120(2) shall not be applied.

2. Exposures to regional governments or local authorities shall be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default.

EBA shall maintain a publicly available database of all regional governments and local authorities within the Union which relevant competent authorities treat as exposures to their central governments.

3. Exposures to churches or religious communities constituted in the form of a legal person under public law shall, in so far as they raise taxes in accordance with legislation conferring on them the right to do so, be treated as exposures to regional governments and local authorities. In this case, paragraph 2 shall not apply and, for the purposes of Article 150(1)(a), permission to apply the Standardised Approach shall not be excluded.

4. When competent authorities of a third country jurisdiction which applies supervisory and regulatory arrangements at least equivalent to those applied in the Union treat exposures to regional governments or local authorities as exposures to their central government and there is no difference in risk between such exposures because of the specific revenue-raising powers of regional government or local authorities and to specific institutional arrangements to reduce the risk of default, institutions may risk weight exposures to such regional governments and local authorities in the same manner.

For the purposes of this paragraph, the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies supervisory and regulatory arrangements at least equivalent to those applied in the Union. In the absence of such a decision, until 1 January 2015, institutions may continue to apply the treatment set out in this paragraph to the third country where the relevant competent authorities had approved the third country as eligible for that treatment before 1 January 2014.

5. Exposures to regional governments or local authorities of the Member States that are not referred to in paragraphs 2 to 4 and are denominated and funded in the domestic currency of that regional government and local authority shall be assigned a risk weight of 20 %.

▼C2

Article 116

Exposures to public sector entities

1. Exposures to public sector entities for which a credit assessment by a nominated ECAI is not available shall be assigned a risk weight in accordance with the credit quality step to which exposures to the central government of the jurisdiction in which the public sector entity is incorporated are assigned in accordance with the following Table 2:

Table 2

Credit quality step to which central government is assigned	1	2	3	4	5	6
Risk weight	20 %	50 %	100 %	100 %	100 %	150 %

For exposures to public sector entities incorporated in countries where the central government is unrated, the risk weight shall be 100 %.

2. Exposures to public sector entities for which a credit assessment by a nominated ECAI is available shall be treated in accordance with Article 120. The preferential treatment for short-term exposures specified in Articles 119(2) and 120(2), shall not be applied to those entities.

3. For exposures to public sector entities with an original maturity of three months or less, the risk weight shall be 20 %.

4. In exceptional circumstances, exposures to public-sector entities may be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established where in the opinion of the competent authorities of this jurisdiction there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government, regional government or local authority.

5. When competent authorities of a third country jurisdiction, which apply supervisory and regulatory arrangements at least equivalent to those applied in the Union, treat exposures to public sector entities in accordance with paragraph 1 or 2, institutions may risk weight exposures to such public sector entities in the same manner. Otherwise the institutions shall apply a risk weight of 100 %.

For the purposes of this paragraph, the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies supervisory and regulatory arrangements at least equivalent to those applied in the Union. In the absence of such a decision, until 1 January 2015, institutions may continue to apply the treatment set out in this paragraph to the third country where the relevant competent authorities had approved the third country as eligible for that treatment before 1 January 2014.

▼C2

Article 117

Exposures to multilateral development banks

1. Exposures to multilateral development banks that are not referred to in paragraph 2 shall be treated in the same manner as exposures to institutions. The preferential treatment for short-term exposures as specified in Articles 119(2), 120(2) and 121(3) shall not be applied.

The Inter-American Investment Corporation, the Black Sea Trade and Development Bank, the Central American Bank for Economic Integration and the CAF-Development Bank of Latin America shall be considered multilateral development banks.

2. Exposures to the following multilateral development banks shall be assigned a 0 % risk weight:

(a) the International Bank for Reconstruction and Development;

(b) the International Finance Corporation;

(c) the Inter-American Development Bank;

(d) the Asian Development Bank;

(e) the African Development Bank;

(f) the Council of Europe Development Bank;

(g) the Nordic Investment Bank;

(h) the Caribbean Development Bank;

(i) the European Bank for Reconstruction and Development;

(j) the European Investment Bank;

(k) the European Investment Fund;

(l) the Multilateral Investment Guarantee Agency;

(m) the International Finance Facility for Immunisation;

(n) the Islamic Development Bank;

▼M8

(o) the International Development Association;

(p) the Asian Infrastructure Investment Bank.

The Commission is empowered to amend this Regulation by adopting delegated acts in accordance with Article 462 amending, in accordance with international standards, the list of multilateral development banks referred to in the first subparagraph.

▼C2

3. A risk weight of 20 % shall be assigned to the portion of unpaid capital subscribed to the European Investment Fund.

Article 118

Exposures to international organisations

Exposures to the following international organisations shall be assigned a 0 % risk weight:

▼M8

(a) the European Union and the European Atomic Energy Community;

▼C2

(b) the International Monetary Fund;

(c) the Bank for International Settlements;

(d) the European Financial Stability Facility;

(e) the European Stability Mechanism;

(f) an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems.

Article 119

Exposures to institutions

1. Exposures to institutions for which a credit assessment by a nominated ECAI is available shall be risk-weighted in accordance with Article 120. Exposures to institutions for which a credit assessment by a nominated ECAI is not available shall be risk-weighted in accordance with Article 121.

2. Exposures to institutions of a residual maturity of three months or less denominated and funded in the national currency of the borrower shall be assigned a risk weight that is one category less favourable than the preferential risk weight, as described in Article 114(4) to (7), assigned to exposures to the central government in which the institution is incorporated.

3. No exposures with a residual maturity of three months or less denominated and funded in the national currency of the borrower shall be assigned a risk weight less than 20 %.

4. Exposure to an institution in the form of minimum reserves required by the ECB or by the central bank of a Member State to be held by an institution may be risk-weighted as exposures to the central bank of the Member State in question provided:

(a) the reserves are held in accordance with Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves ([1]) or in accordance with national requirements in all material respects equivalent to that Regulation;

(b) in the event of the bankruptcy or insolvency of the institution where the reserves are held, the reserves are fully repaid to the institution in a timely manner and are not made available to meet other liabilities of the institution.

▼M9

5. Exposures to financial institutions authorised and supervised by the competent authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness shall be treated as exposures to institutions.

For the purposes of this paragraph, the prudential requirements laid down in Regulation (EU) 2019/2033 shall be considered to be comparable to those applied to institutions in terms of robustness.

([1]) OJ L 250, 2.10.2003, p. 10.

▼C2

Article 120

Exposures to rated institutions

1. Exposures to institutions with a residual maturity of more than three months for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 3 which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 3

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	50 %	50 %	100 %	100 %	150 %

2. Exposures to an institution of up to three months residual maturity for which a credit assessment by a nominated ECAI is available shall be assigned a risk-weight in accordance with Table 4 which corresponds to the credit assessment of the ECAI in accordance with Article 136:

Table 4

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	20 %	20 %	50 %	50 %	150 %

3. The interaction between the treatment of short term credit assessment under Article 131 and the general preferential treatment for short term exposures set out in paragraph 2 shall be as follows:

(a) If there is no short-term exposure assessment, the general preferential treatment for short-term exposures as specified in paragraph 2 shall apply to all exposures to institutions of up to three months residual maturity;

(b) If there is a short-term assessment and such an assessment determines the application of a more favourable or identical risk weight than the use of the general preferential treatment for short-term exposures, as specified in paragraph 2, then the short-term assessment shall be used for that specific exposure only. Other short-term exposures shall follow the general preferential treatment for short-term exposures, as specified in paragraph 2;

(c) If there is a short-term assessment and such an assessment determines a less favourable risk weight than the use of the general preferential treatment for short-term exposures, as specified in paragraph 2, then the general preferential treatment for short-term exposures shall not be used and all unrated short-term claims shall be assigned the same risk weight as that applied by the specific short-term assessment.

▼C2

Article 121

Exposures to unrated institutions

1. Exposures to institutions for which a credit assessment by a nominated ECAI is not available shall be assigned a risk weight in accordance with the credit quality step to which exposures to the central government of the jurisdiction in which the institution is incorporated are assigned in accordance with Table 5.

Table 5

Credit quality step to which central government is assigned	1	2	3	4	5	6
Risk weight of exposure	20 %	50 %	100 - %	100 - %	100 - %	150 %

2. For exposures to unrated institutions incorporated in countries where the central government is unrated, the risk weight shall be 100 %.

3. For exposures to unrated institutions with an original effective maturity of three months or less, the risk weight shall be 20 %.

4. Notwithstanding paragraphs 2 and 3, for trade finance exposures referred to in point (b) of the second subparagraph of Article 162(3) to unrated institutions, the risk weight shall be 50 % and where the residual maturity of these trade finance exposures to unrated institutions is three months or less, the risk weight shall be 20 %.

Article 122

Exposures to corporates

1. Exposures for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 6 which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 6

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	50 %	100 %	100 %	150 %	150 %

2. Exposures for which such a credit assessment is not available shall be assigned a 100 % risk weight or the risk weight of exposures to the central government of the jurisdiction in which the corporate is incorporated, whichever is the higher.

▼C2

Article 123

Retail exposures

Exposures that comply with the following criteria shall be assigned a risk weight of 75 %:

(a) the exposure shall be either to a natural person or persons, or to a small or medium-sized enterprise (SME);

(b) the exposure shall be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;

(c) the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients, but excluding exposures fully and completely secured on residential property collateral that have been assigned to the exposure class laid down in point (i) of Article 112, shall not, to the knowledge of the institution, exceed EUR 1 million. The institution shall take reasonable steps to acquire this knowledge.

Securities shall not be eligible for the retail exposure class.

Exposures that do not comply with the criteria referred to in points (a) to (c) of the first subparagraph shall not be eligible for the retail exposures class.

The present value of retail minimum lease payments is eligible for the retail exposure class.

▼M8

Exposures due to loans granted by a credit institution to pensioners or employees with a permanent contract against the unconditional transfer of part of the borrower's pension or salary to that credit institution shall be assigned a risk weight of 35 %, provided that all the following conditions are met:

(a) in order to repay the loan, the borrower unconditionally authorises the pension fund or employer to make direct payments to the credit institution by deducting the monthly payments on the loan from the borrower's monthly pension or salary;

(b) the risks of death, inability to work, unemployment or reduction of the net monthly pension or salary of the borrower are properly covered through an insurance policy underwritten by the borrower to the benefit of the credit institution;

(c) the monthly payments to be made by the borrower on all loans that meet the conditions set out in points (a) and (b) do not in aggregate exceed 20 % of the borrower's net monthly pension or salary;

▼M8

(d) the maximum original maturity of the loan is equal to or less than ten years.

Article 124

Exposures secured by mortgages on immovable property

1. An exposure or any part of an exposure fully secured by mortgage on immovable property shall be assigned a risk weight of 100 %, where the conditions set out in Article 125 or 126 are not met, except for any part of the exposure which is assigned to another exposure class. The part of the exposure that exceeds the mortgage value of the immovable property shall be assigned the risk weight applicable to the unsecured exposures of the counterparty involved.

The part of an exposure that is treated as fully secured by immovable property shall not be greater than the pledged amount of the market value or in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, the mortgage lending value of the immovable property in question.

1a. Member States shall designate an authority to be responsible for the application of paragraph 2. That authority shall be the competent authority or the designated authority.

Where the authority designated by the Member State for the application of this Article is the competent authority, it shall ensure that the relevant national bodies and authorities which have a macroprudential mandate are duly informed of the competent authority's intention to make use of this Article, and are appropriately involved in the assessment of financial stability concerns in its Member State in accordance with paragraph 2.

Where the authority designated by the Member State for the application of this Article is different from the competent authority, the Member State shall adopt the necessary provisions to ensure proper coordination and exchange of information between the competent authority and the designated authority for the proper application of this Article. In particular, authorities shall be required to cooperate closely and to share all the information that may be necessary for the adequate performance of the duties imposed upon the designated authority pursuant to this Article. That cooperation shall aim at avoiding any form of duplicative or inconsistent action between the competent authority and the designated authority, as well as ensuring that the interaction with other measures, in particular measures taken under Article 458 of this Regulation and Article 133 of Directive 2013/36/EU, is duly taken into account.

2. Based on the data collected under Article 430a and on any other relevant indicators, the authority designated in accordance with paragraph 1a of this Article shall periodically, and at least annually, assess whether the risk weight of 35 % for exposures to one or more property segments secured by mortgages on residential property referred

▼M8

to in Article 125 located in one or more parts of the territory of the Member State of the relevant authority and the risk weight of 50 % for exposures secured by mortgages on commercial immovable property referred to in Article 126 located in one or more parts of the territory of the Member State of the relevant authority are appropriately based on:

(a) the loss experience of exposures secured by immovable property;

(b) forward-looking immovable property markets developments.

Where, on the basis of the assessment referred to in the first subparagraph of this paragraph, the authority designated in accordance with paragraph 1a of this Article concludes that the risk weights set out in Article 125(2) or 126(2) do not adequately reflect the actual risks related to exposures to one or more property segments fully secured by mortgages on residential property or on commercial immovable property located in one or more parts of the territory of the Member State of the relevant authority, and if it considers that the inadequacy of the risk weights could adversely affect current or future financial stability in its Member State, it may increase the risk weights applicable to those exposures within the ranges determined in the fourth subparagraph of this paragraph or impose stricter criteria than those set out in Article 125(2) or 126(2).

The authority designated in accordance with paragraph 1a of this Article shall notify EBA and the ESRB of any adjustments to risk weights and criteria applied pursuant to this paragraph. Within one month of receipt of that notification, EBA and the ESRB shall provide their opinion to the Member State concerned. EBA and the ESRB shall publish the risk weights and criteria for exposures referred to in Articles 125, 126 and point (a) of Article 199(1) as implemented by the relevant authority.

For the purposes of the second subparagraph of this paragraph, the authority designated in accordance with paragraph 1a may set the risk weights within the following ranges:

(a) 35 % to 150 % for exposures secured by mortgages on residential property;

(b) 50 % to 150 % for exposures secured by mortgages on commercial immovable property.

3. Where the authority designated in accordance with paragraph 1a sets higher risk weights or stricter criteria pursuant to the second subparagraph of paragraph 2, institutions shall have a six-month transitional period to apply them.

▼M8

4. EBA, in close cooperation with the ESRB, shall develop draft regulatory technical standards to specify the rigorous criteria for the assessment of the mortgage lending value referred to in paragraph 1 and the types of factors to be considered for the assessment of the appropriateness of the risk weights referred in the first subparagraph of paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2019.

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

5. The ESRB may, by means of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, and in close cooperation with EBA, give guidance to authorities designated in accordance with paragraph 1a of this Article on the following:

(a) factors which could 'adversely affect current or future financial stability' referred to in the second subparagraph of paragraph 2; and

(b) indicative benchmarks that the authority designated in accordance with paragraph 1a is to take into account when determining higher risk weights.

6. The institutions of a Member State shall apply the risk weights and criteria that have been determined by the authorities of another Member State in accordance with paragraph 2 to all their corresponding exposures secured by mortgages on residential property or commercial immovable property located in one or more parts of that Member State.

▼C2

Article 125

Exposures fully and completely secured by mortgages on residential property

1. Unless otherwise decided by the competent authorities in accordance with Article 124(2), exposures fully and completely secured by mortgages on residential property shall be treated as follows:

(a) exposures or any part of an exposure fully and completely secured by mortgages on residential property which is or shall be occupied or let by the owner, or the beneficial owner in the case of personal investment companies, shall be assigned a risk weight of 35 %;

▼C2

(b) exposures to a tenant under a property leasing transaction concerning residential property under which the institution is the lessor and the tenant has an option to purchase, shall be assigned a risk weight of 35 % provided that the exposure of the institution is fully and completely secured by its ownership of the property.

2. Institutions shall consider an exposure or any part of an exposure as fully and completely secured for the purposes of paragraph 1 only if the following conditions are met:

(a) the value of the property shall not materially depend upon the credit quality of the borrower. Institutions may exclude situations where purely macro-economic factors affect both the value of the property and the performance of the borrower from their determination of the materiality of such dependence;

(b) the risk of the borrower shall not materially depend upon the performance of the underlying property or project, but on the underlying capacity of the borrower to repay the debt from other sources, and as a consequence, the repayment of the facility shall not materially depend on any cash flow generated by the underlying property serving as collateral. For those other sources, institutions shall determine maximum loan-to-income ratios as part of their lending policy and obtain suitable evidence of the relevant income when granting the loan;

(c) the requirements set out in Article 208 and the valuation rules set out in Article 229(1) are met;

(d) unless otherwise determined under Article 124(2), the part of the loan to which the 35 % risk weight is assigned does not exceed 80 % of the market value of the property in question or 80 % of the mortgage lending value of the property in question in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

3. Institutions may derogate from point (b) of paragraph 2 for exposures fully and completely secured by mortgages on residential property which is situated within the territory of a Member State, where the competent authority of that Member State has published evidence showing that a well-developed and long-established residential property market is present in that territory with loss rates which do not exceed the following limits:

(a) losses stemming from lending collateralised by residential property up to 80 % of the market value or 80 % of the mortgage lending value, unless otherwise decided under Article 124(2), do not exceed 0,3 % of the outstanding loans collateralised by residential property in any given year;

(b) overall losses stemming from lending collateralised by residential property do not exceed 0,5 % of the outstanding loans collateralised by residential property in any given year.

▼C2

4. Where either of the limits referred to in paragraph 3 is not satisfied in a given year, the eligibility to use paragraph 3 shall cease and the condition contained in point (b) of paragraph 2 shall apply until the conditions in paragraph 3 are satisfied in a subsequent year.

Article 126

Exposures fully and completely secured by mortgages on commercial immovable property

1. Unless otherwise decided by the competent authorities in accordance with Article 124(2), exposures fully and completely secured by mortgages on commercial immovable property shall be treated as follows:

(a) exposures or any part of an exposure fully and completely secured by mortgages on offices or other commercial premises may be assigned a risk weight of 50 %;

(b) exposures related to property leasing transactions concerning offices or other commercial premises under which the institution is the lessor and the tenant has an option to purchase may be assigned a risk weight of 50 % provided that the exposure of the institution is fully and completely secured by its ownership of the property.

2. Institutions shall consider an exposure or any part of an exposure as fully and completely secured for the purposes of paragraph 1 only if the following conditions are met:

(a) the value of the property shall not materially depend upon the credit quality of the borrower. Institutions may exclude situations where purely macro-economic factors affect both the value of the property and the performance of the borrower from their determination of the materiality of such dependence;

(b) the risk of the borrower shall not materially depend upon the performance of the underlying property or project, but on the underlying capacity of the borrower to repay the debt from other sources, and as a consequence, the repayment of the facility shall not materially depend on any cash flow generated by the underlying property serving as collateral;

(c) the requirements set out in Article 208 and the valuation rules set out in Article 229(1) are met;

(d) the 50 % risk weight unless otherwise provided under Article 124(2) shall be assigned to the part of the loan that does not exceed 50 % of the market value of the property or 60 % of the mortgage lending value unless otherwise provided under Article 124(2) of the property in question in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

3. Institutions may derogate from point (b) of paragraph 2 for exposures fully and completely secured by mortgages on commercial immovable property which is situated within the territory of a Member State, where the competent authority of that Member State has published evidence showing that a well-developed and long-established commercial immovable property market is present in that territory with loss rates which do not exceed the following limits:

▼C2

(a) losses stemming from lending collateralised by commercial immovable property up to 50 % of the market value or 60 % of the mortgage lending value, unless otherwise determined under Article 124(2), do not exceed 0,3 % of the outstanding loans collateralised by commercial immovable property;

(b) overall losses stemming from lending collateralised by commercial immovable property do not exceed 0,5 % of the outstanding loans collateralised by commercial immovable property.

4. Where either of the limits referred to in paragraph 3 is not satisfied in a given year, the eligibility to use paragraph 3 shall cease and the condition contained in point (b) of paragraph 2 shall apply until the conditions in paragraph 3 are satisfied in a subsequent year.

Article 127

Exposures in default

▼M7

1. The unsecured part of any item where the obligor has defaulted in accordance with Article 178, or in the case of retail exposures, the unsecured part of any credit facility which has defaulted in accordance with Article 178 shall be assigned a risk weight of:

(a) 150 %, where the sum of specific credit risk adjustments and of the amounts deducted in accordance with point (m) Article 36(1) is less than 20 % of the unsecured part of the exposure value if those specific credit risk adjustments and deductions were not applied;

(b) 100 %, where the sum of the specific credit risk adjustments and of the amounts deducted in accordance with point (m) Article 36(1) is no less than 20 % of the unsecured part of the exposure value if those specific credit risk adjustments and deductions were not applied.

▼C2

2. For the purpose of determining the secured part of the past due item, eligible collateral and guarantees shall be those eligible for credit risk mitigation purposes under Chapter 4.

3. The exposure value remaining after specific credit risk adjustments of exposures fully and completely secured by mortgages on residential property in accordance with Article 125 shall be assigned a risk weight of 100 % if a default has occurred in accordance with Article 178.

4. The exposure value remaining after specific credit risk adjustments of exposures fully and completely secured by mortgages on commercial immovable property in accordance with Article 126 shall be assigned a risk weight of 100 % if a default has occurred in accordance with Article 178.

▼C2

Article 128

Items associated with particular high risk

▼M8

1. Institutions shall assign a 150 % risk weight to exposures that are associated with particularly high risks.

2. For the purposes of this Article, institutions shall treat any of the following exposures as exposures associated with particularly high risks:

(a) investments in venture capital firms, except where those investments are treated in accordance with Article 132;

(b) investments in private equity, except where those investments are treated in accordance with Article 132;

(c) speculative immovable property financing.

▼C2

3. When assessing whether an exposure other than exposures referred to in paragraph 2 is associated with particularly high risks, institutions shall take into account the following risk characteristics:

(a) there is a high risk of loss as a result of a default of the obligor;

(b) it is impossible to assess adequately whether the exposure falls under point (a).

EBA shall issue guidelines specifying which types of exposures are associated with particularly high risk and under which circumstances.

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 129

Exposures in the form of covered bonds

1. ►M10 To be eligible for the preferential treatment set out in paragraphs 4 and 5 of this Article, covered bonds as defined in point (1) of Article 3 of Directive (EU) 2019/2162 of the European Parliament and of the Council [1] shall meet the requirements set out in paragraphs 3, 3a and 3b of this Article and shall be collateralised by any of the following eligible assets: ◄

(a) exposures to or guaranteed by central governments, the ESCB central banks, public sector entities, regional governments or local authorities in the Union;

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

▼C2

(b) exposures to or guaranteed by third country central governments, third-country central banks, multilateral development banks, international organisations that qualify for the credit quality step 1 as set out in this Chapter, and exposures to or guaranteed by third-country public sector entities, third-country regional governments or third-country local authorities that are risk weighted as exposures to institutions or central governments and central banks in accordance with Article 115(1) or (2), or Article 116(1), (2) or (4) respectively and that qualify for the credit quality step 1 as set out in this Chapter, and exposures within the meaning of this point that qualify as a minimum for the credit quality step 2 as set out in this Chapter, provided that they do not exceed 20 % of the nominal amount of outstanding covered bonds of the issuing institutions;

▼M10

(c) exposures to credit institutions that qualify for credit quality step 1 or credit quality step 2, or exposures to credit institutions that qualify for credit quality step 3 where those exposures are in the form of:

(i) short-term deposits with an original maturity not exceeding 100 days, where used to meet the cover pool liquidity buffer requirement of Article 16 of Directive (EU) 2019/2162; or

(ii) derivative contracts that meet the requirements of Article 11(1) of that Directive, where permitted by the competent authorities;

(d) loans secured by residential property up to the lesser of the principal amount of the liens that are combined with any prior liens and 80 % of the value of the pledged properties;

▼C2

(e) residential loans fully guaranteed by an eligible protection provider referred to in Article 201 qualifying for the credit quality step 2 or above as set out in this Chapter, where the portion of each of the loans that is used to meet the requirement set out in this paragraph for collateralisation of the covered bond does not represent more than 80 % of the value of the corresponding residential property located in France, and where a loan-to-income ratio respects at most 33 % when the loan has been granted. There shall be no mortgage liens on the residential property when the loan is granted, and for the loans granted from 1 January 2014 the borrower shall be contractually committed not to grant such liens without the consent of the credit institution that granted the loan. The loan-to-income ratio represents the share of the gross income of the borrower that covers the reimbursement of the loan, including the interests. The protection provider shall be either a financial institution authorised and supervised by the competent authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness or an institution or an insurance undertaking. It shall establish a mutual guarantee fund or equivalent protection for insurance undertakings to absorb credit risk losses, whose calibration

▼C2

shall be periodically reviewed by the competent authorities. Both the credit institution and the protection provider shall carry out a creditworthiness assessment of the borrower;

▼M10

(f) loans secured by commercial immovable property up to the lesser of the principal amount of the liens that are combined with any prior liens and 60 % of the value of the pledged properties. Loans secured by commercial immovable property are eligible where the loan-to-value ratio of 60 % is exceeded up to a maximum level of 70 % if the value of the total assets pledged as collateral for the covered bonds exceed the nominal amount outstanding on the covered bond by at least 10 %, and the bondholders' claim meets the legal certainty requirements set out in Chapter 4. The bondholders' claim shall take priority over all other claims on the collateral;

▼C2

(g) loans secured by maritime liens on ships up to the difference between 60 % of the value of the pledged ship and the value of any prior maritime liens.

▼M10

For the purposes of paragraph 1a, exposures caused by the transmission and management of the payments of the obligors of loans secured by pledged properties of debt securities or by the transmission and management of liquidation proceeds in respect of such loans shall not be comprised in calculating the limits referred to in that paragraph.

———————

1a. For the purposes of point (c) of the first subparagraph of paragraph 1, the following shall apply:

(a) for exposures to credit institutions that qualify for credit quality step 1, the exposure shall not exceed 15 % of the nominal amount of outstanding covered bonds of the issuing credit institution;

(b) for exposures to credit institutions that qualify for credit quality step 2, the exposure shall not exceed 10 % of the nominal amount of outstanding covered bonds of the issuing credit institution;

(c) for exposures to credit institutions that qualify for credit quality step 3 that take the form of short-term deposits, as referred to in point (c)(i) of the first subparagraph of paragraph 1 of this Article, or the form of derivative contracts, as referred to in point (c)(ii) of the first subparagraph of paragraph 1 of this Article, the total exposure shall not exceed 8 % of the nominal amount of outstanding covered bonds of the issuing credit institution; the competent authorities designated pursuant to Article 18(2) of Directive (EU) 2019/2162 may, after consulting EBA, allow exposures to credit institutions that qualify for credit quality step 3 in the form of derivative contracts, provided that significant potential concentration problems in the Member States concerned due to the application of credit quality step 1 and 2 requirements referred to in this paragraph can be documented;

▼M10

(d) the total exposure to credit institutions that qualify for credit quality step 1, 2 or 3 shall not exceed 15 % of the nominal amount of outstanding covered bonds of the issuing credit institution and the total exposure to credit institutions that qualify for credit quality step 2 or 3 shall not exceed 10 % of the nominal amount of outstanding covered bonds of the issuing credit institution.

1b. Paragraph 1a of this Article shall not apply to the use of covered bonds as eligible collateral as permitted pursuant to Article 8 of Directive (EU) 2019/2162.

1c. For the purposes of point (d) of the first subparagraph of paragraph 1, the limit of 80 % shall apply on a loan-by-loan basis, shall determine the portion of the loan contributing to the coverage of liabilities attached to the covered bond, and shall apply throughout the entire maturity of the loan.

1d. For the purposes of points (f) and (g) of the first subparagraph of paragraph 1, the limits of 60 % or 70 % shall apply on a loan-by-loan basis, shall determine the portion of the loan contributing to the coverage of liabilities attached to the covered bond, and shall apply throughout the entire maturity of the loan.

▼C2

2. The situations referred to in points (a) to (f) of paragraph 1 shall also include collateral that is exclusively restricted by legislation to the protection of the bond-holders against losses.

▼M10

3. For immovable property and ships collateralising covered bonds that comply with this Regulation, the requirements set out in Article 208 shall be met. The monitoring of property values in accordance with point (a) of Article 208(3) shall be carried out frequently and at least annually for all immovable property and ships.

3a. In addition to being collateralised by the eligible assets listed in paragraph 1 of this Article, covered bonds shall be subject to a minimum level of 5 % of overcollateralisation as defined in point (14) of Article 3 of Directive (EU) 2019/2162.

For the purposes of the first subparagraph of this paragraph, the total nominal amount of all cover assets as defined in point (4) of Article 3 of that Directive shall be at least of the same value as the total nominal amount of outstanding covered bonds (‘nominal principle’), and shall consist of eligible assets as set out in paragraph 1 of this Article.

Member States may set a lower minimum level of overcollateralisation for covered bonds or authorise their competent authorities to set such a level, provided that:

(a) either the calculation of overcollateralisation is based on a formal approach where the underlying risk of the assets is taken into account, or the valuation of the assets is subject to the mortgage lending value; and

▼M10

(b) the minimum level of overcollateralisation is not lower than 2 %, based on the nominal principle referred to in Article 15(6) and (7) of Directive (EU) 2019/2162.

The assets contributing to a minimum level of overcollateralisation shall not be subject to the limits on exposure size set out in paragraph 1a and shall not count towards those limits.

3b. Eligible assets listed in paragraph 1 of this Article may be included in the cover pool as substitution assets as defined in point (13) of Article 3 of Directive (EU) 2019/2162, subject to the limits on credit quality and exposure size set out in paragraphs 1 and 1a of this Article.

▼C2

4. Covered bonds for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 6a which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 6a

Credit quality step	1	2	3	4	5	6
Risk weight	10 %	20 %	20 %	50 %	50 %	100 %

5. Covered bonds for which a credit assessment by a nominated ECAI is not available shall be assigned a risk weight on the basis of the risk weight assigned to senior unsecured exposures to the institution which issues them. The following correspondence between risk weights shall apply:

(a) if the exposures to the institution are assigned a risk weight of 20 %, the covered bond shall be assigned a risk weight of 10 %;

(b) if the exposures to the institution are assigned a risk weight of 50 %, the covered bond shall be assigned a risk weight of 20 %;

(c) if the exposures to the institution are assigned a risk weight of 100 %, the covered bond shall be assigned a risk weight of 50 %;

(d) if the exposures to the institution are assigned a risk weight of 150 %, the covered bond shall be assigned a risk weight of 100 %.

▼M10

6. Covered bonds issued before 31 December 2007 shall not be subject to the requirements laid down in paragraphs 1, 1a, 3, 3a and 3b. They shall be eligible for preferential treatment under paragraphs 4 and 5 until their maturity.

7. Covered bonds issued before 8 July 2022 that comply with the requirements laid down in this Regulation as applicable at the date of their issue shall not be subject to the requirements laid down in paragraphs 3a and 3b. They shall be eligible for preferential treatment under paragraphs 4 and 5 until their maturity.

▼C2

Article 130

Items representing securitisation positions

Risk-weighted exposure amounts for securitisation positions shall be determined in accordance with Chapter 5.

Article 131

Exposures to institutions and corporates with a short-term credit assessment

Exposures to institutions and exposures to corporates for which a short-term credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 7 which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 7

Credit Quality Step	1	2	3	4	5	6
Risk weight	20 %	50 %	100 %	150 %	150 %	150 %

▼M8

Article 132

Own funds requirements for exposures in the form of units or shares in CIUs

1. Institutions shall calculate the risk-weighted exposure amount for their exposures in the form of units or shares in a CIU by multiplying the risk-weighted exposure amount of the CIU's exposures, calculated in accordance with the approaches referred to in the first subparagraph of paragraph 2, with the percentage of units or shares held by those institutions.

2. Where the conditions set out in paragraph 3 of this Article are met, institutions may apply the look-through approach in accordance with Article 132a(1) or the mandate-based approach in accordance with Article 132a(2).

Subject to Article 132b(2), institutions that do not apply the look-through approach or the mandate-based approach shall assign a risk weight of 1 250 % (‘fall-back approach’) to their exposures in the form of units or shares in a CIU.

Institutions may calculate the risk-weighted exposure amount for their exposures in the form of units or shares in a CIU by using a combination of the approaches referred to in this paragraph, provided that the conditions for using those approaches are met.

3. Institutions may determine the risk-weighted exposure amount of a CIU's exposures in accordance with the approaches set out in Article 132a where all the following conditions are met:

▼M8

(a) the CIU is one of the following:

(i) an undertaking for collective investment in transferable securities (UCITS), governed by Directive 2009/65/EC;

(ii) an AIF managed by an EU AIFM registered under Article 3(3) of Directive 2011/61/EU;

(iii) an AIF managed by an EU AIFM authorised under Article 6 of Directive 2011/61/EU;

(iv) an AIF managed by a non-EU AIFM authorised under Article 37 of Directive 2011/61/EU;

(v) a non-EU AIF managed by a non-EU AIFM and marketed in accordance with Article 42 of Directive 2011/61/EU;

(vi) a non-EU AIF not marketed in the Union and managed by a non-EU AIFM established in a third country that is covered by a delegated act referred to in Article 67(6) of Directive 2011/61/EU;

(b) the CIU's prospectus or equivalent document includes the following:

(i) the categories of assets in which the CIU is authorised to invest;

(ii) where investment limits apply, the relative limits and the methodologies to calculate them;

(c) reporting by the CIU or the CIU management company to the institution complies with the following requirements:

(i) the exposures of the CIU are reported at least as frequently as those of the institution;

(ii) the granularity of the financial information is sufficient to allow the institution to calculate the CIU's risk -weighted exposure amount in accordance with the approach chosen by the institution;

(iii) where the institution applies the look-through approach, information about the underlying exposures is verified by an independent third party.

By way of derogation from point (a) of the first subparagraph of this paragraph, multilateral and bilateral development banks and other institutions that co-invest in a CIU with multilateral or bilateral development banks may determine the risk-weighted exposure amount of that CIU's exposures in accordance with the approaches set out in Article 132a, provided that the conditions set out in points (b) and (c) of the first subparagraph of this paragraph are met and that the CIU's investment mandate limits the types of assets that the CIU can invest in to assets that promote sustainable development in developing countries.

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Institutions shall notify their competent authority of the CIUs to which they apply the treatment referred to in the second subparagraph.

By way of derogation from point (c)(i) of the first subparagraph, where the institution determines the risk-weighted exposure amount of a CIU's exposures in accordance with the mandate-based approach, the reporting by the CIU or the CIU management company to the institution may be limited to the investment mandate of the CIU and any changes thereof and may be done only when the institution incurs the exposure to the CIU for the first time and when there is a change in the investment mandate of the CIU.

4. Institutions that do not have adequate data or information to calculate the risk-weighted exposure amount of a CIU's exposures in accordance with the approaches set out in Article 132a may rely on the calculations of a third party, provided that all the following conditions are met:

(a) the third party is one of the following:

(i) the depository institution or the depository financial institution of the CIU, provided that the CIU exclusively invests in securities and deposits all securities at that depository institution or depository financial institution;

(ii) for CIUs not covered by point (i) of this point, the CIU management company, provided that the company meets the condition set out in point (a) of paragraph 3;

(b) the third party carries out the calculation in accordance with the approaches set out in Article 132a(1), (2) or (3), as applicable;

(c) an external auditor has confirmed the correctness of the third party's calculation.

Institutions that rely on third-party calculations shall multiply the risk-weighted exposure amount of a CIU's exposures resulting from those calculations by a factor of 1,2.

By way of derogation from the second subparagraph, where the institution has unrestricted access to the detailed calculations carried out by the third party, the factor of 1,2 shall not apply. The institution shall provide those calculations to its competent authority upon request.

5. Where an institution applies the approaches referred to in Article 132a for the purpose of calculating the risk-weighted exposure amount of a CIU's exposures (‘level 1 CIU’), and any of the underlying exposures of the level 1 CIU is an exposure in the form of units or shares in another CIU (‘level 2 CIU’), the risk-weighted exposure amount of the

▼M8

level 2 CIU's exposures may be calculated by using any of the three approaches described in paragraph 2 of this Article. The institution may use the look-through approach to calculate the risk-weighted exposure amounts of CIUs' exposures in level 3 and any subsequent level only where it used that approach for the calculation in the preceding level. In any other scenario it shall use the fall-back approach.

6. The risk-weighted exposure amount of a CIU's exposures calculated in accordance with the look-through approach and the mandate-based approach set out in Article 132a(1) and (2) shall be capped at the risk-weighted amount of that CIU's exposures calculated in accordance with the fall-back approach.

7. By way of derogation from paragraph 1 of this Article, institutions that apply the look-through approach in accordance with Article 132a(1) may calculate the risk-weighted exposure amount for their exposures in the form of units or shares in a CIU by multiplying the exposure values of those exposures, calculated in accordance with Article 111, with the risk weight (RW_i^*) calculated in accordance with the formula set out in Article 132c, provided that the following conditions are met:

(a) the institutions measure the value of their holdings of units or shares in a CIU at historical cost but measure the value of the underlying assets of the CIU at fair value if they apply the look-through approach;

(b) a change in the market value of the units or shares for which institutions measure the value at historical cost changes neither the amount of own funds of those institutions nor the exposure value associated with those holdings.

Article 132a

Approaches for calculating risk-weighted exposure amounts of CIUs

1. Where the conditions set out in Article 132(3) are met, institutions that have sufficient information about the individual underlying exposures of a CIU shall look through to those exposures to calculate the risk-weighted exposure amount of the CIU, risk weighting all underlying exposures of the CIU as if they were directly held by those institutions.

2. Where the conditions set out in Article 132(3) are met, institutions that do not have sufficient information about the individual underlying exposures of a CIU to use the look-through approach may calculate the risk-weighted exposure amount of those exposures in accordance with the limits set in the CIU's mandate and relevant law.

Institutions shall carry out the calculations referred to in the first sub-paragraph under the assumption that the CIU first incurs exposures to the maximum extent allowed under its mandate or relevant law in the exposures attracting the highest own funds requirement and then continues incurring exposures in descending order until the maximum total exposure limit is reached, and that the CIU applies leverage to the maximum extent allowed under its mandate or relevant law, where applicable.

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Institutions shall carry out the calculations referred to in the first subparagraph in accordance with the methods set out in this Chapter, in Chapter 5, and in Section 3, 4 or 5 of Chapter 6 of this Title.

3. By way of derogation from point (d) of Article 92(3), institutions that calculate the risk-weighted exposure amount of a CIU's exposures in accordance with paragraph 1 or 2 of this Article may calculate the own funds requirement for the credit valuation adjustment risk of derivative exposures of that CIU as an amount equal to 50 % of the own funds requirement for those derivative exposures calculated in accordance with Section 3, 4 or 5 of Chapter 6 of this Title, as applicable.

By way of derogation from the first subparagraph, an institution may exclude from the calculation of the own funds requirement for credit valuation adjustment risk derivative exposures which would not be subject to that requirement if they were incurred directly by the institution.

4. EBA shall develop draft regulatory technical standards to specify how institutions shall calculate the risk-weighted exposure amount referred to in paragraph 2 where one or more of the inputs required for that calculation are not available.

EBA shall submit those draft regulatory technical standards to the Commission by 28 March 2020.

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

Article 132b

Exclusions from the approaches for calculating risk-weighted exposure amounts of CIUs

1. Institutions may exclude from the calculations referred to in Article 132 Common Equity Tier 1, Additional Tier 1, Tier 2 instruments and eligible liabilities instruments held by a CIU which institutions shall deduct in accordance with Article 36(1) and Articles 56, 66 and 72e respectively.

2. Institutions may exclude from the calculations referred to in Article 132 exposures in the form of units or shares in CIUs referred to in points (g) and (h) of Article 150(1) and instead apply the treatment set out in Article 133 to those exposures.

Article 132c

Treatment of off-balance-sheet exposures to CIUs

1. Institutions shall calculate the risk-weighted exposure amount for their off-balance-sheet items with the potential to be converted into exposures in the form of units or shares in a CIU by multiplying the exposure values of those exposures calculated in accordance with Article 111, with the following risk weight:

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(a) for all exposures for which institutions use one of the approaches set out in Article 132a:

$$RW_i^* = \frac{RWAE_i}{E_i^*} \cdot \frac{A_i}{EQ_i}$$

where:

RW_i^* = the risk weight;

i = the index denoting the CIU:

$RWAE_i$ = the amount calculated in accordance with Article 132a for a CIU_i;

E_i^* = the exposure value of the exposures of CIU_i;

A_i = the accounting value of assets of CIU_i; and

EQ_i = the accounting value of the equity of CIU_i.

(b) for all other exposures, $RW_i^* = 1\,250\%$.

2. Institutions shall calculate the exposure value of a minimum value commitment that meets the conditions set out in paragraph 3 of this Article as the discounted present value of the guaranteed amount using a default risk-free discount factor. Institutions may reduce the exposure value of the minimum value commitment by any losses recognised with respect to the minimum value commitment under the applicable accounting standard.

Institutions shall calculate the risk-weighted exposure amount for off-balance-sheet exposures arising from minimum value commitments that meet all the conditions set out in paragraph 3 of this Article by multiplying the exposure value of those exposures by a conversion factor of 20 % and the risk weight derived under Article 132 or 152.

3. Institutions shall determine the risk-weighted exposure amount for off-balance-sheet exposures arising from minimum value commitments in accordance with paragraph 2 where all the following conditions are met:

(a) the off-balance-sheet exposure of the institution is a minimum value commitment for an investment into units or shares of one or more CIUs under which the institution is only obliged to pay out under the minimum value commitment where the market value of the underlying exposures of the CIU or CIUs is below a predetermined threshold at one or more points in time, as specified in the contract;

(b) the CIU is any of the following:

(i) a UCITS as defined in Directive 2009/65/EC; or

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(ii) an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU which solely invests in transferable securities or in other liquid financial assets referred to in Article 50(1) of Directive 2009/65/EC, where the mandate of the AIF does not allow a leverage higher than that allowed under Article 51(3) of Directive 2009/65/EC;

(c) the current market value of the underlying exposures of the CIU underlying the minimum value commitment without considering the effect of the off-balance-sheet minimum value commitments covers or exceeds the present value of the threshold specified in the minimum value commitment;

(d) when the excess of the market value of the underlying exposures of the CIU or CIUs over the present value of the minimum value commitment declines, the institution, or another undertaking in so far as it is covered by the supervision on a consolidated basis to which the institution itself is subject in accordance with this Regulation and Directive 2013/36/EU or Directive 2002/87/EC, can influence the composition of the underlying exposures of the CIU or CIUs or limit the potential for a further reduction of the excess in other ways;

(e) the ultimate direct or indirect beneficiary of the minimum value commitment is typically a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU.;

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Article 133

Equity exposures

1. The following exposures shall be considered equity exposures:

(a) non-debt exposures conveying a subordinated, residual claim on the assets or income of the issuer;

(b) debt exposures and other securities, partnerships, derivatives, or other vehicles, the economic substance of which is similar to the exposures specified in point (a).

2. Equity exposures shall be assigned a risk weight of 100 %, unless they are required to be deducted in accordance with Part Two, assigned a 250 % risk weight in accordance with Article 48(4), assigned a 1 250 % risk weight in accordance with Article 89(3) or treated as high risk items in accordance with Article 128.

▼C2

3. Investments in equity or regulatory capital instruments issued by institutions shall be classified as equity claims, unless deducted from own funds or attracting a 250 % risk weight under Article 48(4) or treated as high risk items in accordance with Article 128.

Article 134

Other items

1. Tangible assets within the meaning of item 10 under the heading 'Assets' in Article 4 of Directive 86/635/EEC shall be assigned a risk weight of 100 %.

2. Prepayments and accrued income for which an institution is unable to determine the counterparty in accordance with Directive 86/635/EEC, shall be assigned a risk weight of 100 %.

3. Cash items in the process of collection shall be assigned a 20 % risk weight. Cash in hand and equivalent cash items shall be assigned a 0 % risk weight.

4. Gold bullion held in own vaults or on an allocated basis to the extent backed by bullion liabilities shall be assigned a 0 % risk weight.

5. In the case of asset sale and repurchase agreements and outright forward purchases, the risk weight shall be that assigned to the assets in question and not to the counterparties to the transactions.

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6. Where an institution provides credit protection for a number of exposures subject to the condition that the nth default among the exposures shall trigger payment and that this credit event shall terminate the contract, the risk weights of the exposures included in the basket will be aggregated, excluding n-1 exposures, up to a maximum of 1 250 % and multiplied by the nominal amount of the protection provided by the credit derivative to obtain the risk-weighted exposure amount. The n-1 exposures to be excluded from the aggregation shall be determined on the basis that they shall include those exposures each of which produces a lower risk-weighted exposure amount than the risk-weighted exposure amount of any of the exposures included in the aggregation.

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7. The exposure value for leases shall be the discounted minimum lease payments. Minimum lease payments are the payments over the lease term that the lessee is or can be required to make and any bargain option the exercise of which is reasonably certain. A party other than the lessee may be required to make a payment related to the residual value of a leased property and that payment obligation fulfils the set of conditions in Article 201 regarding the eligibility of protection providers as well as the requirements for recognising other types of guarantees provided in Articles 213 to 215, that payment obligation may be taken

▼C2

into account as unfunded credit protection under Chapter 4. These exposures shall be assigned to the relevant exposure class in accordance with Article 112. When the exposure is a residual value of leased assets, the risk-weighted exposure amounts shall be calculated as follows: 1/t * 100 % * residual value, where t is the greater of 1 and the nearest number of whole years of the lease remaining.

Section 3

Recognition and mapping of credit risk assessment

Sub-Section 1

Recognition of ECAIs

Article 135

Use of credit assessments by ECAIs

1. An external credit assessment may be used to determine the risk weight of an exposure under this Chapter only if it has been issued by an ECAI or has been endorsed by an ECAI in accordance with Regulation (EC) No 1060/2009.

2. EBA shall publish the list of ECAIs in accordance with Article 2(4) and Article 18(3) of Regulation (EC) No 1060/2009 on its website.

Sub-Section 2

Mapping of ECAI's credit assessments

Article 136

Mapping of ECAI's credit assessments

1. EBA, EIOPA and ESMA shall, through the Joint Committee, develop draft implementing technical standards to specify for all ECAIs, with which of the credit quality steps set out in Section 2 the relevant credit assessments of the ECAI correspond (‘mapping’). Those determinations shall be objective and consistent.

EBA, EIOPA and ESMA shall submit those draft implementing technical standards to the Commission by 1 July 2014 and shall submit revised draft implementing technical standards where necessary.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

2. When determining the mapping of credit assessments, EBA, EIOPA and ESMA shall comply with the following requirements:

(a) in order to differentiate between the relative degrees of risk expressed by each credit assessment, EBA, EIOPA and ESMA shall consider quantitative factors such as the long-term default rate associated with all items assigned the same credit assessment. For recently established ECAIs and for those that have compiled

▼C2

only a short record of default data, EBA, EIOPA and ESMA shall ask the ECAI what it believes to be the long-term default rate associated with all items assigned the same credit assessment;

(b) in order to differentiate between the relative degrees of risk expressed by each credit assessment, EBA, EIOPA and ESMA shall consider qualitative factors such as the pool of issuers that the ECAI covers, the range of credit assessments that the ECAI assigns, each credit assessment meaning and the ECAI's definition of default;

(c) EBA, EIOPA and ESMA shall compare default rates experienced for each credit assessment of a particular ECAI and compare them with a benchmark built on the basis of default rates experienced by other ECAIs on a population of issuers that present an equivalent level of credit risk;

(d) where the default rates experienced for the credit assessment of a particular ECAI are materially and systematically higher then the benchmark, EBA, EIOPA and ESMA shall assign a higher credit quality step in the credit quality assessment scale to the ECAI credit assessment;

(e) where EBA, EIOPA and ESMA have increased the associated risk weight for a specific credit assessment of a particular ECAI, and where default rates experienced for that ECAI's credit assessment are no longer materially and systematically higher than the benchmark, EBA, EIOPA and ESMA may restore the original credit quality step in the credit quality assessment scale for the ECAI credit assessment.

3. EBA, EIOPA and ESMA shall develop draft implementing technical standards to specify the quantitative factors referred to in point (a), the qualitative factors referred to in point (b) and the benchmark referred to in point (c) of paragraph 2.

EBA, EIOPA and ESMA shall submit those draft implementing technical standards to the Commission by 1 July 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

Sub-Section 3

Use of credit assessments by Export Credit Agencies

Article 137

Use of credit assessments by export credit agencies

1. For the purpose of Article 114, institutions may use credit assessments of an Export Credit Agency that the institution has nominated, if either of the following conditions is met:

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(a) it is a consensus risk score from export credit agencies participating in the OECD 'Arrangement on Guidelines for Officially Supported Export Credits';

(b) the Export Credit Agency publishes its credit assessments, and the Export Credit Agency subscribes to the OECD agreed methodology, and the credit assessment is associated with one of the eight minimum export insurance premiums that the OECD agreed methodology establishes. An institution may revoke its nomination of an Export Credit Agency. An institution shall substantiate the revocation if there are concrete indications that the intention underlying the revocation is to reduce the capital adequacy requirements.

2. Exposures for which a credit assessment by an Export Credit Agency is recognised for risk weighting purposes shall be assigned a risk weight in accordance with Table 9.

Table 9

MEIP	0	1	2	3	4	5	6	7
Risk weight	0 %	0 %	20 %	50 %	100 %	100 %	100 %	150 %

Section 4

Use of the ECAI credit assessments for the determination of risk weights

Article 138

General requirements

An institution may nominate one or more ECAIs to be used for the determination of risk weights to be assigned to assets and off-balance sheet items. An institution may revoke its nomination of an ECAI. An institution shall substantiate the revocation if there are concrete indications that the intention underlying the revocation is to reduce the capital adequacy requirements. Credit assessments shall not be used selectively. An institution shall use solicited credit assessments. However it may use unsolicited credit assessments if EBA has confirmed that unsolicited credit assessments of an ECAI do not differ in quality from solicited credit assessments of this ECAI. EBA shall refuse or revoke this confirmation in particular if the ECAI has used an unsolicited credit assessment to put pressure on the rated entity to place an order for a credit assessment or other services. In using credit assessment, institutions shall comply with the following requirements:

(a) an institution which decides to use the credit assessments produced by an ECAI for a certain class of items shall use those credit assessments consistently for all exposures belonging to that class;

(b) an institution which decides to use the credit assessments produced by an ECAI shall use them in a continuous and consistent way over time;

▼C2

(c) an institution shall only use ECAIs credit assessments that take into account all amounts both in principal and in interest owed to it;

(d) where only one credit assessment is available from a nominated ECAI for a rated item, that credit assessment shall be used to determine the risk weight for that item;

(e) where two credit assessments are available from nominated ECAIs and the two correspond to different risk weights for a rated item, the higher risk weight shall be assigned;

(f) where more than two credit assessments are available from nominated ECAIs for a rated item, the two assessments generating the two lowest risk weights shall be referred to. If the two lowest risk weights are different, the higher risk weight shall be assigned. If the two lowest risk weights are the same, that risk weight shall be assigned.

Article 139

Issuer and issue credit assessment

1. Where a credit assessment exists for a specific issuing programme or facility to which the item constituting the exposure belongs, this credit assessment shall be used to determine the risk weight to be assigned to that item.

2. Where no directly applicable credit assessment exists for a certain item, but a credit assessment exists for a specific issuing programme or facility to which the item constituting the exposure does not belong or a general credit assessment exists for the issuer, then that credit assessment shall be used in either of the following cases:

(a) it produces a higher risk weight than would otherwise be the case and the exposure in question ranks pari passu or junior in all respects to the specific issuing program or facility or to senior unsecured exposures of that issuer, as relevant;

(b) it produces a lower risk weight and the exposure in question ranks pari passu or senior in all respects to the specific issuing programme or facility or to senior unsecured exposures of that issuer, as relevant.

In all other cases, the exposure shall be treated as unrated.

3. Paragraphs 1 and 2 are not to prevent the application of Article 129.

4. Credit assessments for issuers within a corporate group cannot be used as credit assessment of another issuer within the same corporate group.

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Article 140

Long-term and short-term credit assessments

1. Short-term credit assessments may only be used for short-term asset and off-balance sheet items constituting exposures to institutions and corporates.

2. Any short-term credit assessment shall only apply to the item the short-term credit assessment refers to, and it shall not be used to derive risk weights for any other item, except in the following cases:

(a) if a short-term rated facility is assigned a 150 % risk weight, then all unrated unsecured exposures on that obligor whether short-term or long-term shall also be assigned a 150 % risk weight;

(b) if a short-term rated facility is assigned a 50 % risk-weight, no unrated short-term exposure shall be assigned a risk weight lower than 100 %.

Article 141

Domestic and foreign currency items

A credit assessment that refers to an item denominated in the obligor's domestic currency cannot be used to derive a risk weight for another exposure on that same obligor that is denominated in a foreign currency.

When an exposure arises through an institution's participation in a loan that has been extended by a multilateral development bank whose preferred creditor status is recognised in the market, the credit assessment on the obligors' domestic currency item may be used for risk weighting purposes.

CHAPTER 3

Internal Ratings Based Approach

Section 1

Permission by competent authorities to use the IRB approach

Article 142

Definitions

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

(1) ‘rating system’ means all of the methods, processes, controls, data collection and IT systems that support the assessment of credit risk, the assignment of exposures to rating grades or pools, and the quantification of default and loss estimates that have been developed for a certain type of exposures;

▼C2

(2) ‘type of exposures’ means a group of homogeneously managed exposures which are formed by a certain type of facilities and which may be limited to a single entity or a single sub-set of entities within a group provided that the same type of exposures is managed differently in other entities of the group;

(3) ‘business unit’ means any separate organisational or legal entities, business lines, geographical locations;

(4) ‘large financial sector entity’ means any financial sector entity which meets the following conditions:

(a) its total assets, calculated on an individual or consolidated basis, are greater than or equal to a EUR 70 billion threshold, using the most recent audited financial statement or consolidated financial statement in order to determine asset size; and

(b) it is, or one of its subsidiaries is, subject to prudential regulation in the Union or to the laws of a third country which applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union;

(5) ‘unregulated financial sector entity’ means an entity that is not a regulated financial sector entity but that performs, as its main business, one or more of the activities listed in Annex I to Directive 2013/36/EU or in Annex I to Directive 2004/39/EC;

(6) ‘obligor grade’ means a risk category within the obligor rating scale of a rating system, to which obligors are assigned on the basis of a specified and distinct set of rating criteria, from which estimates of probability of default (PD) are derived;

(7) ‘facility grade’ means a risk category within a rating system's facility scale, to which exposures are assigned on the basis of a specified and distinct set of rating criteria, from which own estimates of LGD are derived.

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2. For the purposes of point (4)(b) of paragraph 1 of this Article, the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies supervisory and regulatory arrangements at least equivalent to those applied in the Union. In the absence of such a decision, until 1 January 2015, institutions may continue to apply the treatment set out in this paragraph to a third country where the relevant competent authorities had approved the third country as eligible for this treatment before 1 January 2014.

Article 143

Permission to use the IRB Approach

1. Where the conditions set out in this Chapter are met, the competent authority shall permit institutions to calculate their risk-weighted exposure amounts using the Internal Ratings Based Approach (hereinafter referred to as ‘IRB Approach’).

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2. Prior permission to use the IRB Approach, including own estimates of LGD and conversion factors, shall be required for each exposure class and for each rating system and internal models approaches to equity exposures and for each approach to estimating LGDs and conversion factors used.

3. Institutions shall obtain the prior permission of the competent authorities for the following:

(a) material changes to the range of application of a rating system or an internal models approach to equity exposures that the institution has received permission to use;

(b) material changes to a rating system or an internal models approach to equity exposures that the institution has received permission to use.

The range of application of a rating system shall comprise all exposures of the relevant type of exposure for which that rating system was developed.

4. Institutions shall notify the competent authorities of all changes to rating systems and internal models approaches to equity exposures.

5. EBA shall develop draft regulatory technical standards to specify the conditions for assessing the materiality of the use of an existing rating system for other additional exposures not already covered by that rating system and changes to rating systems or internal models approaches to equity exposures under the IRB Approach.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.

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

Article 144

Competent authorities' assessment of an application to use an IRB Approach

1. The competent authority shall grant permission pursuant to Article 143 for an institution to use the IRB Approach, including to use own estimates of LGD and conversion factors, only if the competent authority is satisfied that requirements laid down in this Chapter are met, in particular those laid down in Section 6, and that the systems of the institution for the management and rating of credit risk exposures are sound and implemented with integrity and, in particular, that the institution has demonstrated to the satisfaction of the competent authority that the following standards are met:

(a) the institution's rating systems provide for a meaningful assessment of obligor and transaction characteristics, a meaningful differentiation of risk and accurate and consistent quantitative estimates of risk;

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(b) internal ratings and default and loss estimates used in the calculation of own funds requirements and associated systems and processes play an essential role in the risk management and decision-making process, and in the credit approval, internal capital allocation and corporate governance functions of the institution;

(c) the institution has a credit risk control unit responsible for its rating systems that is appropriately independent and free from undue influence;

(d) the institution collects and stores all relevant data to provide effective support to its credit risk measurement and management process;

(e) the institution documents its rating systems and the rationale for their design and validates its rating systems;

(f) the institution has validated each rating system and each internal models approach for equity exposures during an appropriate time period prior to the permission to use this rating system or internal models approach to equity exposures, has assessed during this time period whether the rating system or internal models approaches for equity exposures are suited to the range of application of the rating system or internal models approach for equity exposures, and has made necessary changes to these rating systems or internal models approaches for equity exposures following from its assessment;

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(g) the institution has calculated under the IRB Approach the own funds requirements resulting from its risk parameters estimates and is able to submit the reporting as required by Article 430;

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(h) the institution has assigned and continues with assigning each exposure in the range of application of a rating system to a rating grade or pool of this rating system; the institution has assigned and continues with assigning each exposure in the range of application of an approach for equity exposures to this internal models approach.

The requirements to use an IRB Approach, including own estimates of LGD and conversion factors, apply also where an institution has implemented a rating system, or model used within a rating system, that it has purchased from a third-party vendor.

2. EBA shall develop draft regulatory technical standards to specify the assessment methodology competent authorities shall follow in assessing the compliance of an institution with the requirements to use the IRB Approach.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

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Article 145

Prior experience of using IRB approaches

1. An institution applying to use the IRB Approach shall have been using for the IRB exposure classes in question rating systems that were broadly in line with the requirements set out in Section 6 for internal risk measurement and management purposes for at least three years prior to its qualification to use the IRB Approach.

2. An institution applying for the use of own estimates of LGDs and conversion factors shall demonstrate to the satisfaction of the competent authorities that it has been estimating and employing own estimates of LGDs and conversion factors in a manner that is broadly consistent with the requirements for use of own estimates of those parameters set out in Section 6 for at least three years prior to qualification to use own estimates of LGDs and conversion factors.

3. Where the institution extends the use of the IRB Approach subsequent to its initial permission, the experience of the institution shall be sufficient to satisfy the requirements of paragraphs 1 and 2 in respect of the additional exposures covered. If the use of rating systems is extended to exposures that are significantly different from the scope of the existing coverage, such that the existing experience cannot be reasonably assumed to be sufficient to meet the requirements of these provisions in respect of the additional exposures, then the requirements of paragraphs 1 and 2 shall apply separately for the additional exposures.

Article 146

Measures to be taken where the requirements of this Chapter cease to be met

Where an institution ceases to comply with the requirements laid down in this Chapter, it shall notify the competent authority and do one of the following:

(a) present to the satisfaction of the competent authority a plan for a timely return to compliance and realise this plan within a period agreed with the competent authority;

(b) demonstrate to the satisfaction of the competent authorities that the effect of non-compliance is immaterial.

Article 147

Methodology to assign exposures to exposure classes

1. The methodology used by the institution for assigning exposures to different exposure classes shall be appropriate and consistent over time.

2. Each exposure shall be assigned to one of the following exposure classes:

(a) exposures to central governments and central banks;

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(b) exposures to institutions;

(c) exposures to corporates;

(d) retail exposures;

(e) equity exposures;

(f) items representing securitisation positions;

(g) other non credit-obligation assets.

3. The following exposures shall be assigned to the class laid down in point (a) of paragraph 2:

(a) exposures to regional governments, local authorities or public sector entities which are treated as exposures to central governments under Articles 115 and 116;

(b) exposures to multilateral development banks referred to in Article 117(2);

(c) exposures to International Organisations which attract a risk weight of 0 % under Article 118.

4. The following exposures shall be assigned to the class laid down in point (b) of paragraph 2:

(a) exposures to regional governments and local authorities which are not treated as exposures to central governments in accordance with Article 115(2) and (4);

(b) exposures to public sector entities which are not treated as exposures to central governments in accordance with Article 116(4);

(c) exposures to multilateral development banks which are not assigned a 0 % risk weight under Article 117; and

(d) exposures to financial institutions which are treated as exposures to institutions in accordance with Article 119(5).

5. To be eligible for the retail exposure class laid down in point (d) of paragraph 2, exposures shall meet the following criteria:

(a) they shall be one of the following:

(i) exposures to one or more natural persons;

(ii) exposures to an SME, provided in that case that the total amount owed to the institution and parent undertakings and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, but excluding exposures secured on residential property collateral, shall not, to the knowledge of the institution, which shall have taken reasonable steps to confirm the situation, exceed EUR 1 million;

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(b) they are treated by the institution in its risk management consistently over time and in a similar manner;

(c) they are not managed just as individually as exposures in the corporate exposure class;

(d) they each represent one of a significant number of similarly managed exposures.

In addition to the exposures listed in the first subparagraph, the present value of retail minimum lease payments shall be included in the retail exposure class.

6. The following exposures shall be assigned to the equity exposure class laid down in point (e) of paragraph 2:

(a) non-debt exposures conveying a subordinated, residual claim on the assets or income of the issuer;

(b) debt exposures and other securities, partnerships, derivatives, or other vehicles, the economic substance of which is similar to the exposures specified in point (a).

7. Any credit obligation not assigned to the exposure classes laid down in points (a), (b), (d), (e) and (f) of paragraph 2 shall be assigned to the corporate exposure class referred to in point (c) of that paragraph.

8. Within the corporate exposure class laid down in point (c) of paragraph 2, institutions shall separately identify as specialised lending exposures, exposures which possess the following characteristics:

(a) the exposure is to an entity which was created specifically to finance or operate physical assets or is an economically comparable exposure;

(b) the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate;

(c) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise.

9. The residual value of leased properties shall be assigned to the exposure class laid down in point (g) of paragraph 2, except to the extent that residual value is already included in the lease exposure laid down in Article 166(4).

10. The exposure from providing protection under an nth-to-default basket credit derivative shall be assigned to the same class laid down in paragraph 2 to which the exposures in the basket would be assigned, except if the individual exposures in the basket would be assigned to various exposure classes in which case the exposure shall be assigned to the corporates exposure class laid down in point (c) of paragraph 2.

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Article 148

Conditions for implementing the IRB Approach across different classes of exposure and business units

1. Institutions and any parent undertaking and its subsidiaries shall implement the IRB Approach for all exposures, unless they have received the permission of the competent authorities to permanently use the Standardised Approach in accordance with Article 150.

Subject to the prior permission of the competent authorities, implementation may be carried out sequentially across the different exposure classes referred to in Article 147 within the same business unit, across different business units in the same group or for the use of own estimates of LGDs or conversion factors for the calculation of risk weights for exposures to corporates, institutions, and central governments and central banks.

In the case of the retail exposure class referred to in Article 147(5), implementation may be carried out sequentially across the categories of exposures to which the different correlations in Article 154 correspond.

2. Competent authorities shall determine the time period over which an institution and any parent undertaking and its subsidiaries shall be required to implement the IRB Approach for all exposures. This time period shall be one that competent authorities consider to be appropriate on the basis of the nature and scale of the activities of the institutions, or any parent undertaking and its subsidiaries, and the number and nature of rating systems to be implemented.

3. Institutions shall carry out implementation of the IRB Approach in accordance with conditions determined by the competent authorities. The competent authority shall design those conditions such that they ensure that the flexibility under paragraph 1 is not used selectively for the purposes of achieving reduced own funds requirements in respect of those exposure classes or business units that are yet to be included in the IRB Approach or in the use of own estimates of LGDs and conversion factors.

4. Institutions that have begun to use the IRB Approach only after 1 January 2013 or that have until that date been required by the competent authorities to be able to calculate their capital requirements using the Standardised Approach shall retain their ability to calculate capital requirements using the Standardised Approach for all their exposures during the implementation period until the competent authorities notify them that they are satisfied that the implementation of the IRB Approach will be completed with reasonable certainty.

5. An institution that is permitted to use the IRB Approach for any exposure class shall use the IRB Approach for the equity exposure class laid down in point (e) of Article 147(2), except where that institution is permitted to apply the Standardised Approach for equity exposures pursuant to Article 150 and for the other non credit-obligation assets exposure class laid down in point (g) of Article 147(2).

6. EBA shall develop draft regulatory technical standards to specify the conditions according to which competent authorities shall determine the appropriate nature and timing of the sequential roll out of the IRB Approach across exposure classes referred to in paragraph 3.

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EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 149

Conditions to revert to the use of less sophisticated approaches

1. An institution that uses the IRB Approach for a particular exposure class or type of exposure shall not stop using that approach and use instead the Standardised Approach for the calculation of risk-weighted exposure amounts unless the following conditions are met:

(a) the institution has demonstrated to the satisfaction of the competent authority that the use of the Standardised Approach is not proposed in order to reduce the own funds requirement of the institution, is necessary on the basis of nature and complexity of the institution's total exposures of this type and would not have a material adverse impact on the solvency of the institution or its ability to manage risk effectively;

(b) the institution has received the prior permission of the competent authority.

2. Institutions which have obtained permission under Article 151(9) to use own estimates of LGDs and conversion factors, shall not revert to the use of LGD values and conversion factors referred to in Article 151(8) unless the following conditions are met:

(a) the institution has demonstrated to the satisfaction of the competent authority that the use of LGDs and conversion factors laid down in Article 151(8) for a certain exposure class or type of exposure is not proposed in order to reduce the own funds requirement of the institution, is necessary on the basis of nature and complexity of the institution's total exposures of this type and would not have a material adverse impact on the solvency of the institution or its ability to manage risk effectively;

(b) the institution has received the prior permission of the competent authority.

3. The application of paragraphs 1 and 2 is subject to the conditions for rolling out the IRB Approach determined by the competent authorities in accordance with Article 148 and the permission for permanent partial use referred to in Article 150.

Article 150

Conditions for permanent partial use

1. Where institutions have received the prior permission of the competent authorities, institutions permitted to use the IRB Approach in the calculation of risk-weighted exposure amounts and expected loss amounts for one or more exposure classes may apply the Standardised Approach for the following exposures:

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(a) the exposure class laid down in Article 147(2)(a), where the number of material counterparties is limited and it would be unduly burdensome for the institution to implement a rating system for these counterparties;

(b) the exposure class laid down in Article 147(2)(b), where the number of material counterparties is limited and it would be unduly burdensome for the institution to implement a rating system for these counterparties;

(c) exposures in non-significant business units as well as exposure classes or types of exposures that are immaterial in terms of size and perceived risk profile;

(d) exposures to central governments and central banks of the Member States and their regional governments, local authorities, administrative bodies and public sector entities provided that:

(i) there is no difference in risk between the exposures to that central government and central bank and those other exposures because of specific public arrangements; and

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(ii) exposures to central governments and central banks are assigned a 0 % risk weight under Article 114(2) or (4);

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(e) exposures of an institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(f) exposures between institutions which meet the requirements set out in Article 113(7);

(g) equity exposures to entities whose credit obligations are assigned a 0 % risk weight under Chapter 2 including those publicly sponsored entities where a 0 % risk weight can be applied;

(h) equity exposures incurred under legislative programmes to promote specified sectors of the economy that provide significant subsidies for the investment to the institution and involve some form of government oversight and restrictions on the equity investments where such exposures may in aggregate be excluded from the IRB Approach only up to a limit of 10 % of own funds;

(i) the exposures identified in Article 119(4) meeting the conditions specified therein;

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(j) State and State-reinsured guarantees referred to in Article 215(2).

The competent authorities shall permit the application of Standardised Approach for equity exposures referred to in points (g) and (h) of the first subparagraph which have been permitted for that treatment in other Member States. EBA shall publish on its website and regularly update a list of the exposures referred to in those points to be treated according to the Standardised Approach.

2. For the purposes of paragraph 1, the equity exposure class of an institution shall be material if their aggregate value, excluding equity exposures incurred under legislative programmes as referred to in point (h) of paragraph 1, exceeds on average over the preceding year 10 % of the own funds of the institution. Where the number of those equity exposures is less than 10 individual holdings, that threshold shall be 5 % of the own funds of the institution.

3. EBA shall develop draft regulatory technical standards to determine the conditions of application of points (a), (b) and (c) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

4. EBA shall issue guidelines on the application of point (d) of paragraph 1 in 2018, recommending limits in terms of a percentage of total balance sheet and/or risk weighted assets to be calculated in accordance with the Standardised Approach.

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

Section 2

Calculation of risk-weighted exposure amounts

Sub-Section 1

Treatment by type of exposure class

Article 151

Treatment by exposure class

1. The risk-weighted exposure amounts for credit risk for exposures belonging to one of the exposure classes referred to in points (a) to (e) and (g) of 147(2) shall, unless deducted from own funds, be calculated in accordance with Sub-section 2 except where those exposures are deducted from Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

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2. The risk-weighted exposure amounts for dilution risk for purchased receivables shall be calculated in accordance with Article 157. Where an institution has full recourse to the seller of purchased receivables for default risk and for dilution risk, the provisions of this Article and Article 152 and Article 158(1) to (4) in relation to purchased receivables shall not apply and the exposure shall be treated as a collateralised exposure.

3. The calculation of risk-weighted exposure amounts for credit risk and dilution risk shall be based on the relevant parameters associated with the exposure in question. These shall include PD, LGD, maturity (hereinafter referred to as 'M') and exposure value of the exposure. PD and LGD may be considered separately or jointly, in accordance with Section 4.

4. Institutions shall calculate risk-weighted exposure amounts for credit risk for all exposures belonging to the exposure class 'equity' referred to in point (e) of Article 147(2) in accordance with Article 155. Institutions may use the approaches set out in Article 155(3) and (4) where they have received the prior permission of the competent authorities. Competent authorities shall grant permission for an institution to use the internal models approach set out in Article 155(4) provided that the institution meets the requirements set out in Sub-section 4 of Section 6.

5. The calculation of risk weighted exposure amounts for credit risk for specialised lending exposures may be calculated in accordance with Article 153(5).

6. For exposures belonging to the exposure classes referred to in points (a) to (d) of Article 147(2), institutions shall provide their own estimates of PDs in accordance with Article 143 and Section 6.

7. For exposures belonging to the exposure class referred to in point (d) of Article 147(2), institutions shall provide own estimates of LGDs and conversion factors in accordance with Article 143 and Section 6.

8. For exposures belonging to the exposure classes referred to in points (a) to (c) of Article 147(2), institutions shall apply the LGD values set out in Article 161(1), and the conversion factors set out in Article 166(8)(a) to (d), unless it has been permitted to use its own estimates of LGDs and conversion factors for those exposure classes in accordance with paragraph 9.

9. For all exposures belonging to the exposure classes referred to in points (a) to (c) of Article 147(2), the competent authority shall permit institutions to use own estimates of LGDs and conversion factors in accordance with Article 143 and Section 6.

10. The risk-weighted exposure amounts for securitised exposures and for exposures belonging to the exposure class referred to in point (f) of Article 147(2) shall be calculated in accordance with Chapter 5.

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Article 152

Treatment of exposures in the form of units or shares in CIUs

1. Institutions shall calculate the risk-weighted exposure amounts for their exposures in the form of units or shares in a CIU by multiplying the risk-weighted exposure amount of the CIU, calculated in accordance with the approaches set out in paragraphs 2 and 5, with the percentage of units or shares held by those institutions.

2. Where the conditions set out in Article 132(3) are met, institutions that have sufficient information about the individual underlying exposures of a CIU shall look through to those underlying exposures to calculate the risk-weighted exposure amount of the CIU, risk weighting all underlying exposures of the CIU as if they were directly held by the institutions.

3. By way of derogation from point (d) of Article 92(3), institutions that calculate the risk-weighted exposure amount of the CIU in accordance with paragraph 1 or 2 of this Article may calculate the own funds requirement for credit valuation adjustment risk of derivative exposures of that CIU as an amount equal to 50 % of the own funds requirement for those derivative exposures calculated in accordance with Section 3, 4 or 5 of Chapter 6 of this Title, as applicable.

By way of derogation from the first subparagraph, an institution may exclude from the calculation of the own funds requirement for credit valuation adjustment risk derivative exposures which would not be subject to that requirement if they were incurred directly by the institution.

4. Institutions that apply the look-through approach in accordance with paragraphs 2 and 3 of this Article and that meet the conditions for permanent partial use in accordance with Article 150, or that do not meet the conditions for using the methods set out in this Chapter or one or more of the methods set out in Chapter 5 for all or parts of the underlying exposures of the CIU, shall calculate risk-weighted exposure amounts and expected loss amounts in accordance with the following principles:

(a) for exposures assigned to the equity exposure class referred to in point (e) of Article 147(2), institutions shall apply the simple risk-weight approach set out in Article 155(2);

(b) for exposures assigned to the items representing securitisation positions referred to in point (f) of Article 147(2), institutions shall apply the treatment set out in Article 254 as if those exposures were directly held by those institutions;

(c) for all other underlying exposures, institutions shall apply the Standardised Approach laid down in Chapter 2 of this Title.

For the purposes of point (a) of the first subparagraph, where the institution is unable to differentiate between private equity exposures, exchange-traded exposures and other equity exposures, it shall treat the exposures concerned as other equity exposures.

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5. Where the conditions set out in Article 132(3) are met, institutions that do not have sufficient information about the individual underlying exposures of a CIU may calculate the risk-weighted exposure amount for those exposures in accordance with the mandate-based approach set out in Article 132a(2). However, for the exposures listed in points (a), (b) and (c) of paragraph 4 of this Article, institutions shall apply the approaches set out therein.

6. Subject to Article 132b(2), institutions that do not apply the look-through approach in accordance with paragraphs 2 and 3 of this Article or the mandate-based approach in accordance with paragraph 5 of this Article shall apply the fall-back approach referred to in Article 132(2).

7. Institutions may calculate the risk-weighted exposure amount for their exposures in the form of units or shares in a CIU by using a combination of the approaches referred to in this Article, provided that the conditions for using those approaches are met.

8. Institutions that do not have adequate data or information to calculate the risk-weighted amount of a CIU in accordance with the approaches set out in paragraphs 2, 3, 4 and 5 may rely on the calculations of a third party, provided that all the following conditions are met:

(a) the third party is one of the following:

   (i) the depository institution or the depository financial institution of the CIU, provided that the CIU exclusively invests in securities and deposits all securities at that depository institution or depository financial institution;

   (ii) for CIUs not covered by point (i) of this point, the CIU management company, provided that the CIU management company meets the criteria set out in point (a) of Article 132(3);

(b) for exposures other than those listed in points (a), (b) and (c) of paragraph 4 of this Article, the third party carries out the calculation in accordance with the look-through approach set out in Article 132a(1);

(c) for exposures listed in points (a), (b) and (c) of paragraph 4, the third party carries out the calculation in accordance with the approaches set out therein;

(d) an external auditor has confirmed the correctness of the third party's calculation.

Institutions that rely on third-party calculations shall multiply the risk weighted exposure amounts of a CIU's exposures resulting from those calculations by a factor of 1,2.

By way of derogation from the second subparagraph, where the institution has unrestricted access to the detailed calculations carried out by the third party, the 1,2 factor shall not apply. The institution shall provide those calculations to its competent authority upon request.

9. For the purposes of this Article, Article 132(5) and (6) and Article 132b shall apply. For the purposes of this Article, Article 132c shall apply, using the risk weights calculated in accordance with Chapter 3 of this Title.

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Sub-Section 2

Calculation of risk-weighted exposure amounts for credit risk

Article 153

Risk-weighted exposure amounts for exposures to corporates, institutions and central governments and central banks

1. Subject to the application of the specific treatments laid down in paragraphs 2, 3 and 4, the risk-weighted exposure amounts for exposures to corporates, institutions and central governments and central banks shall be calculated according to the following formulae:

$$Risk - weighted\ exposure\ amount = RW \cdot exposure\ value$$

where the risk weight RW is defined as

(i) if PD = 0, RW shall be 0;

(ii) if PD = 1, i.e., for defaulted exposures:

— where institutions apply the LGD values set out in Article 161(1), RW shall be 0;

— where institutions use own estimates of LGDs, RW shall be

$$RW = max\ \{0;\ 12.5 \cdot (LGD - EL_{BE})\};$$

where the expected loss best estimate (hereinafter referred to as 'EL_{BE}') shall be the institution's best estimate of expected loss for the defaulted exposure in accordance with Article 181(1)(h);

(iii) if 0 < PD < 1

$$RW = \left(LGD \cdot N\left(\frac{1}{\sqrt{1-R}} \cdot G(PD) + \sqrt{\frac{R}{1-R}} \cdot G(0.999)\right) - LGD \cdot PD\right) \cdot \frac{1 + (M - 2{,}5) \cdot b}{1 - 1{,}5 \cdot b} \cdot 12{,}5 \cdot 1{,}06$$

where:

N(x) = the cumulative distribution function for a standard normal random variable (i.e. the probability that a normal random variable with mean zero and variance of one is less than or equal to x);

G(Z) = denotes the inverse cumulative distribution function for a standard normal random variable (i.e. the value x such that N(x) = z)

R = denotes the coefficient of correlation, is defined as

$$R = 0.12 \cdot \frac{1 - e^{-50 \cdot PD}}{1 - e^{-50}} + 0.24 \cdot \left(1 - \frac{1 - e^{-50 \cdot PD}}{1 - e^{-50}}\right)$$

b = the maturity adjustment factor, which is defined as

$$b = (0.11852 - 0.05478 \cdot ln(PD))^2.$$

2. For all exposures to large financial sector entities, the co-efficient of correlation of paragraph 1(iii) is multiplied by 1,25. For all exposures to unregulated financial sector entities, the coefficients of correlation set out in paragraph 1(iii) and paragraph 4, as relevant, are multiplied by 1,25.

3. The risk-weighted exposure amount for each exposure which meets the requirements set out in Articles 202 and 217 may be adjusted in accordance with the following formula:

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Risk – weighted exposure amount = RW · exposure value · (0.15 + 160 · PD^{pp})

where:

PD_{pp} = PD of the protection provider.

RW shall be calculated using the relevant risk weight formula set out in point 1 for the exposure, the PD of the obligor and the LGD of a comparable direct exposure to the protection provider. The maturity factor (b) shall be calculated using the lower of the PD of the protection provider and the PD of the obligor.

4. For exposures to companies where the total annual sales for the consolidated group of which the firm is a part is less than EUR 50 million, institutions may use the following correlation formula in paragraph 1 (iii) for the calculation of risk weights for corporate exposures. In this formula S is expressed as total annual sales in millions of euro with EUR 5 million ≤ S ≤ EUR 50 million. Reported sales of less than EUR 5 million shall be treated as if they were equivalent to EUR 5 million. For purchased receivables the total annual sales shall be the weighted average by individual exposures of the pool.

$$R = 0.12 \cdot \frac{1 - e^{-50 \cdot PD}}{1 - e^{-50}} + 0.24 \cdot \left(1 - \frac{1 - e^{-50 \cdot PD}}{1 - e^{-50}}\right) - 0.04 \cdot \left(1 - \frac{\min\{\max\{5, S\}, 50\} - 5}{45}\right)$$

Institutions shall substitute total assets of the consolidated group for total annual sales when total annual sales are not a meaningful indicator of firm size and total assets are a more meaningful indicator than total annual sales.

5. For specialised lending exposures in respect of which an institution is not able to estimate PDs or the institutions' PD estimates do not meet the requirements set out in Section 6, the institution shall assign risk weights to these exposures in accordance with Table 1, as follows:

Table 1

Remaining Maturity	Category 1	Category 2	Category 3	Category 4	Category 5
Less than 2,5 years	50 %	70 %	115 %	250 %	0 %
Equal or more than 2,5 years	70 %	90 %	115 %	250 %	0 %

In assigning risk weights to specialised lending exposures institutions shall take into account the following factors: financial strength, political and legal environment, transaction and/or asset characteristics, strength of the sponsor and developer, including any public private partnership income stream, and security package.

6. For their purchased corporate receivables institutions shall comply with the requirements set out in Article 184. For purchased corporate receivables that comply in addition with the conditions set out in Article 154(5), and where it would be unduly burdensome for an institution to use the risk quantification standards for corporate exposures as set out in Section 6 for these receivables, the risk quantification standards for retail exposures as set out in Section 6 may be used.

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7. For purchased corporate receivables, refundable purchase price discounts, collaterals or partial guarantees that provide first loss protection for default losses, dilution losses, or both, may be treated as a first loss protection by the purchaser of the receivables or by the beneficiary of the collateral or of the partial guarantee in accordance with Subsections 2 and 3 of Section 3 of Chapter 5. The seller providing the refundable purchase price discount and the provider of a collateral or a partial guarantee shall treat those as an exposure to a first loss position in accordance with Subsections 2 and 3 of Section 3 of Chapter 5.

8. Where an institution provides credit protection for a number of exposures subject to the condition that the nth default among the exposures shall trigger payment and that this credit event shall terminate the contract, the risk weights of the exposures included in the basket will be aggregated, excluding n-1 exposures, where the sum of the expected loss amount multiplied by 12,5 and the risk-weighted exposure amount shall not exceed the nominal amount of the protection provided by the credit derivative multiplied by 12,5. The n-1 exposures to be excluded from the aggregation shall be determined on the basis that they shall include those exposures each of which produces a lower risk-weighted exposure amount than the risk-weighted exposure amount of any of the exposures included in the aggregation. A 1 250 % risk weight shall apply to positions in a basket for which an institution cannot determine the risk-weight under the IRB Approach.

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9. EBA shall develop draft regulatory technical standards to specify how institutions shall take into account the factors referred to in the second subparagraph of paragraph 5 when assigning risk weights to specialised lending exposures.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 154

Risk-weighted exposure amounts for retail exposures

1. The risk-weighted exposure amounts for retail exposures shall be calculated in accordance with the following formulae:

$$Risk - weighted\ exposure\ amount = RW \cdot exposure\ value$$

where the risk weight RW is defined as follows:

(i) if PD = 1, i.e., for defaulted exposures, RW shall be

$$RW = max\{0; 12.5 \cdot (LGD - EL_{BE})\};$$

where EL_{BE} shall be the institution's best estimate of expected loss for the defaulted exposure in accordance with Article 181(1)(h);

▼C2

(ii) if 0 < PD < 1, i.e., for any possible value for PD other than under (i)

$$RW = \left(LGD \cdot N\left(\frac{1}{\sqrt{1-R}} \cdot G(PD) + \sqrt{\frac{R}{1-R}} \cdot G(0.999) \right) - LGD \cdot PD \right) \cdot 12{,}5 \cdot 1{,}06$$

where:

N(x) = the cumulative distribution function for a standard normal random variable (i.e. the probability that a normal random variable with mean zero and variance of one is less than or equal to x);

G(Z) = the inverse cumulative distribution function for a standard normal random variable (i.e. the value x such that N(x) = z);

R = the coefficient of correlation defined as

$$R = 0.03 \cdot \frac{1 - e^{-35 \cdot PD}}{1 - e^{-35}} + 0.16 \cdot \left(1 - \frac{1 - e^{-35 \cdot PD}}{1 - e^{-35}} \right)$$

2. The risk-weighted exposure amount for each exposure to an SME as referred to in Article 147(5) which meets the requirements set out in Articles 202 and 217 may be calculated in accordance with Article 153(3).

3. For retail exposures secured by immovable property collateral a coefficient of correlation R of 0,15 shall replace the figure produced by the correlation formula in paragraph 1.

4. For qualifying revolving retail exposures in accordance with points (a) to (e), a coefficient of correlation R of 0,04 shall replace the figure produced by the correlation formula in paragraph 1.

Exposures shall qualify as qualifying revolving retail exposures if they meet the following conditions:

(a) the exposures are to individuals;

(b) the exposures are revolving, unsecured, and to the extent they are not drawn immediately and unconditionally, cancellable by the institution. In this context revolving exposures are defined as those where customers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to a limit established by the institution. Undrawn commitments may be considered as unconditionally cancellable if the terms permit the institution to cancel them to the full extent allowable under consumer protection and related legislation;

(c) the maximum exposure to a single individual in the sub-portfolio is EUR 100 000 or less;

▼C2

(d) the use of the correlation of this paragraph is limited to portfolios that have exhibited low volatility of loss rates, relative to their average level of loss rates, especially within the low PD bands;

(e) the treatment as a qualifying revolving retail exposure shall be consistent with the underlying risk characteristics of the sub-portfolio.

By way of derogation from point (b), the requirement to be unsecured does not apply in respect of collateralised credit facilities linked to a wage account. In this case amounts recovered from the collateral shall not be taken into account in the LGD estimate.

Competent authorities shall review the relative volatility of loss rates across the qualifying revolving retail sub-portfolios, as well the aggregate qualifying revolving retail portfolio, and shall share information on the typical characteristics of qualifying revolving retail loss rates across Member States.

5. To be eligible for the retail treatment, purchased receivables shall comply with the requirements set out in Article 184 and the following conditions:

(a) the institution has purchased the receivables from unrelated third party sellers, and its exposure to the obligor of the receivable does not include any exposures that are directly or indirectly originated by the institution itself;

(b) the purchased receivables shall be generated on an arm's-length basis between the seller and the obligor. As such, inter-company accounts receivables and receivables subject to contra-accounts between firms that buy and sell to each other are ineligible;

(c) the purchasing institution has a claim on all proceeds from the purchased receivables or a pro-rata interest in the proceeds; and

(d) the portfolio of purchased receivables is sufficiently diversified.

▼M5

6. For purchased retail receivables, refundable purchase price discounts, collaterals or partial guarantees that provide first loss protection for default losses, dilution losses, or both, may be treated as a first loss protection by the purchaser of the receivables or by the beneficiary of the collateral or of the partial guarantee in accordance with Subsections 2 and 3 of Section 3 of Chapter 5. The seller providing the refundable purchase price discount and the provider of a collateral or a partial guarantee shall treat those as an exposure to a first loss position in accordance with Subsections 2 and 3 of Section 3 of Chapter 5.

▼C2

7. For hybrid pools of purchased retail receivables where purchasing institutions cannot separate exposures secured by immovable property collateral and qualifying revolving retail exposures from other retail exposures, the retail risk weight function producing the highest capital requirements for those exposures shall apply.

▼C2

Article 155

Risk-weighted exposure amounts for equity exposures

1. Institutions shall determine their risk-weighted exposure amounts for equity exposures, excluding those deducted in accordance with Part Two or subject to a 250 % risk weight in accordance with Article 48, in accordance with the approaches set out in paragraphs 2, 3 and 4 of this Article. An institution may apply different approaches to different equity portfolios where the institution itself uses different approaches for internal risk management purposes. Where an institution uses different approaches, the choice of the PD/LGD approach or the internal models approach shall be made consistently, including over time and with the approach used for the internal risk management of the relevant equity exposure, and shall not be determined by regulatory arbitrage considerations.

Institutions may treat equity exposures to ancillary services undertakings in accordance with the treatment of other non credit- obligation assets.

2. Under the simple risk weight approach, the risk-weighted exposure amount shall be calculated in accordance with the formula:

$$\textit{Risk – weighted exposure amount} = RW * \textit{exposure value},$$

where:

Risk weight (RW) = 190 % for private equity exposures in sufficiently diversified portfolios.

Risk weight (RW) = 290 % for exchange traded equity exposures.

Risk weight (RW) = 370 % for all other equity exposures.

Short cash positions and derivative instruments held in the non-trading book are permitted to offset long positions in the same individual stocks provided that these instruments have been explicitly designated as hedges of specific equity exposures and that they provide a hedge for at least another year. Other short positions are to be treated as if they are long positions with the relevant risk weight assigned to the absolute value of each position. In the context of maturity mismatched positions, the method is that for corporate exposures as set out in Article 162(5).

Institutions may recognise unfunded credit protection obtained on an equity exposure in accordance with the methods set out in Chapter 4.

3. Under the PD/LGD approach, risk-weighted exposure amounts shall be calculated according to the formulas in Article 153(1). If institutions do not have sufficient information to use the definition of default set out in Article 178, a scaling factor of 1,5 shall be assigned to the risk weights.

▼C2

At the individual exposure level the sum of the expected loss amount multiplied by 12,5 and the risk-weighted exposure amount shall not exceed the exposure value multiplied by 12,5.

Institutions may recognise unfunded credit protection obtained on an equity exposure in accordance with the methods set out in Chapter 4. This shall be subject to an LGD of 90 % on the exposure to the provider of the hedge. For private equity exposures in sufficiently diversified portfolios an LGD of 65 % may be used. For these purposes M shall be five years.

4. Under the internal models approach, the risk-weighted exposure amount shall be the potential loss on the institution's equity exposures as derived using internal value-at-risk models subject to the 99th percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate computed over a long-term sample period, multiplied by 12,5. The risk-weighted exposure amounts at the equity portfolio level shall not be less than the total of the sums of the following:

(a) the risk-weighted exposure amounts required under the PD/LGD Approach; and

(b) the corresponding expected loss amounts multiplied by 12,5.

The amounts referred to in point (a) and (b) shall be calculated on the basis of the PD values set out in Article 165(1) and the corresponding LGD values set out in Article 165(2).

Institutions may recognise unfunded credit protection obtained on an equity position.

Article 156

Risk-weighted exposure amounts for other non credit-obligation assets

The risk-weighted exposure amounts for other non credit-obligation assets shall be calculated in accordance with the following formula:

$$Risk - weighted\ exposure\ amount = 100\ \% \cdot exposure\ value,$$

except for:

(a) cash in hand and equivalent cash items as well as gold bullion held in own vault or on an allocated basis to the extent backed by bullion liabilities, in which case a 0 % risk-weight shall be assigned;

(b) when the exposure is a residual value of leased assets in which case it shall be calculated as follows:

$$\frac{1}{t} \cdot 100\ \% \cdot exposure\ value$$

▼C2

where t is the greater of 1 and the nearest number of whole years of the lease remaining.

Sub-Section 3

Calculation of risk-weighted exposure amounts for dilution risk of purchased receivables

Article 157

Risk-weighted exposure amounts for dilution risk of purchased receivables

1. Institutions shall calculate the risk-weighted exposure amounts for dilution risk of purchased corporate and retail receivables in accordance with the formula set out in Article 153(1).

2. Institutions shall determine the input parameters PD and LGD in accordance with Section 4.

3. Institutions shall determine the exposure value in accordance with Section 5.

4. For the purposes of this Article, the value of M is 1 year.

5. The competent authorities shall exempt an institution from calculating and recognising risk-weighted exposure amounts for dilution risk of a type of exposures caused by purchased corporate or retail receivables where the institution has demonstrated to the satisfaction of the competent authority that dilution risk for that institution is immaterial for this type of exposures.

Section 3

Expected loss amounts

Article 158

Treatment by exposure type

1. The calculation of expected loss amounts shall be based on the same input figures of PD, LGD and the exposure value for each exposure as are used for the calculation of risk-weighted exposure amounts in accordance with Article 151.

2. The expected loss amounts for securitised exposures shall be calculated in accordance with Chapter 5.

3. The expected loss amount for exposures belonging to the ‘other non credit obligations assets’ exposure class referred to in point (g) of Article 147(2) shall be zero.

4. The expected loss amounts for exposures in the form of shares or units of a CIU referred to in Article 152 shall be calculated in accordance with the methods set out in this Article.

▼C2

5. The expected loss (EL) and expected loss amounts for exposures to corporates, institutions, central governments and central banks and retail exposures shall be calculated in accordance with the following formulae:

*Expected loss (EL) = PD * LGD*

Expected loss amount = EL [multiplied by] exposure value.

For defaulted exposures (PD = 100 %) where institutions use own estimates of LGDs, EL shall be EL_{BE}, the institution's best estimate of expected loss for the defaulted exposure in accordance with Article 181(1)(h).

For exposures subject to the treatment set out in Article 153(3), EL shall be 0 %.

6. The EL values for specialised lending exposures where institutions use the methods set out in Article 153(5) for assigning risk weights shall be assigned in accordance with Table 2.

Table 2

Remaining Maturity	Category 1	Category 2	Category 3	Category 4	Category 5
Less than 2,5 years	0 %	0,4 %	2,8 %	8 %	50 %
Equal to or more than 2,5 years	0,4 %	0,8 %	2,8 %	8 %	50 %

7. The expected loss amounts for equity exposures where the risk-weighted exposure amounts are calculated in accordance with the simple risk weight approach shall be calculated in accordance with the following formula:

Expected loss amount = EL · exposure value

The EL values shall be the following:

Expected loss (EL) = 0,8 % for private equity exposures in sufficiently diversified portfolios

Expected loss (EL) = 0,8 % for exchange traded equity exposures

Expected loss (EL) = 2,4 % for all other equity exposures.

8. The expected loss and expected loss amounts for equity exposures where the risk-weighted exposure amounts are calculated in accordance with the PD/LGD approach shall be calculated in accordance with the following formula:

Expected loss (EL) = PD · LGD

Expected loss amount = EL · exposure value

▼C2

9. The expected loss amounts for equity exposures where the risk-weighted exposure amounts are calculated in accordance with the internal models approach shall be zero.

▼M8

9a. The expected loss amount for a minimum value commitment that meets all the requirements set out in Article 132c(3) shall be zero.

▼C2

10. The expected loss amounts for dilution risk of purchased receivables shall be calculated in accordance with the following formula:

$$\textit{Expected loss (EL)} = PD \cdot LGD$$

$$\textit{Expected loss amount} = EL \cdot \textit{exposure value}$$

▼M7

Article 159

Treatment of expected loss amounts

Institutions shall subtract the expected loss amounts calculated in accordance with Article 158(5), (6) and (10) from the general and specific credit risk adjustments in accordance with Article 110, additional value adjustments in accordance with Articles 34 and 105 and other own funds reductions related to those exposures except for the deductions made in accordance with point (m) Article 36(1). Discounts on balance sheet exposures purchased when in default in accordance with Article 166(1) shall be treated in the same manner as specific credit risk adjustments. Specific credit risk adjustments on exposures in default shall not be used to cover expected loss amounts on other exposures. Expected loss amounts for securitised exposures and general and specific credit risk adjustments related to those exposures shall not be included in that calculation.

▼C2

Section 4

PD, LGD and maturity

Sub-Section 1

Exposures to corporates, institutions and central governments and central banks

Article 160

Probability of default (PD)

1. The PD of an exposure to a corporate or an institution shall be at least 0,03 %.

2. For purchased corporate receivables in respect of which an institution is not able to estimate PDs or an institution's PD estimates do not meet the requirements set out in Section 6, the PDs for these exposures shall be determined in accordance with the following methods:

(a) for senior claims on purchased corporate receivables PD shall be the institutions estimate of EL divided by LGD for these receivables;

▼C2

(b) for subordinated claims on purchased corporate receivables PD shall be the institution's estimate of EL;

(c) an institution that has received the permission of the competent authority to use own LGD estimates for corporate exposures pursuant to Article 143 and that can decompose its EL estimates for purchased corporate receivables into PDs and LGDs in a manner that the competent authority considers to be reliable, may use the PD estimate that results from this decomposition.

3. The PD of obligors in default shall be 100 %.

4. Institutions may take into account unfunded credit protection in the PD in accordance with the provisions of Chapter 4. For dilution risk, in addition to the protection providers referred to in Article 201(1)(g) the seller of the purchased receivables is eligible if the following conditions are met:

(a) the corporate entity has a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to corporates under Chapter 2;

(b) the corporate entity, in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts under the IRB Approach, does not have a credit assessment by a recognised ECAI and is internally rated as having a PD equivalent to that associated with the credit assessments of ECAIs determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to corporates under Chapter 2.

5. Institutions using own LGD estimates may recognise unfunded credit protection by adjusting PDs subject to Article 161(3).

6. For dilution risk of purchased corporate receivables, PD shall be set equal to the EL estimate of the institution for dilution risk. An institution that has received permission from the competent authority pursuant to Article 143 to use own LGD estimates for corporate exposures that can decompose its EL estimates for dilution risk of purchased corporate receivables into PDs and LGDs in a manner that the competent authority considers to be reliable, may use the PD estimate that results from this decomposition. Institutions may recognise unfunded credit protection in the PD in accordance with the provisions of Chapter 4. For dilution risk, in addition to the protection providers referred to in Article 201(1)(g), the seller of the purchased receivables is eligible provided that the conditions set out in paragraph 4 are met.

7. By way of derogation from Article 201(1)(g), the corporate entities that meet the conditions set out in paragraph 4 are eligible.

▼C2

An institution that has received the permission of the competent authority pursuant to Article 143 to use own LGD estimates for dilution risk of purchased corporate receivables, may recognise unfunded credit protection by adjusting PDs subject to Article 161(3).

Article 161

Loss Given Default (LGD)

1. Institutions shall use the following LGD values:

(a) senior exposures without eligible collateral: 45 %;

(b) subordinated exposures without eligible collateral: 75 %;

(c) institutions may recognise funded and unfunded credit protection in the LGD in accordance with Chapter 4;

(d) covered bonds eligible for the treatment set out in Article 129(4) or (5) may be assigned an LGD value of 11,25 %;

(e) for senior purchased corporate receivables exposures where an institution is not able to estimate PDs or the institution's PD estimates do not meet the requirements set out in Section 6: 45 %;

(f) for subordinated purchased corporate receivables exposures where an institution is not able to estimate PDs or the institution's PD estimates do not meet the requirements set out in Section 6: 100 %;

(g) for dilution risk of purchased corporate receivables: 75 %.

2. For dilution and default risk if an institution has received permission from the competent authority to use own LGD estimates for corporate exposures pursuant to Article 143 and it can decompose its EL estimates for purchased corporate receivables into PDs and LGDs in a manner the competent authority considers to be reliable, the LGD estimate for purchased corporate receivables may be used.

3. If an institution has received the permission of the competent authority to use own LGD estimates for exposures to corporates, institutions, central governments and central banks pursuant to Article 143, unfunded credit protection may be recognised by adjusting PD or LGD subject to requirements as specified in Section 6 and permission of the competent authorities. An institution shall not assign guaranteed exposures an adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor.

▼C2

4. For the purposes of the undertakings referred to in Article 153(3), the LGD of a comparable direct exposure to the protection provider shall either be the LGD associated with an unhedged facility to the guarantor or the unhedged facility of the obligor, depending upon whether in the event both the guarantor and obligor default during the life of the hedged transaction, available evidence and the structure of the guarantee indicate that the amount recovered would depend on the financial condition of the guarantor or obligor, respectively.

Article 162

Maturity

1. Institutions that have not received permission to use own LGDs and own conversion factors for exposures to corporates, institutions or central governments and central banks shall assign to exposures arising from repurchase transactions or securities or commodities lending or borrowing transactions a maturity value (M) of 0,5 years and to all other exposures M of 2,5 years.

Alternatively, as part of the permission referred to in Article 143, the competent authorities shall decide on whether the institution shall use maturity (M) for each exposure as set out under paragraph 2.

2. Institutions that have received the permission of the competent authority to use own LGDs and own conversion factors for exposures to corporates, institutions or central governments and central banks pursuant to Article 143 shall calculate M for each of these exposures as set out in points (a) to (e) of this paragraph and subject to paragraphs 3 to 5 of this Article. M shall be no greater than five years except in the cases specified in Article 384(1) where M as specified there shall be used:

(a) for an instrument subject to a cash flow schedule, M shall be calculated in accordance with the following formula:

$$M = max\left\{1, min\left\{\frac{\sum_t t \cdot CF_t}{\sum_t CF_t}, 5\right\}\right\}$$

where CF_t denotes the cash flows (principal, interest payments and fees) contractually payable by the obligor in period t;

(b) for derivatives subject to a master netting agreement, M shall be the weighted average remaining maturity of the exposure, where M shall be at least 1 year, and the notional amount of each exposure shall be used for weighting the maturity;

▼C2

(c) for exposures arising from fully or nearly-fully collateralised derivative instruments listed in Annex II and fully or nearly-fully collateralised margin lending transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least 10 days;

(d) for repurchase transactions or securities or commodities lending or borrowing transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least five days. The notional amount of each transaction shall be used for weighting the maturity;

(e) an institution that has received the permission of the competent authority pursuant to Article 143 to use own PD estimates for purchased corporate receivables, for drawn amounts M shall equal the purchased receivables exposure weighted average maturity, where M shall be at least 90 days. This same value of M shall also be used for undrawn amounts under a committed purchase facility provided that the facility contains effective covenants, early amortisation triggers, or other features that protect the purchasing institution against a significant deterioration in the quality of the future receivables it is required to purchase over the facility's term. Absent such effective protections, M for undrawn amounts shall be calculated as the sum of the longest-dated potential receivable under the purchase agreement and the remaining maturity of the purchase facility, where M shall be at least 90 days;

(f) for any instrument other than those referred to in this paragraph or when an institution is not in a position to calculate M as set out in point (a), M shall be the maximum remaining time (in years) that the obligor is permitted to take to fully discharge its contractual obligations, where M shall be at least one year;

(g) for institutions using the Internal Model Method set out in Section 6 of Chapter 6 to calculate the exposure values, M shall be calculated for exposures to which they apply this method and for which the maturity of the longest-dated contract contained in the netting set is greater than one year in accordance with the following formula:

$$M = min\left\{\frac{\sum_k Effective\ EE_{t_k} \cdot \Delta t_k \cdot df_{t_k} \cdot s_{t_k} + \sum_k EE_{t_k} \cdot \Delta t_k \cdot df_{t_k} \cdot (1 - s_{t_k})}{\sum_k Effective\ EE_{t_k} \cdot \Delta t_k \cdot df_{t_k} \cdot s_{t_k}}, 5\right\}$$

where:

S_{t_k} = a dummy variable whose value at future period t_k is equal to 0 if $t_k > 1$ year and to 1 if $t_k \leq 1$;

EE_{t_k} = the expected exposure at the future period t_k;

▼C2

$Effective\ EE_{t_k}$ = the effective expected exposure at the future period t_k;

df_{t_k} = the risk-free discount factor for future time period t_k;

$\Delta t_k = t_k - t_{k-1}$;

(h) an institution that uses an internal model to calculate a one-sided credit valuation adjustment (CVA) may use, subject to the permission of the competent authorities, the effective credit duration estimated by the internal model as M.

Subject to paragraph 2, for netting sets in which all contracts have an original maturity of less than one year the formula in point (a) shall apply;

(i) for institutions using the Internal Model Method set out in Section 6 of Chapter 6, to calculate the exposure values and having an internal model permission for specific risk associated with traded debt positions in accordance with Part Three, Title IV, Chapter 5, M shall be set to 1 in the formula laid out in Article 153(1), provided that an institution can demonstrate to the competent authorities that its internal model for Specific risk associated with traded debt positions applied in Article 383 contains effects of rating migrations;

(j) for the purposes of Article 153(3), M shall be the effective maturity of the credit protection but at least 1 year.

3. Where the documentation requires daily re-margining and daily revaluation and includes provisions that allow for the prompt liquidation or set off of collateral in the event of default or failure to remargin, M shall be at least one-day for:

(a) fully or nearly-fully collateralised derivative instruments listed in Annex II;

(b) fully or nearly-fully collateralised margin lending transactions;

(c) repurchase transactions, securities or commodities lending or borrowing transactions.

In addition, for qualifying short-term exposures which are not part of the institution's ongoing financing of the obligor, M shall be at least one-day. Qualifying short term exposures shall include the following:

▼M9

(a) exposures to institutions or investment firms arising from the settlement of foreign exchange obligations;

▼C2

(b) self-liquidating short-term trade finance transactions connected to the exchange of goods or services with a residual maturity of up to one year as referred to in point (80) of Article 4(1);

(c) exposures arising from settlement of securities purchases and sales within the usual delivery period or two business days;

(d) exposures arising from cash settlements by wire transfer and settlements of electronic payment transactions and prepaid cost, including overdrafts arising from failed transactions that do not exceed a short, fixed agreed number of business days.

4. For exposures to corporates situated in the Union and having consolidated sales and consolidated assets of less than EUR 500 million, institutions may choose to consistently set M as set out in paragraph 1 instead of applying paragraph 2. Institutions may replace EUR 500 million total assets with EUR 1 000 million total assets for corporates which primarily own and let non-speculative residential property.

5. Maturity mismatches shall be treated as specified in Chapter 4.

Sub-Section 2

Retail exposures

Article 163

Probability of default (PD)

1. The PD of an exposure shall be at least 0,03 %.

2. The PD of obligors or, where an obligation approach is used, of exposures in default shall be 100 %.

3. For dilution risk of purchased receivables PD shall be set equal to EL estimates for dilution risk. If an institution can decompose its EL estimates for dilution risk of purchased receivables into PDs and LGDs in a manner the competent authorities consider to be reliable, the PD estimate may be used.

4. Unfunded credit protection may be taken into account by adjusting PDs subject to Article 164(2). For dilution risk, in addition to the protection providers referred to in Article 201(1)(g), the seller of the purchased receivables is eligible if the conditions set out in Article 160(4) are met.

▼M8

Article 164

Loss Given Default (LGD)

1. Institutions shall provide own estimates of LGDs subject to the requirements specified in Section 6 of this Chapter and permission of the competent authorities granted in accordance with Article 143. For dilution risk of purchased receivables, an LGD value of 75 % shall be used. If an institution can decompose its EL estimates for dilution risk of purchased receivables into PDs and LGDs in a reliable manner, the institution may use its own LGD estimate.

2. Unfunded credit protection may be recognised as eligible by adjusting PD or LGD estimates subject to requirements as specified in Article 183(1), (2) and (3) and the permission of the competent authorities either in support of an individual exposure or a pool of exposures. An institution shall not assign guaranteed exposures an adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor.

3. For the purposes of Article 154(2), the LGD of a comparable direct exposure to the protection provider referred to in Article 153(3) shall either be the LGD associated with an unhedged facility to the guarantor or the unhedged facility of the obligor, depending upon whether, in the event both the guarantor and obligor default during the life of the hedged transaction, available evidence and the structure of the guarantee indicate that the amount recovered would depend on the financial condition of the guarantor or obligor, respectively.

4. The exposure-weighted average LGD for all retail exposures secured by residential property and not benefiting from guarantees from central governments shall not be lower than 10 %.

The exposure-weighted average LGD for all retail exposures secured by commercial immovable property and not benefiting from guarantees from central governments shall not be lower than 15 %.

5. Member States shall designate an authority to be responsible for the application of paragraph 6. That authority shall be the competent authority or the designated authority.

Where the authority designated by the Member State for the application of this Article is the competent authority, it shall ensure that the relevant national bodies and authorities which have a macroprudential mandate are duly informed of the competent authority's intention to make use of this Article, and are appropriately involved in the assessment of financial stability concerns in its Member State in accordance with paragraph 6.

▼M8

Where the authority designated by the Member State for the application of this Article is different from the competent authority, the Member State shall adopt the necessary provisions to ensure proper coordination and exchange of information between the competent authority and the designated authority for the proper application of this Article. In particular, authorities shall be required to cooperate closely and to share all the information that may be necessary for the adequate performance of the duties imposed upon the designated authority pursuant to this Article. That cooperation shall aim at avoiding any form of duplicative or inconsistent action between the competent authority and the designated authority, as well as ensuring that the interaction with other measures, in particular measures taken under Article 458 of this Regulation and Article 133 of Directive 2013/36/EU, is duly taken into account.

6. Based on the data collected under Article 430a and on any other relevant indicators, and taking into account forward-looking immovable property market developments the authority designated in accordance with paragraph 5 of this Article shall periodically, and at least annually, assess whether the minimum LGD values referred to in paragraph 4 of this Article, are appropriate for exposures secured by mortgages on residential property or commercial immovable property located in one or more parts of the territory of the Member State of the relevant authority.

Where, on the basis of the assessment referred to in the first subparagraph of this paragraph, the authority designated in accordance with paragraph 5 concludes that the minimum LGD values referred to in paragraph 4 are not adequate, and if it considers that the inadequacy of LGD values could adversely affect current or future financial stability in its Member State, it may set higher minimum LGD values for those exposures located in one or more parts of the territory of the Member State of the relevant authority. Those higher minimum values may also be applied at the level of one or more property segments of such exposures.

The authority designated in accordance with paragraph 5 shall notify EBA and the ESRB before making the decision referred to in this paragraph. Within one month of receipt of that notification EBA and the ESRB shall provide their opinion to the Member State concerned. EBA and the ESRB shall publish those LGD values.

7. Where the authority designated in accordance with paragraph 5 sets higher minimum LGD values pursuant to paragraph 6, institutions shall have a six-month transitional period to apply them.

8. EBA, in close cooperation with the ESRB, shall develop draft regulatory technical standards to specify the conditions that the authority designated in accordance with paragraph 5 shall take into account when assessing the appropriateness of LGD values as part of the assessment referred to in paragraph 6.

▼M8

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2019.

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

9. The ESRB may, by means of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, and in close cooperation with EBA, give guidance to authorities designated in accordance with paragraph 5 of this Article on the following:

(a) factors which could 'adversely affect current or future financial stability' referred to in paragraph 6; and

(b) indicative benchmarks that the authority designated in accordance with paragraph 5 is to take into account when determining higher minimum LGD values.

10. The institutions of a Member State shall apply the higher minimum LGD values that have been determined by the authorities of another Member State in accordance with paragraph 6 to all their corresponding exposures secured by mortgages on residential property or commercial immovable property located in one or more parts of that Member State.

▼C2

Sub-Section 3

Equity exposures subject to PD/LGD method

Article 165

Equity exposures subject to the PD/LGD method

1. PDs shall be determined in accordance with the methods for corporate exposures.

The following minimum PDs shall apply:

(a) 0,09 % for exchange traded equity exposures where the investment is part of a long-term customer relationship;

(b) 0,09 % for non-exchange traded equity exposures where the returns on the investment are based on regular and periodic cash flows not derived from capital gains;

▼C2

(c) 0,40 % for exchange traded equity exposures including other short positions as set out in Article 155(2);

(d) 1,25 % for all other equity exposures including other short positions as set out in Article 155(2).

2. Private equity exposures in sufficiently diversified portfolios may be assigned an LGD of 65 %. All other such exposures shall be assigned an LGD of 90 %.

3. M assigned to all exposures shall be five years.

Section 5

Exposure value

Article 166

Exposures to corporates, institutions, central governments and central banks and retail exposures

1. Unless noted otherwise, the exposure value of on-balance sheet exposures shall be the accounting value measured without taking into account any credit risk adjustments made.

This rule also applies to assets purchased at a price different than the amount owed.

For purchased assets, the difference between the amount owed and the accounting value remaining after specific credit risk adjustments have been applied that has been recorded on the balance-sheet of the institutions when purchasing the asset is denoted discount if the amount owed is larger, and premium if it is smaller.

2. Where institutions use master netting agreements in relation to repurchase transactions or securities or commodities lending or borrowing transactions, the exposure value shall be calculated in accordance with Chapter 4 or 6.

3. In order to calculate the exposure value for on-balance sheet netting of loans and deposits, institutions shall apply the methods set out in Chapter 4.

4. The exposure value for leases shall be the discounted minimum lease payments. Minimum lease payments shall comprise the payments over the lease term that the lessee is or can be required to make and any bargain option (i.e. option the exercise of which is reasonably certain). If a party other than the lessee may be required to make a payment related to the residual value of a leased asset and this payment obligation fulfils the set of conditions in Article 201 regarding the eligibility of protection providers as well as the requirements for recognising other types of guarantees provided in Article 213, the payment obligation may be taken into account as unfunded credit protection in accordance with Chapter 4.

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5. In the case of any contract listed in Annex II, the exposure value shall be determined by the methods set out in Chapter 6 and shall not take into account any credit risk adjustment made.

6. The exposure value for the calculation of risk-weighted exposure amounts of purchased receivables shall be the value determined in accordance with paragraph 1 minus the own funds requirements for dilution risk prior to credit risk mitigation.

7. Where an exposure takes the form of securities or commodities sold, posted or lent under repurchase transactions or securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions, the exposure value shall be the value of the securities or commodities determined in accordance with Article 24. Where the Financial Collateral Comprehensive Method as set out under Article 223 is used, the exposure value shall be increased by the volatility adjustment appropriate to such securities or commodities, as set out therein. The exposure value of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions may be determined either in accordance with Chapter 6 or Article 220(2).

8. The exposure value for the following items shall be calculated as the committed but undrawn amount multiplied by a conversion factor. Institutions shall use the following conversion factors in accordance with Article 151(8) for exposures to corporates, institutions, central governments and central banks:

(a) for credit lines that are unconditionally cancellable at any time by the institution without prior notice, or that effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness, a conversion factor of 0 % shall apply. To apply a conversion factor of 0 %, institutions shall actively monitor the financial condition of the obligor, and their internal control systems shall enable them to immediately detect deterioration in the credit quality of the obligor. Undrawn credit lines may be considered as unconditionally cancellable if the terms permit the institution to cancel them to the full extent allowable under consumer protection and related legislation;

(b) for short-term letters of credit arising from the movement of goods, a conversion factor of 20 % shall apply for both the issuing and confirming institutions;

(c) for undrawn purchase commitments for revolving purchased receivables that are able to be unconditionally cancelled or that effectively provide for automatic cancellation at any time by the institution without prior notice, a conversion factor of 0 % shall apply. To apply a conversion factor of 0 %, institutions shall actively monitor the financial condition of the obligor, and their internal control systems shall enable them to immediately detect a deterioration in the credit quality of the obligor;

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(d) for other credit lines, note issuance facilities (NIFs), and revolving underwriting facilities (RUFs), a conversion factor of 75 % shall apply.

Institutions which meet the requirements for the use of own estimates of conversion factors as specified in Section 6 may use their own estimates of conversion factors across different product types as mentioned in points (a) to (d), subject to permission of the competent authorities.

9. Where a commitment refers to the extension of another commitment, the lower of the two conversion factors associated with the individual commitment shall be used.

10. For all off-balance sheet items other than those mentioned in paragraphs 1 to 8, the exposure value shall be the following percentage of its value:

(a) 100 % if it is a full risk item;

(b) 50 % if it is a medium-risk item;

(c) 20 % if it is a medium/low-risk item;

(d) 0 % if it is a low-risk item.

For the purposes of this paragraph the off-balance sheet items shall be assigned to risk categories as indicated in Annex I.

Article 167

Equity exposures

1. The exposure value of equity exposures shall be the accounting value remaining after specific credit risk adjustment have been applied.

2. The exposure value of off-balance sheet equity exposures shall be its nominal value after reducing its nominal value by specific credit risk adjustments for this exposure.

Article 168

Other non credit-obligation assets

The exposure value of other non credit-obligation assets shall be the accounting value remaining after specific credit risk adjustment have been applied

Section 6

Requirements for the IRB approach

Sub-Section 1

Rating systems

Article 169

General principles

1. Where an institution uses multiple rating systems, the rationale for assigning an obligor or a transaction to a rating system shall be documented and applied in a manner that appropriately reflects the level of risk.

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2. Assignment criteria and processes shall be periodically reviewed to determine whether they remain appropriate for the current portfolio and external conditions.

3. Where an institution uses direct estimates of risk parameters for individual obligors or exposures these may be seen as estimates assigned to grades on a continuous rating scale.

Article 170

Structure of rating systems

1. The structure of rating systems for exposures to corporates, institutions and central governments and central banks shall comply with the following requirements:

(a) a rating system shall take into account obligor and transaction risk characteristics;

(b) a rating system shall have an obligor rating scale which reflects exclusively quantification of the risk of obligor default. The obligor rating scale shall have a minimum of 7 grades for non-defaulted obligors and one for defaulted obligors;

(c) an institution shall document the relationship between obligor grades in terms of the level of default risk each grade implies and the criteria used to distinguish that level of default risk;

(d) institutions with portfolios concentrated in a particular market segment and range of default risk shall have enough obligor grades within that range to avoid undue concentrations of obligors in a particular grade. Significant concentrations within a single grade shall be supported by convincing empirical evidence that the obligor grade covers a reasonably narrow PD band and that the default risk posed by all obligors in the grade falls within that band;

(e) to be permitted by the competent authority to use own estimates of LGDs for own funds requirement calculation, a rating system shall incorporate a distinct facility rating scale which exclusively reflects LGD related transaction characteristics. The facility grade definition shall include both a description of how exposures are assigned to the grade and of the criteria used to distinguish the level of risk across grades;

(f) significant concentrations within a single facility grade shall be supported by convincing empirical evidence that the facility grade covers a reasonably narrow LGD band, respectively, and that the risk posed by all exposures in the grade falls within that band.

2. Institutions using the methods set out in Article 153(5) for assigning risk weights for specialised lending exposures are exempt from the requirement to have an obligor rating scale which reflects

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exclusively quantification of the risk of obligor default for these exposures. These institutions shall have for these exposures at least four grades for non-defaulted obligors and at least one grade for defaulted obligors.

3. The structure of rating systems for retail exposures shall comply with the following requirements:

(a) rating systems shall reflect both obligor and transaction risk, and shall capture all relevant obligor and transaction characteristics;

(b) the level of risk differentiation shall ensure that the number of exposures in a given grade or pool is sufficient to allow for meaningful quantification and validation of the loss characteristics at the grade or pool level. The distribution of exposures and obligors across grades or pools shall be such as to avoid excessive concentrations;

(c) the process of assigning exposures to grades or pools shall provide for a meaningful differentiation of risk, for a grouping of sufficiently homogenous exposures, and shall allow for accurate and consistent estimation of loss characteristics at grade or pool level. For purchased receivables the grouping shall reflect the seller's underwriting practices and the heterogeneity of its customers.

4. Institutions shall consider the following risk drivers when assigning exposures to grades or pools:

(a) obligor risk characteristics;

(b) transaction risk characteristics, including product or collateral types or both. Institutions shall explicitly address cases where several exposures benefit from the same collateral;

(c) delinquency, except where an institution demonstrates to the satisfaction of its competent authority that delinquency is not a material driver of risk for the exposure.

Article 171

Assignment to grades or pools

1. An institution shall have specific definitions, processes and criteria for assigning exposures to grades or pools within a rating system that comply with the following requirements:

(a) the grade or pool definitions and criteria shall be sufficiently detailed to allow those charged with assigning ratings to consistently assign obligors or facilities posing similar risk to the same grade or pool. This consistency shall exist across lines of business, departments and geographic locations;

(b) the documentation of the rating process shall allow third parties to understand the assignments of exposures to grades or pools, to replicate grade and pool assignments and to evaluate the appropriateness of the assignments to a grade or a pool;

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(c) the criteria shall also be consistent with the institution's internal lending standards and its policies for handling troubled obligors and facilities.

2. An institution shall take all relevant information into account in assigning obligors and facilities to grades or pools. Information shall be current and shall enable the institution to forecast the future performance of the exposure. The less information an institution has, the more conservative shall be its assignments of exposures to obligor and facility grades or pools. If an institution uses an external rating as a primary factor determining an internal rating assignment, the institution shall ensure that it considers other relevant information.

Article 172

Assignment of exposures

1. For exposures to corporates, institutions and central governments and central banks, and for equity exposures where an institution uses the PD/LGD approach set out in Article 155(3), assignment of exposures shall be carried out in accordance with the following criteria:

(a) each obligor shall be assigned to an obligor grade as part of the credit approval process;

(b) for those exposures for which an institution has received the permission of the competent authority to use own estimates of LGDs and conversion factors pursuant to Article 143, each exposure shall also be assigned to a facility grade as part of the credit approval process;

(c) institutions using the methods set out in Article 153(5) for assigning risk weights for specialised lending exposures shall assign each of these exposures to a grade in accordance with Article 170(2);

(d) each separate legal entity to which the institution is exposed shall be separately rated. An institution shall have appropriate policies regarding the treatment of individual obligor clients and groups of connected clients;

(e) separate exposures to the same obligor shall be assigned to the same obligor grade, irrespective of any differences in the nature of each specific transaction. However, where separate exposures are allowed to result in multiple grades for the same obligor, the following shall apply:

(i) country transfer risk, this being dependent on whether the exposures are denominated in local or foreign currency;

(ii) the treatment of associated guarantees to an exposure may be reflected in an adjusted assignment to an obligor grade;

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(iii) consumer protection, bank secrecy or other legislation prohibit the exchange of client data.

2. For retail exposures, each exposure shall be assigned to a grade or a pool as part of the credit approval process.

3. For grade and pool assignments institutions shall document the situations in which human judgement may override the inputs or outputs of the assignment process and the personnel responsible for approving these overrides. Institutions shall document these overrides and note down the personnel responsible. Institutions shall analyse the performance of the exposures whose assignments have been overridden. This analysis shall include an assessment of the performance of exposures whose rating has been overridden by a particular person, accounting for all the responsible personnel.

Article 173

Integrity of assignment process

1. For exposures to corporates, institutions and central governments and central banks, and for equity exposures where an institution uses the PD/LGD approach set out in Article 155(3), the assignment process shall meet the following requirements of integrity:

(a) Assignments and periodic reviews of assignments shall be completed or approved by an independent party that does not directly benefit from decisions to extend the credit;

(b) Institutions shall review assignments at least annually and adjust the assignment where the result of the review does not justify carrying forward the current assignment. High risk obligors and problem exposures shall be subject to more frequent review. Institutions shall undertake a new assignment if material information on the obligor or exposure becomes available;

(c) An institution shall have an effective process to obtain and update relevant information on obligor characteristics that affect PDs, and on transaction characteristics that affect LGDs or conversion factors.

2. For retail exposures, an institution shall at least annually review obligor and facility assignments and adjust the assignment where the result of the review does not justify carrying forward the current assignment, or review the loss characteristics and delinquency status of each identified risk pool, whichever applicable. An institution shall also at least annually review in a representative sample the status of individual exposures within each pool as a means of ensuring that exposures continue to be assigned to the correct pool, and adjust the assignment where the result of the review does not justify carrying forward the current assignment.

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3. EBA shall develop draft regulatory technical standards for the methodologies of the competent authorities to assess the integrity of the assignment process and the regular and independent assessment of risks.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 174

Use of models

If an institution uses statistical models and other mechanical methods to assign exposures to obligors or facilities grades or pools, the following requirements shall be met:

(a) the model shall have good predictive power and capital requirements shall not be distorted as a result of its use. The input variables shall form a reasonable and effective basis for the resulting predictions. The model shall not have material biases;

(b) the institution shall have in place a process for vetting data inputs into the model, which includes an assessment of the accuracy, completeness and appropriateness of the data;

(c) the data used to build the model shall be representative of the population of the institution's actual obligors or exposures;

(d) the institution shall have a regular cycle of model validation that includes monitoring of model performance and stability; review of model specification; and testing of model outputs against outcomes;

(e) the institution shall complement the statistical model by human judgement and human oversight to review model-based assignments and to ensure that the models are used appropriately. Review procedures shall aim at finding and limiting errors associated with model weaknesses. Human judgements shall take into account all relevant information not considered by the model. The institution shall document how human judgement and model results are to be combined.

Article 175

Documentation of rating systems

1. The institutions shall document the design and operational details of its rating systems. The documentation shall provide evidence of compliance with the requirements in this Section, and address topics including portfolio differentiation, rating criteria, responsibilities of parties that rate obligors and exposures, frequency of assignment reviews, and management oversight of the rating process.

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2. The institution shall document the rationale for and analysis supporting its choice of rating criteria. An institution shall document all major changes in the risk rating process, and such documentation shall support identification of changes made to the risk rating process subsequent to the last review by the competent authorities. The organisation of rating assignment including the rating assignment process and the internal control structure shall also be documented.

3. The institutions shall document the specific definitions of default and loss used internally and ensure consistency with the definitions set out in this Regulation.

4. Where the institution employs statistical models in the rating process, the institution shall document their methodologies. This material shall:

(a) provide a detailed outline of the theory, assumptions and mathematical and empirical basis of the assignment of estimates to grades, individual obligors, exposures, or pools, and the data source(s) used to estimate the model;

(b) establish a rigorous statistical process including out-of-time and out-of-sample performance tests for validating the model;

(c) indicate any circumstances under which the model does not work effectively.

5. An institution shall demonstrate to the satisfaction of the competent authority that the requirements of this Article are met, where an institution has obtained a rating system, or model used within a rating system, from a third-party vendor and that vendor refuses or restricts the access of the institution to information pertaining to the methodology of that rating system or model, or underlying data used to develop that methodology or model, on the basis that such information is proprietary.

Article 176

Data maintenance

1. Institutions shall collect and store data on aspects of their internal ratings as required under Part Eight.

2. For exposures to corporates, institutions and central governments and central banks, and for equity exposures where an institution uses the PD/LGD approach set out in Article 155(3), institutions shall collect and store:

(a) complete rating histories on obligors and recognised guarantors;

(b) the dates the ratings were assigned;

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(c) the key data and methodology used to derive the rating;

(d) the person responsible for the rating assignment;

(e) the identity of obligors and exposures that defaulted;

(f) the date and circumstances of such defaults;

(g) data on the PDs and realised default rates associated with rating grades and ratings migration.

3. Institutions not using own estimates of LGDs and conversion factors shall collect and store data on comparisons of realised LGDs to the values as set out in Article 161(1) and realised conversion factors to the values as set out in Article 166(8).

4. Institutions using own estimates of LGDs and conversion factors shall collect and store:

(a) complete histories of data on the facility ratings and LGD and conversion factor estimates associated with each rating scale;

(b) the dates on which the ratings were assigned and the estimates were made;

(c) the key data and methodology used to derive the facility ratings and LGD and conversion factor estimates;

(d) the person who assigned the facility rating and the person who provided LGD and conversion factor estimates;

(e) data on the estimated and realised LGDs and conversion factors associated with each defaulted exposure;

(f) data on the LGD of the exposure before and after evaluation of the effects of a guarantee/or credit derivative, for those institutions that reflect the credit risk mitigating effects of guarantees or credit derivatives through LGD;

(g) data on the components of loss for each defaulted exposure.

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5. For retail exposures, institutions shall collect and store:

(a) data used in the process of allocating exposures to grades or pools;

(b) data on the estimated PDs, LGDs and conversion factors associated with grades or pools of exposures;

(c) the identity of obligors and exposures that defaulted;

(d) for defaulted exposures, data on the grades or pools to which the exposure was assigned over the year prior to default and the realised outcomes on LGD and conversion factor;

(e) data on loss rates for qualifying revolving retail exposures.

Article 177

Stress tests used in assessment of capital adequacy

1. An institution shall have in place sound stress testing processes for use in the assessment of its capital adequacy. Stress testing shall involve identifying possible events or future changes in economic conditions that could have unfavourable effects on an institution's credit exposures and assessment of the institution's ability to withstand such changes.

2. An institution shall regularly perform a credit risk stress test to assess the effect of certain specific conditions on its total capital requirements for credit risk. The test shall be one chosen by the institution, subject to supervisory review. The test to be employed shall be meaningful and consider the effects of severe, but plausible, recession scenarios. An institution shall assess migration in its ratings under the stress test scenarios. Stressed portfolios shall contain the vast majority of an institution's total exposure.

3. Institutions using the treatment set out in Article 153(3) shall consider as part of their stress testing framework the impact of a deterioration in the credit quality of protection providers, in particular the impact of protection providers falling outside the eligibility criteria.

Sub-Section 2

Risk quantification

Article 178

Default of an obligor

1. A default shall be considered to have occurred with regard to a particular obligor when either or both of the following have taken place:

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(a) the institution considers that the obligor is unlikely to pay its credit obligations to the institution, the parent undertaking or any of its subsidiaries in full, without recourse by the institution to actions such as realising security;

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(b) the obligor is more than 90 days past due on any material credit obligation to the institution, the parent undertaking or any of its subsidiaries. Competent authorities may replace the 90 days with 180 days for exposures secured by residential property or SME commercial immovable property in the retail exposure class, as well as exposures to public sector entities. The 180 days shall not apply for the purposes of point (m) Article 36(1) or Article 127.

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In the case of retail exposures, institutions may apply the definition of default laid down in points (a) and (b) of the first subparagraph at the level of an individual credit facility rather than in relation to the total obligations of a borrower.

2. The following shall apply for the purposes of point (b) of paragraph 1:

(a) for overdrafts, days past due commence once an obligor has breached an advised limit, has been advised a limit smaller than current outstandings, or has drawn credit without authorisation and the underlying amount is material;

(b) for the purposes of point (a), an advised limit comprises any credit limit determined by the institution and about which the obligor has been informed by the institution;

(c) days past due for credit cards commence on the minimum payment due date;

(d) materiality of a credit obligation past due shall be assessed against a threshold, defined by the competent authorities. This threshold shall reflect a level of risk that the competent authority considers to be reasonable;

(e) institutions shall have documented policies in respect of the counting of days past due, in particular in respect of the re-ageing of the facilities and the granting of extensions, amendments or deferrals, renewals, and netting of existing accounts. These policies shall be applied consistently over time, and shall be in line with the internal risk management and decision processes of the institution.

3. For the purpose of point (a) of paragraph 1, elements to be taken as indications of unlikeliness to pay shall include the following:

(a) the institution puts the credit obligation on non-accrued status;

(b) the institution recognises a specific credit adjustment resulting from a significant perceived decline in credit quality subsequent to the institution taking on the exposure;

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(c) the institution sells the credit obligation at a material credit-related economic loss;

(d) the institution consents to a distressed restructuring of the credit obligation where this is likely to result in a diminished financial obligation caused by the material forgiveness, or postponement, of principal, interest or, where relevant fees. This includes, in the case of equity exposures assessed under a PD/LGD Approach, distressed restructuring of the equity itself;

(e) the institution has filed for the obligor's bankruptcy or a similar order in respect of an obligor's credit obligation to the institution, the parent undertaking or any of its subsidiaries;

(f) the obligor has sought or has been placed in bankruptcy or similar protection where this would avoid or delay repayment of a credit obligation to the institution, the parent undertaking or any of its subsidiaries.

4. Institutions that use external data that is not itself consistent with the definition of default laid down in paragraph 1, shall make appropriate adjustments to achieve broad equivalence with the definition of default.

5. If the institution considers that a previously defaulted exposure is such that no trigger of default continues to apply, the institution shall rate the obligor or facility as they would for a non-defaulted exposure. Where the definition of default is subsequently triggered, another default would be deemed to have occurred.

6. EBA shall develop draft regulatory technical standards to specify the conditions according to which a competent authority shall set the threshold referred to in paragraph 2(d).

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

7. EBA shall issue guidelines on the application of this Article. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 179

Overall requirements for estimation

1. In quantifying the risk parameters to be associated with rating grades or pools, institutions shall apply the following requirements:

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(a) an institution's own estimates of the risk parameters PD, LGD, conversion factor and EL shall incorporate all relevant data, information and methods. The estimates shall be derived using both historical experience and empirical evidence, and not based purely on judgemental considerations. The estimates shall be plausible and intuitive and shall be based on the material drivers of the respective risk parameters. The less data an institution has, the more conservative it shall be in its estimation;

(b) an institution shall be able to provide a breakdown of its loss experience in terms of default frequency, LGD, conversion factor, or loss where EL estimates are used, by the factors it sees as the drivers of the respective risk parameters. The institution's estimates shall be representative of long run experience;

(c) any changes in lending practice or the process for pursuing recoveries over the observation periods referred to in Article 180(1)(h) and (2)(e), Article 181(1)(j) and (2), and Article 182(2) and (3) shall be taken into account. An institution's estimates shall reflect the implications of technical advances and new data and other information, as it becomes available. Institutions shall review their estimates when new information comes to light but at least on an annual basis;

(d) the population of exposures represented in the data used for estimation, the lending standards used when the data was generated and other relevant characteristics shall be comparable with those of the institution's exposures and standards. The economic or market conditions that underlie the data shall be relevant to current and foreseeable conditions. The number of exposures in the sample and the data period used for quantification shall be sufficient to provide the institution with confidence in the accuracy and robustness of its estimates;

(e) for purchased receivables the estimates shall reflect all relevant information available to the purchasing institution regarding the quality of the underlying receivables, including data for similar pools provided by the seller, by the purchasing institution, or by external sources. The purchasing institution shall evaluate any data relied upon which is provided by the seller;

(f) an institution shall add to its estimates a margin of conservatism that is related to the expected range of estimation errors. Where methods and data are considered to be less satisfactory, the expected range of errors is larger, the margin of conservatism shall be larger.

Where institutions use different estimates for the calculation of risk weights and for internal purposes, it shall be documented and be reasonable. If institutions can demonstrate to their competent authorities that for data that have been collected prior to 1 January 2007 appropriate adjustments have been made to achieve broad equivalence with the definition of default laid down in Article 178 or with loss, competent authorities may permit the institutions some flexibility in the application of the required standards for data.

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2. Where an institution uses data that is pooled across institutions it shall meet the following requirements:

(a) the rating systems and criteria of other institutions in the pool are similar to its own;

(b) the pool is representative of the portfolio for which the pooled data is used;

(c) the pooled data is used consistently over time by the institution for its estimates;

(d) the institution shall remain responsible for the integrity of its rating systems;

(e) the institution shall maintain sufficient in-house understanding of its rating systems, including the ability to effectively monitor and audit the rating process.

Article 180

Requirements specific to PD estimation

1. In quantifying the risk parameters to be associated with rating grades or pools, institutions shall apply the following requirements specific to PD estimation to exposures to corporates, institutions and central governments and central banks and for equity exposures where an institution uses the PD/LGD approach set out in Article 155(3):

(a) institutions shall estimate PDs by obligor grade from long run averages of one-year default rates. PD estimates for obligors that are highly leveraged or for obligors whose assets are predominantly traded assets shall reflect the performance of the underlying assets based on periods of stressed volatilities;

(b) for purchased corporate receivables institutions may estimate the EL by obligor grade from long run averages of one-year realised default rates;

(c) if an institution derives long run average estimates of PDs and LGDs for purchased corporate receivables from an estimate of EL, and an appropriate estimate of PD or LGD, the process for estimating total losses shall meet the overall standards for estimation of PD and LGD set out in this part, and the outcome shall be consistent with the concept of LGD as set out in Article 181(1)(a);

(d) institutions shall use PD estimation techniques only with supporting analysis. Institutions shall recognise the importance of judgmental considerations in combining results of techniques and in making adjustments for limitations of techniques and information;

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(e) to the extent that an institution uses data on internal default experience for the estimation of PDs, the estimates shall be reflective of underwriting standards and of any differences in the rating system that generated the data and the current rating system. Where underwriting standards or rating systems have changed, the institution shall add a greater margin of conservatism in its estimate of PD;

(f) to the extent that an institution associates or maps its internal grades to the scale used by an ECAI or similar organisations and then attributes the default rate observed for the external organisation's grades to the institution's grades, mappings shall be based on a comparison of internal rating criteria to the criteria used by the external organisation and on a comparison of the internal and external ratings of any common obligors. Biases or inconsistencies in the mapping approach or underlying data shall be avoided. The criteria of the external organisation underlying the data used for quantification shall be oriented to default risk only and not reflect transaction characteristics. The analysis undertaken by the institution shall include a comparison of the default definitions used, subject to the requirements in Article 178. The institution shall document the basis for the mapping;

(g) to the extent that an institution uses statistical default prediction models it is allowed to estimate PDs as the simple average of default-probability estimates for individual obligors in a given grade. The institution's use of default probability models for this purpose shall meet the standards specified in Article 174;

(h) irrespective of whether an institution is using external, internal, or pooled data sources, or a combination of the three, for its PD estimation, the length of the underlying historical observation period used shall be at least five years for at least one source. If the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. This point also applies to the PD/LGD Approach to equity. Subject to the permission of competent authorities, institutions which have not received the permission of the competent authority pursuant to Article 143 to use own estimates of LGDs or conversion factors may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.

2. For retail exposures, the following requirements shall apply:

(a) institutions shall estimate PDs by obligor grade or pool from long run averages of one-year default rates;

(b) PD estimates may also be derived from an estimate of total losses and appropriate estimates of LGDs;

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(c) institutions shall regard internal data for assigning exposures to grades or pools as the primary source of information for estimating loss characteristics. Institutions may use external data (including pooled data) or statistical models for quantification provided that the following strong links both exist:

(i) between the institution's process of assigning exposures to grades or pools and the process used by the external data source; and

(ii) between the institution's internal risk profile and the composition of the external data;

(d) if an institution derives long run average estimates of PD and LGD for retail exposures from an estimate of total losses and an appropriate estimate of PD or LGD, the process for estimating total losses shall meet the overall standards for estimation of PD and LGD set out in this part, and the outcome shall be consistent with the concept of LGD as set out in point (a) of Article 181(1);

(e) irrespective of whether an institution is using external, internal or pooled data sources or a combination of the three, for their estimation of loss characteristics, the length of the underlying historical observation period used shall be at least five years for at least one source. If the available observation spans a longer period for any source, and these data are relevant, this longer period shall be used. An institution need not give equal importance to historic data if more recent data is a better predictor of loss rates. Subject to the permission of the competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years;

(f) institutions shall identify and analyse expected changes of risk parameters over the life of credit exposures (seasoning effects).

For purchased retail receivables, institutions may use external and internal reference data. Institutions shall use all relevant data sources as points of comparison.

3. EBA shall develop draft regulatory technical standards to specify the following:

(a) the conditions according to which competent authorities may grant the permissions referred to in point (h) of paragraph 1 and point (e) of paragraph 2;

(b) the methodologies according to which competent authorities shall assess the methodology of an institution for estimating PD pursuant to Article 143.

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EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 181

Requirements specific to own-LGD estimates

1. In quantifying the risk parameters to be associated with rating grades or pools, institutions shall apply the following requirements specific to own-LGD estimates:

(a) institutions shall estimate LGDs by facility grade or pool on the basis of the average realised LGDs by facility grade or pool using all observed defaults within the data sources (default weighted average);

(b) institutions shall use LGD estimates that are appropriate for an economic downturn if those are more conservative than the long-run average. To the extent a rating system is expected to deliver realised LGDs at a constant level by grade or pool over time, institutions shall make adjustments to their estimates of risk parameters by grade or pool to limit the capital impact of an economic downturn;

(c) an institution shall consider the extent of any dependence between the risk of the obligor and that of the collateral or collateral provider. Cases where there is a significant degree of dependence shall be addressed in a conservative manner;

(d) currency mismatches between the underlying obligation and the collateral shall be treated conservatively in the institution's assessment of LGD;

(e) to the extent that LGD estimates take into account the existence of collateral, these estimates shall not solely be based on the collateral's estimated market value. LGD estimates shall take into account the effect of the potential inability of institutions to expeditiously gain control of their collateral and liquidate it;

(f) to the extent that LGD estimates take into account the existence of collateral, institutions shall establish internal requirements for collateral management, legal certainty and risk management that are generally consistent with those set out in Chapter 4, Section 3;

(g) to the extent that an institution recognises collateral for determining the exposure value for counterparty credit risk in accordance with Chapter 6, Section 5 or 6, any amount expected to be recovered from the collateral shall not be taken into account in the LGD estimates;

▼C2

(h) for the specific case of exposures already in default, the institution shall use the sum of its best estimate of expected loss for each exposure given current economic circumstances and exposure status and its estimate of the increase of loss rate caused by possible additional unexpected losses during the recovery period, i.e. between date of default and final liquidation of the exposure;

(i) to the extent that unpaid late fees have been capitalised in the institution's income statement, they shall be added to the institution's measure of exposure and loss;

(j) for exposures to corporates, institutions and central governments and central banks, estimates of LGD shall be based on data over a minimum of five years, increasing by one year each year after implementation until a minimum of seven years is reached, for at least one data source. If the available observation period spans a longer period for any source, and the data is relevant, this longer period shall be used.

2. For retail exposures, institutions may do the following:

(a) derive LGD estimates from realised losses and appropriate estimates of PDs;

(b) reflect future drawings either in their conversion factors or in their LGD estimates;

(c) For purchased retail receivables use external and internal reference data to estimate LGDs.

For retail exposures, estimates of LGD shall be based on data over a minimum of five years. An institution need not give equal importance to historic data if more recent data is a better predictor of loss rates. Subject to the permission of the competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.

3. EBA shall develop draft regulatory technical standards to specify the following:

(a) the nature, severity and duration of an economic downturn referred to in paragraph 1;

(b) the conditions according to which a competent authority may permit an institution pursuant to paragraph 2 to use relevant data covering a period of two years when the institution implements the IRB Approach.

▼C2

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 182

Requirements specific to own-conversion factor estimates

1. In quantifying the risk parameters to be associated with rating grades or pools, institutions shall apply the following requirements specific to own-conversion factor estimates:

(a) institutions shall estimate conversion factors by facility grade or pool on the basis of the average realised conversion factors by facility grade or pool using the default weighted average resulting from all observed defaults within the data sources;

(b) institutions shall use conversion factor estimates that are appropriate for an economic downturn if those are more conservative than the long-run average. To the extent a rating system is expected to deliver realised conversion factors at a constant level by grade or pool over time, institutions shall make adjustments to their estimates of risk parameters by grade or pool to limit the capital impact of an economic downturn;

(c) institutions' estimates of conversion factors shall reflect the possibility of additional drawings by the obligor up to and after the time a default event is triggered. The conversion factor estimate shall incorporate a larger margin of conservatism where a stronger positive correlation can reasonably be expected between the default frequency and the magnitude of conversion factor;

(d) in arriving at estimates of conversion factors institutions shall consider their specific policies and strategies adopted in respect of account monitoring and payment processing. Institutions shall also consider their ability and willingness to prevent further drawings in circumstances short of payment default, such as covenant violations or other technical default events;

(e) institutions shall have adequate systems and procedures in place to monitor facility amounts, current outstandings against committed lines and changes in outstandings per obligor and per grade. The institution shall be able to monitor outstanding balances on a daily basis;

▼C2

(f) if institutions use different estimates of conversion factors for the calculation of risk-weighted exposure amounts and internal purposes it shall be documented and be reasonable.

2. For exposures to corporates, institutions and central governments and central banks, estimates of conversion factors shall be based on data over a minimum of five years, increasing by one year each year after implementation until a minimum of seven years is reached, for at least one data source. If the available observation period spans a longer period for any source, and the data is relevant, this longer period shall be used.

3. For retail exposures, institutions may reflect future drawings either in their conversion factors or in their LGD estimates.

For retail exposures, estimates of conversion factors shall be based on data over a minimum of five years. By way of derogation from point (a) of paragraph 1, an institution need not give equal importance to historic data if more recent data is a better predictor of draw downs. Subject to the permission of competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.

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

(a) the nature, severity and duration of an economic downturn referred to in paragraph 1;

(b) conditions according to which a competent authority may permit and institution to use relevant data covering a period of two years at the time an institution first implements the IRB Approach.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 183

Requirements for assessing the effect of guarantees and credit derivatives for exposures to corporates, institutions and central governments and central banks where own estimates of LGD are used and for retail exposures

1. The following requirements shall apply in relation to eligible guarantors and guarantees:

▼C2

(a) institutions shall have clearly specified criteria for the types of guarantors they recognise for the calculation of risk-weighted exposure amounts;

(b) for recognised guarantors the same rules as for obligors as set out in Articles 171, 172 and 173 shall apply;

(c) the guarantee shall be evidenced in writing, non-cancellable on the part of the guarantor, in force until the obligation is satisfied in full (to the extent of the amount and tenor of the guarantee) and legally enforceable against the guarantor in a jurisdiction where the guarantor has assets to attach and enforce a judgement. Conditional guarantees prescribing conditions under which the guarantor may not be obliged to perform may be recognised subject to permission of the competent authorities. The assignment criteria shall adequately address any potential reduction in the risk mitigation effect.

2. An institution shall have clearly specified criteria for adjusting grades, pools or LGD estimates, and, in the case of retail and eligible purchased receivables, the process of allocating exposures to grades or pools, to reflect the impact of guarantees for the calculation of risk-weighted exposure amounts. These criteria shall comply with the requirements set out in Articles 171, 172 and 173.

The criteria shall be plausible and intuitive. They shall address the guarantor's ability and willingness to perform under the guarantee, the likely timing of any payments from the guarantor, the degree to which the guarantor's ability to perform under the guarantee is correlated with the obligor's ability to repay, and the extent to which residual risk to the obligor remains.

3. The requirements for guarantees in this Article shall apply also for single-name credit derivatives. In relation to a mismatch between the underlying obligation and the reference obligation of the credit derivative or the obligation used for determining whether a credit event has occurred, the requirements set out under Article 216(2) shall apply. For retail exposures and eligible purchased receivables, this paragraph applies to the process of allocating exposures to grades or pools.

The criteria shall address the payout structure of the credit derivative and conservatively assess the impact this has on the level and timing of recoveries. The institution shall consider the extent to which other forms of residual risk remain.

4. The requirements set out in paragraphs 1 to 3 shall not apply for guarantees provided by institutions, central governments and central banks, and corporate entities which meet the requirements laid down in Article 201(1)(g) if the institution has received permission to apply the Standardised Approach for exposures to such entities pursuant to Articles 148 and 150. In this case the requirements of Chapter 4 shall apply.

▼C2

5. For retail guarantees, the requirements set out in paragraphs 1, 2 and 3 shall also apply to the assignment of exposures to grades or pools, and the estimation of PD.

6. EBA shall develop draft regulatory technical standards to specify the conditions according to which competent authorities may permit conditional guarantees to be recognised.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 184

Requirements for purchased receivables

1. In quantifying the risk parameters to be associated with rating grades or pools for purchased receivables, institutions shall ensure the conditions laid down in paragraphs 2 to 6 are met.

2. The structure of the facility shall ensure that under all foreseeable circumstances the institution has effective ownership and control of all cash remittances from the receivables. When the obligor makes payments directly to a seller or servicer, the institution shall verify regularly that payments are forwarded completely and within the contractually agreed terms. Institutions shall have procedures to ensure that ownership over the receivables and cash receipts is protected against bankruptcy stays or legal challenges that could materially delay the lender's ability to liquidate or assign the receivables or retain control over cash receipts.

3. The institution shall monitor both the quality of the purchased receivables and the financial condition of the seller and servicer. The following shall apply:

(a) the institution shall assess the correlation among the quality of the purchased receivables and the financial condition of both the seller and servicer, and have in place internal policies and procedures that provide adequate safeguards to protect against any contingencies, including the assignment of an internal risk rating for each seller and servicer;

(b) the institution shall have clear and effective policies and procedures for determining seller and servicer eligibility. The institution or its agent shall conduct periodic reviews of sellers and servicers in order to verify the accuracy of reports from the seller or servicer, detect fraud or operational weaknesses, and verify the quality of the seller's credit policies and servicer's collection policies and procedures. The findings of these reviews shall be documented;

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(c) the institution shall assess the characteristics of the purchased receivables pools, including over-advances; history of the seller's arrears, bad debts, and bad debt allowances; payment terms, and potential contra accounts;

(d) the institution shall have effective policies and procedures for monitoring on an aggregate basis single-obligor concentrations both within and across purchased receivables pools;

(e) the institution shall ensure that it receives from the servicer timely and sufficiently detailed reports of receivables ageings and dilutions to ensure compliance with the institution's eligibility criteria and advancing policies governing purchased receivables, and provide an effective means with which to monitor and confirm the seller's terms of sale and dilution.

4. The institution shall have systems and procedures for detecting deteriorations in the seller's financial condition and purchased receivables quality at an early stage, and for addressing emerging problems pro-actively. In particular, the institution shall have clear and effective policies, procedures, and information systems to monitor covenant violations, and clear and effective policies and procedures for initiating legal actions and dealing with problem purchased receivables.

5. The institution shall have clear and effective policies and procedures governing the control of purchased receivables, credit, and cash. In particular, written internal policies shall specify all material elements of the receivables purchase programme, including the advancing rates, eligible collateral, necessary documentation, concentration limits, and the way cash receipts are to be handled. These elements shall take appropriate account of all relevant and material factors, including the seller and servicer's financial condition, risk concentrations, and trends in the quality of the purchased receivables and the seller's customer base, and internal systems shall ensure that funds are advanced only against specified supporting collateral and documentation.

6. The institution shall have an effective internal process for assessing compliance with all internal policies and procedures. The process shall include regular audits of all critical phases of the institution's receivables purchase programme, verification of the separation of duties between firstly the assessment of the seller and servicer and the assessment of the obligor and secondly between the assessment of the seller and servicer and the field audit of the seller and servicer, and evaluations of back office operations, with particular focus on qualifications, experience, staffing levels, and supporting automation systems.

▼C2

Sub-Section 3

Validation of internal estimates

Article 185

Validation of internal estimates

Institutions shall validate their internal estimates subject to the following requirements:

(a) institutions shall have robust systems in place to validate the accuracy and consistency of rating systems, processes, and the estimation of all relevant risk parameters. The internal validation process shall enable the institution to assess the performance of internal rating and risk estimation systems consistently and meaningfully;

(b) institutions shall regularly compare realised default rates with estimated PDs for each grade and, where realised default rates are outside the expected range for that grade, institutions shall specifically analyse the reasons for the deviation. Institutions using own estimates of LGDs and conversion factors shall also perform analogous analysis for these estimates. Such comparisons shall make use of historical data that cover as long a period as possible. The institution shall document the methods and data used in such comparisons. This analysis and documentation shall be updated at least annually;

(c) institutions shall also use other quantitative validation tools and comparisons with relevant external data sources. The analysis shall be based on data that are appropriate to the portfolio, are updated regularly, and cover a relevant observation period. Institutions' internal assessments of the performance of their rating systems shall be based on as long a period as possible;

(d) the methods and data used for quantitative validation shall be consistent through time. Changes in estimation and validation methods and data (both data sources and periods covered) shall be documented;

(e) institutions shall have sound internal standards for situations where deviations in realised PDs, LGDs, conversion factors and total losses, where EL is used, from expectations, become significant enough to call the validity of the estimates into question. These standards shall take account of business cycles and similar systematic variability in default experience. Where realised values continue to be higher than expected values, institutions shall revise estimates upward to reflect their default and loss experience;

▼C2

Sub-Section 4

Requirements for equity exposures under the internal models approach

Article 186

Own funds requirement and risk quantification

For the purpose of calculating own funds requirements institutions shall meet the following standards:

(a) the estimate of potential loss shall be robust to adverse market movements relevant to the long-term risk profile of the institution's specific holdings. The data used to represent return distributions shall reflect the longest sample period for which data is available and meaningful in representing the risk profile of the institution's specific equity exposures. The data used shall be sufficient to provide conservative, statistically reliable and robust loss estimates that are not based purely on subjective or judgmental considerations. The shock employed shall provide a conservative estimate of potential losses over a relevant long-term market or business cycle. The institution shall combine empirical analysis of available data with adjustments based on a variety of factors in order to attain model outputs that achieve appropriate realism and conservatism. In constructing value at risk (VaR) models estimating potential quarterly losses, institutions may use quarterly data or convert shorter horizon period data to a quarterly equivalent using an analytically appropriate method supported by empirical evidence and through a well-developed and documented thought process and analysis. Such an approach shall be applied conservatively and consistently over time. Where only limited relevant data is available the institution shall add appropriate margins of conservatism;

(b) the models used shall capture adequately all of the material risks embodied in equity returns including both the general market risk and specific risk exposure of the institution's equity portfolio. The internal models shall adequately explain historical price variation, capture both the magnitude and changes in the composition of potential concentrations, and be robust to adverse market environments. The population of risk exposures represented in the data used for estimation shall be closely matched to or at least comparable with those of the institution's equity exposures;

(c) the internal model shall be appropriate for the risk profile and complexity of an institution's equity portfolio. Where an institution has material holdings with values that are highly non-linear in nature the internal models shall be designed to capture appropriately the risks associated with such instruments;

(d) mapping of individual positions to proxies, market indices, and risk factors shall be plausible, intuitive, and conceptually sound;

▼C2

(e) institutions shall demonstrate through empirical analyses the appropriateness of risk factors, including their ability to cover both general and specific risk;

(f) the estimates of the return volatility of equity exposures shall incorporate relevant and available data, information, and methods. Independently reviewed internal data or data from external sources including pooled data shall be used;

(g) a rigorous and comprehensive stress-testing programme shall be in place.

Article 187

Risk management process and controls

With regard to the development and use of internal models for own funds requirement purposes, institutions shall establish policies, procedures, and controls to ensure the integrity of the model and modelling process. These policies, procedures, and controls shall include the following:

(a) full integration of the internal model into the overall management information systems of the institution and in the management of the non-trading book equity portfolio. Internal models shall be fully integrated into the institution's risk management infrastructure if they are particularly used in measuring and assessing equity portfolio performance including the risk-adjusted performance, allocating economic capital to equity exposures and evaluating overall capital adequacy and the investment management process;

(b) established management systems, procedures, and control functions for ensuring the periodic and independent review of all elements of the internal modelling process, including approval of model revisions, vetting of model inputs, and review of model results, such as direct verification of risk computations. These reviews shall assess the accuracy, completeness, and appropriateness of model inputs and results and focus on both finding and limiting potential errors associated with known weaknesses and identifying unknown model weaknesses. Such reviews may be conducted by an internal independent unit, or by an independent external third party;

(c) adequate systems and procedures for monitoring investment limits and the risk exposures of equity exposures;

(d) the units responsible for the design and application of the model shall be functionally independent from the units responsible for managing individual investments;

(e) parties responsible for any aspect of the modelling process shall be adequately qualified. Management shall allocate sufficient skilled and competent resources to the modelling function.

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Article 188

Validation and documentation

Institutions shall have robust systems in place to validate the accuracy and consistency of their internal models and modelling processes. All material elements of the internal models and the modelling process and validation shall be documented.

The validation and documentation of institutions' internal models and modelling processes shall be subject to the following requirements:

(a) institutions shall use the internal validation process to assess the performance of its internal models and processes in a consistent and meaningful way;

(b) the methods and data used for quantitative validation shall be consistent over time. Changes in estimation and validation methods and changes to data sources and periods covered, shall be documented;

(c) institutions shall regularly compare actual equity returns computed using realised and unrealised gains and losses with modelled estimates. Such comparisons shall make use of historical data that cover as long a period as possible. The institution shall document the methods and data used in such comparisons. This analysis and documentation shall be updated at least annually;

(d) institutions shall make use of other quantitative validation tools and comparisons with external data sources. The analysis shall be based on data that are appropriate to the portfolio, are updated regularly, and cover a relevant observation period. Institutions' internal assessments of the performance of their models shall be based on as long a period as possible;

(e) institutions shall have sound internal standards for addressing situations where comparison of actual equity returns with the models estimates calls the validity of the estimates or of the models as such into question. These standards shall take account of business cycles and similar systematic variability in equity returns. All adjustments made to internal models in response to model reviews shall be documented and consistent with the institution's model review standards;

(f) the internal model and the modelling process shall be documented, including the responsibilities of parties involved in the modelling, and the model approval and model review processes.

▼C2

Sub-Section 5

Internal governance and oversight

Article 189

Corporate Governance

1. All material aspects of the rating and estimation processes shall be approved by the institution's management body or a designated committee thereof and senior management. These parties shall possess a general understanding of the rating systems of the institution and detailed comprehension of its associated management reports.

2. Senior management shall be subject to the following requirements:

(a) they shall provide notice to the management body or a designated committee thereof of material changes or exceptions from established policies that will materially impact the operations of the institution's rating systems;

(b) they shall have a good understanding of the rating systems designs and operations;

(c) they shall ensure, on an ongoing basis that the rating systems are operating properly.

Senior management shall be regularly informed by the credit risk control units about the performance of the rating process, areas needing improvement, and the status of efforts to improve previously identified deficiencies.

3. Internal ratings-based analysis of the institution's credit risk profile shall be an essential part of the management reporting to these parties. Reporting shall include at least risk profile by grade, migration across grades, estimation of the relevant parameters per grade, and comparison of realised default rates, and to the extent that own estimates are used of realised LGDs and realised conversion factors against expectations and stress-test results. Reporting frequencies shall depend on the significance and type of information and the level of the recipient.

Article 190

Credit risk control

1. The credit risk control unit shall be independent from the personnel and management functions responsible for originating or renewing exposures and report directly to senior management. The unit shall be responsible for the design or selection, implementation, oversight and performance of the rating systems. It shall regularly produce and analyse reports on the output of the rating systems.

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2. The areas of responsibility for the credit risk control unit or units shall include:

(a) testing and monitoring grades and pools;

(b) production and analysis of summary reports of the institution's rating systems;

(c) implementing procedures to verify that grade and pool definitions are consistently applied across departments and geographic areas;

(d) reviewing and documenting any changes to the rating process, including the reasons for the changes;

(e) reviewing the rating criteria to evaluate if they remain predictive of risk. Changes to the rating process, criteria or individual rating parameters shall be documented and retained;

(f) active participation in the design or selection, implementation and validation of models used in the rating process;

(g) oversight and supervision of models used in the rating process;

(h) ongoing review and alterations to models used in the rating process.

3. Institutions using pooled data in accordance with Article 179(2) may outsource the following tasks:

(a) production of information relevant to testing and monitoring grades and pools;

(b) production of summary reports of the institution's rating systems;

(c) production of information relevant to a review of the rating criteria to evaluate if they remain predictive of risk;

(d) documentation of changes to the rating process, criteria or individual rating parameters;

(e) production of information relevant to ongoing review and alterations to models used in the rating process.

4. Institutions making use of paragraph 3 shall ensure that the competent authorities have access to all relevant information from the third party that is necessary for examining compliance with the requirements and that the competent authorities may perform on-site examinations to the same extent as within the institution.

▼C2

Article 191

Internal Audit

Internal audit or another comparable independent auditing unit shall review at least annually the institution's rating systems and its operations, including the operations of the credit function and the estimation of PDs, LGDs, ELs and conversion factors. Areas of review shall include adherence to all applicable requirements.

CHAPTER 4

Credit risk mitigation

Section 1

Definitions and general requirements

Article 192

Definitions

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

(1) ‘lending institution’ means the institution which has the exposure in question;

(2) ‘secured lending transaction’ means any transaction giving rise to an exposure secured by collateral which does not include a provision conferring upon the institution the right to receive margin at least daily;

(3) ‘capital market-driven transaction’ means any transaction giving rise to an exposure secured by collateral which includes a provision conferring upon the institution the right to receive margin at least daily;

(4) ‘underlying CIU’ means a CIU in the shares or units of which another CIU has invested.

Article 193

Principles for recognising the effect of credit risk mitigation techniques

1. No exposure in respect of which an institution obtains credit risk mitigation shall produce a higher risk-weighted exposure amount or expected loss amount than an otherwise identical exposure in respect of which an institution has no credit risk mitigation.

2. Where the risk-weighted exposure amount already takes account of credit protection under Chapter 2 or Chapter 3, as applicable, institutions shall not take into account that credit protection in the calculations under this Chapter.

3. Where the provisions in Sections 2 and 3 are met, institutions may amend the calculation of risk-weighted exposure amounts under the Standardised Approach and the calculation of risk-weighted exposure amounts and expected loss amounts under the IRB Approach in accordance with the provisions of Sections 4, 5 and 6.

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4. Institutions shall treat cash, securities or commodities purchased, borrowed or received under a repurchase transaction or securities or commodities lending or borrowing transaction as collateral.

5. Where an institution calculating risk-weighted exposure amounts under the Standardised Approach has more than one form of credit risk mitigation covering a single exposure it shall do both of the following:

(a) subdivide the exposure into parts covered by each type of credit risk mitigation tool;

(b) calculate the risk-weighted exposure amount for each part obtained in point (a) separately in accordance with the provisions of Chapter 2 and this Chapter.

6. When an institution calculating risk-weighted exposure amounts under the Standardised Approach covers a single exposure with credit protection provided by a single protection provider and that protection has differing maturities, it shall do both of the following:

(a) subdivide the exposure into parts covered by each credit risk mitigation tool;

(b) calculate the risk-weighted exposure amount for each part obtained in point (a) separately in accordance with the provisions of Chapter 2 and this Chapter.

Article 194

Principles governing the eligibility of credit risk mitigation techniques

1. The technique used to provide the credit protection together with the actions and steps taken and procedures and policies implemented by the lending institution shall be such as to result in credit protection arrangements which are legally effective and enforceable in all relevant jurisdictions.

The lending institution shall provide, upon request of the competent authority, the most recent version of the independent, written and reasoned legal opinion or opinions that it used to establish whether its credit protection arrangement or arrangements meet the condition laid down in the first subparagraph.

2. The lending institution shall take all appropriate steps to ensure the effectiveness of the credit protection arrangement and to address the risks related to that arrangement.

3. Institutions may recognise funded credit protection in the calculation of the effect of credit risk mitigation only where the assets relied upon for protection meet both of the following conditions:

▼C2

(a) they are included in the list of eligible assets set out in Articles 197 to 200, as applicable;

(b) they are sufficiently liquid and their value over time sufficiently stable to provide appropriate certainty as to the credit protection achieved having regard to the approach used to calculate risk-weighted exposure amounts and to the degree of recognition allowed.

4. Institutions may recognise funded credit protection in the calculation of the effect of credit risk mitigation only where the lending institution has the right to liquidate or retain, in a timely manner, the assets from which the protection derives in the event of the default, insolvency or bankruptcy — or other credit event set out in the transaction documentation — of the obligor and, where applicable, of the custodian holding the collateral. The degree of correlation between the value of the assets relied upon for protection and the credit quality of the obligor shall not be too high.

5. In the case of unfunded credit protection, a protection provider shall qualify as an eligible protection provider only where the protection provider is included in the list of eligible protection providers set out in Article 201 or 202, as applicable.

6. In the case of unfunded credit protection, a protection agreement shall qualify as an eligible protection agreement only where it meets both the following conditions:

(a) it is included in the list of eligible protection agreements set out in Articles 203 and 204(1);

(b) it is legally effective and enforceable in the relevant jurisdictions, to provide appropriate certainty as to the credit protection achieved having regard to the approach used to calculate risk-weighted exposure amounts and to the degree of recognition allowed;

(c) the protection provider meets the criteria laid down in paragraph 5.

7. Credit protection shall comply with the requirements set out in Section 3, as applicable.

8. An institution shall be able to demonstrate to competent authorities that it has adequate risk management processes to control those risks to which it may be exposed as a result of carrying out credit risk mitigation practices.

9. Notwithstanding the fact that credit risk mitigation has been taken into account for the purposes of calculating risk-weighted exposure amounts and, where applicable, expected loss amounts, institutions shall continue to undertake a full credit risk assessment of the underlying exposure and be in a position to demonstrate the fulfilment of this requirement to the competent authorities. In the case of repurchase transactions and securities lending or commodities lending or borrowing transactions the underlying exposure shall, for the purposes of this paragraph only, be deemed to be the net amount of the exposure.

▼C2

10. EBA shall develop draft regulatory technical standards to specify what constitutes sufficiently liquid assets and when asset values can be considered as sufficiently stable for the purpose of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 30 September 2014.

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

Section 2

Eligible forms of credit risk mitigation

Sub-Section 1

Funded credit protection

Article 195

On-balance sheet netting

An institution may use on-balance sheet netting of mutual claims between itself and its counterparty as an eligible form of credit risk mitigation.

Without prejudice to Article 196, eligibility is limited to reciprocal cash balances between the institution and the counterparty. Institutions may amend risk-weighted exposure amounts and, as relevant, expected loss amounts only for loans and deposits that they have received themselves and that are subject to an on-balance sheet netting agreement.

Article 196

Master netting agreements covering repurchase transactions or securities or commodities lending or borrowing transactions or other capital market-driven transactions

Institutions adopting the Financial Collateral Comprehensive Method set out in Article 223 may take into account the effects of bilateral netting contracts covering repurchase transactions, securities or commodities lending or borrowing transactions, or other capital market-driven transactions with a counterparty. Without prejudice to Article 299, the collateral taken and securities or commodities borrowed within such agreements or transactions shall comply with the eligibility requirements for collateral set out in Articles 197 and 198.

Article 197

Eligibility of collateral under all approaches and methods

1. Institutions may use the following items as eligible collateral under all approaches and methods:

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(a) cash on deposit with, or cash assimilated instruments held by, the lending institution;

(b) debt securities issued by central governments or central banks, which securities have a credit assessment by an ECAI or export credit agency recognised as eligible for the purposes of Chapter 2 which has been determined by EBA to be associated with credit quality step 4 or above under the rules for the risk weighting of exposures to central governments and central banks under Chapter 2;

▼M9

(c) debt securities issued by institutions or investment firms, which securities have a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions under Chapter 2;

▼C2

(d) debt securities issued by other entities which securities have a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to corporates under Chapter 2;

(e) debt securities with a short-term credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of short term exposures under Chapter 2;

(f) equities or convertible bonds that are included in a main index;

(g) gold;

▼M5

(h) securitisation positions that are not resecuritisation positions and which are subject to a 100 % risk weight or lower in accordance with Article 261 to Article 264.

▼C2

2. For the purposes of point (b) of paragraph 1, ‘debt securities issued by central governments or central banks’ shall include all the following:

(a) debt securities issued by regional governments or local authorities, exposures to which are treated as exposures to the central government in whose jurisdiction they are established under Article 115(2);

(b) debt securities issued by public sector entities which are treated as exposures to central governments in accordance with Article 116(4);

(c) debt securities issued by multilateral development banks to which a 0 % risk weight is assigned under Article 117(2);

(d) debt securities issued by international organisations which are assigned a 0 % risk weight under Article 118.

▼C2

3. For the purposes of point (c) of paragraph 1, ‘debt securities issued by institutions’ shall include all the following:

(a) debt securities issued by regional governments or local authorities other than those debt securities referred to in point (a) of paragraph 2;

(b) debt securities issued by public sector entities, exposures to which are treated in accordance with Article 116(1) and (2);

(c) debt securities issued by multilateral development banks other than those to which a 0 % risk weight is assigned under Article 117(2).

▼M9

4. An institution may use debt securities that are issued by other institutions or investment firms and that do not have a credit assessment by an ECAI as eligible collateral where those debt securities fulfil all the following criteria:

▼C2

(a) they are listed on a recognised exchange;

(b) they qualify as senior debt;

(c) all other rated issues by the issuing institution of the same seniority have a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions or short term exposures under Chapter 2;

(d) the lending institution has no information to suggest that the issue would justify a credit assessment below that indicated in point (c);

(e) the market liquidity of the instrument is sufficient for these purposes.

5. Institutions may use units or shares in CIUs as eligible collateral where all the following conditions are satisfied:

(a) the units or shares have a daily public price quote;

(b) the CIUs are limited to investing in instruments that are eligible for recognition under paragraphs 1 and 4;

(c) the CIUs meet the conditions laid down in Article 132(3).

Where a CIU invests in shares or units of another CIU, conditions laid down in points (a) to (c) of the first subparagraph shall apply equally to any such underlying CIU.

The use by a CIU of derivative instruments to hedge permitted investments shall not prevent units or shares in that undertaking from being eligible as collateral.

▼C2

6. For the purposes of paragraph 5, where a CIU ('the original CIU') or any of its underlying CIUs are not limited to investing in instruments that are eligible under paragraphs 1 and 4, institutions may use units or shares in that CIU as collateral to an amount equal to the value of the eligible assets held by that CIU under the assumption that that CIU or any of its underlying CIUs have invested in non-eligible assets to the maximum extent allowed under their respective mandates.

Where any underlying CIU has underlying CIUs of its own, institutions may use units or shares in the original CIU as eligible collateral provided that they apply the methodology laid down in the first subparagraph.

Where non-eligible assets can have a negative value due to liabilities or contingent liabilities resulting from ownership, institutions shall do both of the following:

(a) calculate the total value of the non-eligible assets;

(b) where the amount obtained under point (a) is negative, subtract the absolute value of that amount from the total value of the eligible assets.

7. With regard to points (b) to (e) of paragraph 1, where a security has two credit assessments by ECAIs, institutions shall apply the less favourable assessment. Where a security has more than two credit assessments by ECAIs, institutions shall apply the two most favourable assessments. Where the two most favourable credit assessments are different, institutions shall apply the less favourable of the two.

8. ESMA shall develop draft implementing technical standards to specify the following:

(a) the main indices referred to in point (f) of paragraph 1 of this Article, in point (a) of Article 198(1), in Article 224(1) and (4), and in point (e) of Article 299(2);

(b) the recognised exchanges referred to in point (a) of paragraph 4 of this Article, in point (a) of Article 198(1), in Article 224(1) and (4), in point (e) of Article 299(2), in point (k) of Article 400(2), in point (e) of Article 416(3), in point (c) of Article 428(1), and in point 12 of Annex III in accordance with the conditions laid down in point (72) of Article 4(1).

ESMA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

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Article 198

Additional eligibility of collateral under the Financial Collateral Comprehensive Method

1. In addition to the collateral established in Article 197, where an institution uses the Financial Collateral Comprehensive Method set out in Article 223, that institution may use the following items as eligible collateral:

(a) equities or convertible bonds not included in a main index but traded on a recognised exchange;

(b) units or shares in CIUs where both the following conditions are met:

(i) the units or shares have a daily public price quote;

(ii) the CIU is limited to investing in instruments that are eligible for recognition under Article 197(1) and (4) and the items mentioned in point (a) of this subparagraph.

In the case a CIU invests in units or shares of another CIU, conditions (a) and (b) of this paragraph equally apply to any such underlying CIU.

The use by a CIU of derivative instruments to hedge permitted investments shall not prevent units or shares in that undertaking from being eligible as collateral.

2. Where the CIU or any underlying CIU are not limited to investing in instruments that are eligible for recognition under Article 197(1) and (4) and the items mentioned in point (a) of paragraph 1 of this Article, institutions may use units or shares in that CIU as collateral to an amount equal to the value of the eligible assets held by that CIU under the assumption that that CIU or any of its underlying CIUs have invested in non-eligible assets to the maximum extent allowed under their respective mandates.

Where non-eligible assets can have a negative value due to liabilities or contingent liabilities resulting from ownership, institutions shall do both of the following:

(a) calculate the total value of the non-eligible assets;

(b) where the amount obtained under point (a) is negative, subtract the absolute value of that amount from the total value of the eligible assets.

Article 199

Additional eligibility for collateral under the IRB Approach

1. In addition to the collateral referred to in Articles 197 and 198, institutions that calculate risk-weighted exposure amounts and expected loss amounts under the IRB Approach may also use the following forms of collateral:

▼C2

(a) immovable property collateral in accordance with paragraphs 2, 3 and 4;

(b) receivables in accordance with paragraph 5;

(c) other physical collateral in accordance with paragraphs 6 and 8;

(d) leasing in accordance with paragraph 7.

2. Unless otherwise specified under Article 124(2), institutions may use as eligible collateral residential property which is or will be occupied or let by the owner, or the beneficial owner in the case of personal investment companies, and commercial immovable property, including offices and other commercial premises, where both the following conditions are met:

(a) the value of the property does not materially depend upon the credit quality of the obligor. Institutions may exclude situations where purely macro-economic factors affect both the value of the property and the performance of the borrower from their determination of the materiality of such dependence;

(b) the risk of the borrower does not materially depend upon the performance of the underlying property or project, but on the underlying capacity of the borrower to repay the debt from other sources, and as a consequence the repayment of the facility does not materially depend on any cash flow generated by the underlying property serving as collateral.

3. Institutions may derogate from point (b) of paragraph 2 for exposures secured by residential property situated within the territory of a Member State, where the competent authority of that Member State has published evidence showing that a well-developed and long-established residential property market is present in that territory with loss rates that do not exceed any of the following limits:

►C3 (a) losses stemming from loans collateralised by residential property up to 80 % of the market value or 80 % of the mortgage lending value, unless ◄ otherwise provided under Article 124(2), do not exceed 0,3 % of the outstanding loans collateralised by residential property in any given year;

(b) overall losses stemming from loans collateralised by residential property do not exceed 0,5 % of the outstanding loans collateralised by residential property in any given year.

Where either of the conditions in points (a) and (b) of the first subparagraph is not met in a given year, institutions shall not use the treatment set out in that subparagraph until both conditions are satisfied in a subsequent year.

4. Institutions may derogate from point (b) of paragraph 2 for commercial immovable property situated within the territory of a Member State, where the competent authority of that Member State has published evidence showing that a well-developed and long-established commercial immovable property market is present in that territory with loss rates that do not exceed any of the following limits:

▼C2

►C3 (a) losses stemming from loans collateralised by commercial immovable property up to 50 % of the market value or 60 % of the mortgage lending value do not exceed ◄ 0,3 % of the outstanding loans collateralised by commercial immovable property in any given year;

(b) overall losses stemming from loans collateralised by commercial immovable property do not exceed 0,5 % of the outstanding loans collateralised by commercial immovable property in any given year.

Where either of the conditions in points (a) and (b) of the first subparagraph is not met in a given year, institutions shall not use the treatment set out in that subparagraph until both conditions are satisfied in a subsequent year.

5. Institutions may use as eligible collateral amounts receivable linked to a commercial transaction or transactions with an original maturity of less than or equal to one year. Eligible receivables do not include those associated with securitisations, sub-participations or credit derivatives or amounts owed by affiliated parties.

6. Competent authorities shall permit an institution to use as eligible collateral physical collateral of a type other than those indicated in paragraphs 2, 3 and 4 where all the following conditions are met:

(a) there are liquid markets, evidenced by frequent transactions taking into account the asset type, for the disposal of the collateral in an expeditious and economically efficient manner. Institutions shall carry out the assessment of this condition periodically and where information indicates material changes in the market;

(b) there are well-established, publicly available market prices for the collateral. Institutions may consider market prices as well-established where they come from reliable sources of information such as public indices and reflect the price of the transactions under normal conditions. Institutions may consider market prices as publicly available, where these prices are disclosed, easily accessible, and obtainable regularly and without any undue administrative or financial burden;

(c) the institution analyses the market prices, time and costs required to realise the collateral and the realised proceeds from the collateral;

(d) the institution demonstrates that the realised proceeds from the collateral are not below 70 % of the collateral value in more than 10 % of all liquidations for a given type of collateral. Where there is material volatility in the market prices, the institution demonstrates to the satisfaction of the competent authorities that its valuation of the collateral is sufficiently conservative.

Institutions shall document the fulfilment of the conditions specified in points (a) to (d) of the first subparagraph and those specified in Article 210.

▼C2

7. Subject to the provisions of Article 230(2), where the requirements set out in Article 211 are met, exposures arising from transactions whereby an institution leases property to a third party may be treated in the same manner as loans collateralised by the type of property leased.

8. EBA shall disclose a list of types of physical collateral for which institutions can assume that the conditions referred to in points (a) and (b) of paragraph 6 are met.

Article 200

Other funded credit protection

Institutions may use the following other funded credit protection as eligible collateral:

(a) cash on deposit with, or cash assimilated instruments held by, a third party institution in a non-custodial arrangement and pledged to the lending institution;

(b) life insurance policies pledged to the lending institution;

▼M9

(c) instruments issued by a third-party institution or by an investment firm which are to be repurchased by that institution or by that investment firm on request.

▼C2

Sub-Section 2

Unfunded credit protection

Article 201

Eligibility of protection providers under all approaches

1. Institutions may use the following parties as eligible providers of unfunded credit protection:

(a) central governments and central banks;

(b) regional governments or local authorities;

(c) multilateral development banks;

(d) international organisations exposures to which a 0 % risk weight under Article 117 is assigned;

(e) public sector entities, claims on which are treated in accordance with Article 116;

(f) institutions, and financial institutions for which exposures to the financial institution are treated as exposures to institutions in accordance with Article 119(5);

(g) other corporate entities, including parent undertakings, subsidiaries and affiliated corporate entities of the institution, where either of the following conditions is met:

▼C2

(i) those other corporate entities have a credit assessment by an ECAI;

(ii) in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts under the IRB Approach, those other corporate entities do not have a credit assessment by a recognised ECAI and are internally rated by the institution;

▼M8

(h) qualifying central counterparties.

▼C2

2. Where institutions calculate risk-weighted exposure amounts and expected loss amounts under the IRB Approach, to be eligible as a provider of unfunded credit protection a guarantor shall be internally rated by the institution in accordance with the provisions of Section 6 of Chapter 3.

Competent authorities shall publish and maintain the list of those financial institutions that are eligible providers of unfunded credit protection under point (f) of paragraph 1, or the guiding criteria for identifying such eligible providers of unfunded credit protection, together with a description of the applicable prudential requirements, and share their list with other competent authorities in accordance with Article 117 of Directive 2013/36/EU.

Article 202

Eligibility of protection providers under the IRB Approach which qualify for the treatment set out in Article 153(3)

▼M9

An institution may use institutions, investment firms, insurance and reinsurance undertakings and export credit agencies as eligible providers of unfunded credit protection which qualify for the treatment set out in Article 153(3) where they meet all the following conditions:

▼C2

(a) they have sufficient expertise in providing unfunded credit protection;

(b) they are regulated in a manner equivalent to the rules laid down in this Regulation, or had, at the time the credit protection was provided, a credit assessment by a recognised ECAI which had been determined by EBA to be associated with credit quality step 3 or above in accordance with the rules for the risk weighting of exposures to corporates set out in Chapter 2;

(c) they had, at the time the credit protection was provided, or for any period of time thereafter, an internal rating with a PD equivalent to or lower than that associated with credit quality step 2 or above in accordance with the rules for the risk weighting of exposures to corporates set out in Chapter 2;

(d) they have an internal rating with a PD equivalent to or lower than that associated with credit quality step 3 or above in accordance with the rules for the risk weighting of exposures to corporates set out in Chapter 2.

▼C2

For the purpose of this Article, credit protection provided by export credit agencies shall not benefit from any explicit central government counter-guarantee.

Article 203

Eligibility of guarantees as unfunded credit protection

Institutions may use guarantees as eligible unfunded credit protection.

Sub-Section 3

Types of derivatives

Article 204

Eligible types of credit derivatives

1. Institutions may use the following types of credit derivatives, and instruments that may be composed of such credit derivatives or that are economically effectively similar, as eligible credit protection:

(a) credit default swaps;

(b) total return swaps;

(c) credit linked notes to the extent of their cash funding.

Where an institution buys credit protection through a total return swap and records the net payments received on the swap as net income, but does not record the offsetting deterioration in the value of the asset that is protected either through reductions in fair value or by an addition to reserves, that credit protection does not qualify as eligible credit protection.

2. Where an institution conducts an internal hedge using a credit derivative, in order for the credit protection to qualify as eligible credit protection for the purposes of this Chapter, the credit risk transferred to the trading book shall be transferred out to a third party or parties.

Where an internal hedge has been conducted in accordance with the first subparagraph and the requirements in this Chapter have been met, institutions shall apply the rules set out in Sections 4 to 6 for the calculation of risk-weighted exposure amounts and expected loss amounts where they acquire unfunded credit protection.

▼C2

Section 3

Requirements

Sub-Section 1

Funded credit protection

Article 205

Requirements for on-balance sheet netting agreements other than master netting agreements referred to in Article 206

On-balance sheet netting agreements other than master netting agreements referred to in Article 206 shall qualify as an eligible form of credit risk mitigation where all the following conditions are met:

(a) those agreements are legally effective and enforceable in all relevant jurisdictions, including in the event of the insolvency or bankruptcy of a counterparty;

(b) institutions are able to determine at any time the assets and liabilities that are subject to those agreements;

(c) institutions monitor and control the risks associated with the termination of the credit protection on an ongoing basis;

(d) institutions monitor and control the relevant exposures on a net basis and do so on an ongoing basis.

Article 206

Requirements for master netting agreements covering repurchase transactions or securities or commodities lending or borrowing transactions or other capital market driven transactions

Master netting agreements covering repurchase transactions, securities or commodities lending or borrowing transactions or other capital market driven transactions shall qualify as an eligible form of credit risk mitigation where the collateral provided under those agreements meets all the requirements laid down in Article 207(2) to (4) and where all the following conditions are met:

(a) they are legally effective and enforceable in all relevant jurisdictions, including in the event of the bankruptcy or insolvency of the counterparty;

(b) they give the non-defaulting party the right to terminate and close-out in a timely manner all transactions under the agreement upon the event of default, including in the event of the bankruptcy or insolvency of the counterparty;

(c) they provide for the netting of gains and losses on transactions closed out under an agreement so that a single net amount is owed by one party to the other.

▼C2

Article 207

Requirements for financial collateral

1. Under all approaches and methods, financial collateral and gold shall qualify as eligible collateral where all the requirements laid down in paragraphs 2 to 4 are met.

2. The credit quality of the obligor and the value of the collateral shall not have a material positive correlation. Where the value of the collateral is reduced significantly, this shall not alone imply a significant deterioration of the credit quality of the obligor. Where the credit quality of the obligor becomes critical, this shall not alone imply a significant reduction in the value of the collateral.

Securities issued by the obligor, or any related group entity, shall not qualify as eligible collateral. This notwithstanding, the obligor's own issues of covered bonds falling within the terms of Article 129 qualify as eligible collateral when they are posted as collateral for a repurchase transaction, provided that they comply with the condition set out in the first subparagraph.

3. Institutions shall fulfil any contractual and statutory requirements in respect of, and take all steps necessary to ensure, the enforceability of the collateral arrangements under the law applicable to their interest in the collateral.

Institutions shall have conducted sufficient legal review confirming the enforceability of the collateral arrangements in all relevant jurisdictions. They shall re-conduct such review as necessary to ensure continuing enforceability.

4. Institutions shall fulfil all the following operational requirements:

(a) they shall properly document the collateral arrangements and have in place clear and robust procedures for the timely liquidation of collateral;

(b) they shall use robust procedures and processes to control risks arising from the use of collateral, including risks of failed or reduced credit protection, valuation risks, risks associated with the termination of the credit protection, concentration risk arising from the use of collateral and the interaction with the institution's overall risk profile;

(c) they shall have in place documented policies and practices concerning the types and amounts of collateral accepted;

(d) they shall calculate the market value of the collateral, and revalue it accordingly, at least once every six months and whenever they have reason to believe that a significant decrease in the market value of the collateral has occurred;

(e) where the collateral is held by a third party, they shall take reasonable steps to ensure that the third party segregates the collateral from its own assets;

▼C2

(f) they shall ensure that they devote sufficient resources to the orderly operation of margin agreements with OTC derivatives and securities-financing counterparties, as measured by the timeliness and accuracy of their outgoing margin calls and response time to incoming margin calls;

(g) they shall have in place collateral management policies to control, monitor and report the following:

(i) the risks to which margin agreements expose them;

(ii) the concentration risk to particular types of collateral assets;

(iii) the reuse of collateral including the potential liquidity shortfalls resulting from the reuse of collateral received from counterparties;

(iv) the surrender of rights on collateral posted to counterparties.

5. In addition to meeting all the requirements set out in paragraphs 2 to 4, for financial collateral to qualify as eligible collateral under the Financial Collateral Simple Method the residual maturity of the protection shall be at least as long as the residual maturity of the exposure.

Article 208

Requirements for immovable property collateral

1. Immovable property shall qualify as eligible collateral only where all the requirements laid down in paragraphs 2 to 5 are met.

2. The following requirements on legal certainly shall be met:

(a) a mortgage or charge is enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement and shall be properly filed on a timely basis;

(b) all legal requirements for establishing the pledge have been fulfilled;

(c) the protection agreement and the legal process underpinning it enable the institution to realise the value of the protection within a reasonable timeframe.

3. The following requirements on monitoring of property values and on property valuation shall be met:

(a) institutions monitor the value of the property on a frequent basis and at a minimum once every year for commercial immovable property and once every three years for residential property. Institutions carry out more frequent monitoring where the market is subject to significant changes in conditions;

▼C2

(b) the property valuation is reviewed when information available to institutions indicates that the value of the property may have declined materially relative to general market prices and that review is carried out by a valuer who possesses the necessary qualifications, ability and experience to execute a valuation and who is independent from the credit decision process. For loans exceeding EUR 3 million or 5 % of the own funds of an institution, the property valuation shall be reviewed by such valuer at least every three years.

Institutions may use statistical methods to monitor the value of the immovable property and to identify immovable property that needs revaluation.

4. Institutions shall clearly document the types of residential property and commercial immovable property they accept and their lending policies in this regard.

5. Institutions shall have in place procedures to monitor that the immovable property taken as credit protection is adequately insured against the risk of damage.

Article 209

Requirements for receivables

1. Receivables shall qualify as eligible collateral where all the requirements laid down in paragraphs 2 and 3 are met.

2. The following requirements on legal certainty shall be met:

(a) the legal mechanism by which the collateral is provided to a lending institution shall be robust and effective and ensure that that institution has clear rights over the collateral including the right to the proceeds from the sale of the collateral;

(b) institutions shall take all steps necessary to fulfil local requirements in respect of the enforceability of security interest. Lending institutions shall have a first priority claim over the collateral although such claims may still be subject to the claims of preferential creditors provided for in legislative provisions;

(c) institutions shall have conducted sufficient legal review confirming the enforceability of the collateral arrangements in all relevant jurisdictions;

(d) institutions shall properly document their collateral arrangements and shall have in place clear and robust procedures for the timely collection of collateral;

(e) institutions shall have in place procedures that ensure that any legal conditions required for declaring the default of a borrower and timely collection of collateral are observed;

▼C2

(f) in the event of a borrower's financial distress or default, institutions shall have legal authority to sell or assign the receivables to other parties without consent of the receivables obligors.

3. The following requirements on risk management shall be met:

(a) an institution shall have in place a sound process for determining the credit risk associated with the receivables. Such a process shall include analyses of a borrower's business and industry and the types of customers with whom that borrower does business. Where the institution relies on its borrowers to ascertain the credit risk of the customers, the institution shall review the borrowers' credit practices to ascertain their soundness and credibility;

(b) the difference between the amount of the exposure and the value of the receivables shall reflect all appropriate factors, including the cost of collection, concentration within the receivables pool pledged by an individual borrower, and potential concentration risk within the institution's total exposures beyond that controlled by the institution's general methodology. Institutions shall maintain a continuous monitoring process appropriate to the receivables. They shall also review, on a regular basis, compliance with loan covenants, environmental restrictions, and other legal requirements;

(c) receivables pledged by a borrower shall be diversified and not be unduly correlated with that borrower. Where there is material positive correlation, institutions shall take into account the attendant risks in the setting of margins for the collateral pool as a whole;

(d) institutions shall not use receivables from affiliates of a borrower, including subsidiaries and employees, as eligible credit protection;

(e) institution shall have in place a documented process for collecting receivable payments in distressed situations. Institutions shall have in place the requisite facilities for collection even when they normally rely on their borrowers for collections.

Article 210

Requirements for other physical collateral

Physical collateral other than immovable property collateral shall qualify as eligible collateral under the IRB Approach where all the following conditions are met:

(a) the collateral arrangement under which the physical collateral is provided to an institution shall be legally effective and enforceable in all relevant jurisdictions and shall enable that institution to realise the value of the collateral within a reasonable timeframe;

▼C2

(b) with the sole exception of permissible first priority claims referred to in Article 209(2)(b), only first liens on, or charges over, collateral shall qualify as eligible collateral and an institution shall have priority over all other lenders to the realised proceeds of the collateral;

(c) institutions shall monitor the value of the collateral on a frequent basis and at least once every year. Institutions shall carry out more frequent monitoring where the market is subject to significant changes in conditions;

(d) the loan agreement shall include detailed descriptions of the collateral as well as detailed specifications of the manner and frequency of revaluation;

(e) institutions shall clearly document in internal credit policies and procedures available for examination the types of physical collateral they accept and the policies and practices they have in place in respect of the appropriate amount of each type of collateral relative to the exposure amount;

(f) institutions' credit policies with regard to the transaction structure shall address the following:

(i) appropriate collateral requirements relative to the exposure amount;

(ii) the ability to liquidate the collateral readily;

(iii) the ability to establish objectively a price or market value;

(iv) the frequency with which the value can readily be obtained, including a professional appraisal or valuation;

(v) the volatility or a proxy of the volatility of the value of the collateral.

(g) when conducting valuation and revaluation, institutions shall take fully into account any deterioration or obsolescence of the collateral, paying particular attention to the effects of the passage of time on fashion- or date-sensitive collateral;

(h) institutions shall have the right to physically inspect the collateral. They shall also have in place policies and procedures addressing their exercise of the right to physical inspection;

(i) the collateral taken as protection shall be adequately insured against the risk of damage and institutions shall have in place procedures to monitor this.

Article 211

Requirements for treating lease exposures as collateralised

Institutions shall treat exposures arising from leasing transactions as collateralised by the type of property leased, where all the following conditions are met:

▼C2

(a) the conditions set out in Article 208 or 210, as applicable, for the type of property leased to qualify as eligible collateral are met;

(b) the lessor has in place robust risk management with respect to the use to which the leased asset is put, its location, its age and the planned duration of its use, including appropriate monitoring of the value of the security;

(c) the lessor has legal ownership of the asset and is able to exercise its rights as owner in a timely fashion;

(d) where this has not already been ascertained in calculating the LGD level, the difference between the value of the unamortised amount and the market value of the security is not so large as to overstate the credit risk mitigation attributed to the leased assets.

Article 212

Requirements for other funded credit protection

1. Cash on deposit with, or cash assimilated instruments held by, a third party institution shall be eligible for the treatment set out in Article 232(1), where all the following conditions are met:

(a) the borrower's claim against the third party institution is openly pledged or assigned to the lending institution and such pledge or assignment is legally effective and enforceable in all relevant jurisdictions and is unconditional and irrevocable;

(b) the third party institution is notified of the pledge or assignment;

(c) as a result of the notification, the third party institution is able to make payments solely to the lending institution or to other parties only with the lending institution's prior consent.

2. Life insurance policies pledged to the lending institution shall qualify as eligible collateral where all the following conditions are met:

(a) the life insurance policy is openly pledged or assigned to the lending institution;

(b) the company providing the life insurance is notified of the pledge or assignment and, as a result of the notification, may not pay amounts payable under the contract without the prior consent of the lending institution;

(c) the lending institution has the right to cancel the policy and receive the surrender value in the event of the default of the borrower;

(d) the lending institution is informed of any non-payments under the policy by the policy-holder;

▼C2

(e) the credit protection is provided for the maturity of the loan. Where this is not possible because the insurance relationship ends before the loan relationship expires, the institution shall ensure that the amount deriving from the insurance contract serves the institution as security until the end of the duration of the credit agreement;

(f) the pledge or assignment is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement;

(g) the surrender value is declared by the company providing the life insurance and is non-reducible;

(h) the surrender value is to be paid by the company providing the life insurance in a timely manner upon request;

(i) the surrender value shall not be requested without the prior consent of the institution;

(j) the company providing the life insurance is subject to Directive 2009/138/EC or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Union.

Sub-Section 2

Unfunded credit protection and credit linked notes

Article 213

Requirements common to guarantees and credit derivatives

1. Subject to Article 214(1), credit protection deriving from a guarantee or credit derivative shall qualify as eligible unfunded credit protection where all the following conditions are met:

(a) the credit protection is direct;

(b) the extent of the credit protection is clearly defined and incontrovertible;

(c) the credit protection contract does not contain any clause, the fulfilment of which is outside the direct control of the lender, that:

(i) would allow the protection provider to cancel the protection unilaterally;

(ii) would increase the effective cost of protection as a result of a deterioration in the credit quality of the protected exposure;

(iii) could prevent the protection provider from being obliged to pay out in a timely manner in the event that the original obligor fails to make any payments due, or when the leasing contract has expired for the purposes of recognising guaranteed residual value under Articles 134(7) and 166(4);

(iv) could allow the maturity of the credit protection to be reduced by the protection provider;

▼C2

(d) the credit protection contract is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement.

2. An institution shall demonstrate to competent authorities that it has in place systems to manage potential concentration of risk arising from its use of guarantees and credit derivatives. An institution shall be able to demonstrate to the satisfaction of the competent authorities how its strategy in respect of its use of credit derivatives and guarantees interacts with its management of its overall risk profile.

3. An institution shall fulfil any contractual and statutory requirements in respect of, and take all steps necessary to ensure, the enforceability of its unfunded credit protection under the law applicable to its interest in the credit protection.

An institution shall have conducted sufficient legal review confirming the enforceability of the unfunded credit protection in all relevant jurisdictions. It shall repeat such review as necessary to ensure continuing enforceability.

Article 214

Sovereign and other public sector counter-guarantees

1. Institutions may treat the exposures referred to in paragraph 2 as protected by a guarantee provided by the entities listed in that paragraph, provided that all the following conditions are satisfied:

(a) the counter-guarantee covers all credit risk elements of the claim;

(b) both the original guarantee and the counter-guarantee meet the requirements for guarantees set out in Articles 213 and 215(1), except that the counter-guarantee need not be direct;

(c) the cover is robust and nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than effectively equivalent to that of a direct guarantee by the entity in question.

2. The treatment set out in paragraph 1 shall apply to exposures protected by a guarantee which is counter-guaranteed by any of the following entities:

(a) a central government or a central bank;

(b) a regional government or a local authority;

(c) a public sector entity, claims on which are treated as claims on the central government in accordance with Article 116(4);

▼C2

(d) a multilateral development bank or an international organisation, to which a 0 % risk weight is assigned under or by virtue of Articles 117(2) and 118 respectively;

(e) a public sector entity, claims on which are treated in accordance with Article 116(1) and (2).

3. Institutions shall apply the treatment set out in paragraph 1 also to an exposure which is not counter-guaranteed by any entity listed in paragraph 2 where that exposure's counter-guarantee is in turn directly guaranteed by one of those entities and the conditions listed in paragraph 1 are satisfied.

Article 215

Additional requirements for guarantees

1. Guarantees shall qualify as eligible unfunded credit protection where all the conditions in Article 213 and all the following conditions are met:

(a) on the qualifying default of or non-payment by the counterparty, the lending institution has the right to pursue, in a timely manner, the guarantor for any monies due under the claim in respect of which the protection is provided and the payment by the guarantor shall not be subject to the lending institution first having to pursue the obligor;

In the case of unfunded credit protection covering residential mortgage loans, the requirements in Article 213(1)(c)(iii) and in the first subparagraph of this point have only to be satisfied within 24 months;

(b) the guarantee is an explicitly documented obligation assumed by the guarantor;

(c) either of the following conditions is met:

(i) the guarantee covers all types of payments the obligor is expected to make in respect of the claim;

(ii) where certain types of payment are excluded from the guarantee, the lending institution has adjusted the value of the guarantee to reflect the limited coverage.

2. In the case of guarantees provided in the context of mutual guarantee schemes or provided by or counter-guaranteed by entities listed in Article 214(2), the requirements in point (a) of paragraph 1 of this Article shall be considered to be satisfied where either of the following conditions is met:

(a) the lending institution has the right to obtain in a timely manner a provisional payment by the guarantor that meets both the following conditions:

▼C2

(i) it represents a robust estimate of the amount of the loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, that the lending institution is likely to incur;

(ii) it is proportional to the coverage of the guarantee;

(b) the lending institution can demonstrate to the satisfaction of the competent authorities that the effects of the guarantee, which shall also cover losses resulting from the non-payment of interest and other types of payments which the borrower is obliged to make, justify such treatment.

Article 216

Additional requirements for credit derivatives

1. Credit derivatives shall qualify as eligible unfunded credit protection where all the conditions in Article 213 and all the following conditions are met:

(a) the credit events specified in the credit derivative contract include:

(i) the failure to pay the amounts due under the terms of the underlying obligation that are in effect at the time of such failure, with a grace period that is equal to or shorter than the grace period in the underlying obligation;

(ii) the bankruptcy, insolvency or inability of the obligor to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and analogous events;

(iii) the restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that results in a credit loss event;

(b) where credit derivatives allow for cash settlement:

(i) institutions have in place a robust valuation process in order to estimate loss reliably;

(ii) there is a clearly specified period for obtaining post-credit-event valuations of the underlying obligation;

(c) where the protection purchaser's right and ability to transfer the underlying obligation to the protection provider is required for settlement, the terms of the underlying obligation provide that any required consent to such transfer shall not be unreasonably withheld;

(d) the identity of the parties responsible for determining whether a credit event has occurred is clearly defined;

(e) the determination of the credit event is not the sole responsibility of the protection provider;

▼C2

(f) the protection buyer has the right or ability to inform the protection provider of the occurrence of a credit event.

Where the credit events do not include restructuring of the underlying obligation as described in point (a)(iii), the credit protection may nonetheless be eligible subject to a reduction in the value as specified in Article 233(2);

2. A mismatch between the underlying obligation and the reference obligation under the credit derivative or between the underlying obligation and the obligation used for purposes of determining whether a credit event has occurred is permissible only where both the following conditions are met:

(a) the reference obligation or the obligation used for the purpose of determining whether a credit event has occurred, as the case may be, ranks pari passu with or is junior to the underlying obligation;

(b) the underlying obligation and the reference obligation or the obligation used for the purpose of determining whether a credit event has occurred, as the case may be, share the same obligor and legally enforceable cross-default or cross-acceleration clauses are in place.

Article 217

Requirements to qualify for the treatment set out in Article 153(3)

1. To be eligible for the treatment set out in Article 153(3), credit protection deriving from a guarantee or credit derivative shall meet the following conditions:

(a) the underlying obligation is to one of the following exposures:

(i) a corporate exposure as referred to in Article 147, excluding insurance and reinsurance undertakings;

(ii) an exposure to a regional government, local authority or public sector entity which is not treated as an exposure to a central government or a central bank in accordance with Article 147;

(iii) an exposure to an SME, classified as a retail exposure in accordance with Article 147(5);

(b) the underlying obligors are not members of the same group as the protection provider;

(c) the exposure is hedged by one of the following instruments:

(i) single-name unfunded credit derivatives or single-name guarantees;

(ii) first-to-default basket products;

(iii) nth-to-default basket products;

▼C2

(d) the credit protection meets the requirements set out in Articles 213, 215 and 216, as applicable;

(e) the risk weight that is associated with the exposure prior to the application of the treatment set out in Article 153(3), does not already factor in any aspect of the credit protection;

(f) an institution has the right and expectation to receive payment from the protection provider without having to take legal action in order to pursue the counterparty for payment. To the extent possible, the institution shall take steps to satisfy itself that the protection provider is willing to pay promptly should a credit event occur;

(g) the purchased credit protection absorbs all credit losses incurred on the hedged portion of an exposure that arise due to the occurrence of credit events outlined in the contract;

(h) where the payout structure of the credit protection provides for physical settlement, there is legal certainty with respect to the deliverability of a loan, bond, or contingent liability;

(i) where an institution intends to deliver an obligation other than the underlying exposure, it shall ensure that the deliverable obligation is sufficiently liquid so that the institution would have the ability to purchase it for delivery in accordance with the contract;

(j) the terms and conditions of credit protection arrangements are legally confirmed in writing by both the protection provider and the institution;

(k) institutions have in place a process to detect excessive correlation between the creditworthiness of a protection provider and the obligor of the underlying exposure due to their performance being dependent on common factors beyond the systematic risk factor;

(l) in the case of protection against dilution risk, the seller of purchased receivables is not a member of the same group as the protection provider.

2. For the purpose of point (c)(ii) of paragraph 1, institutions shall apply the treatment set out in Article 153(3) to the asset within the basket with the lowest risk-weighted exposure amount.

3. For the purpose of point (c)(iii) of paragraph 1, the protection obtained is only eligible for consideration under this framework where eligible (n-1)th default protection has also been obtained or where (n-1) of the assets within the basket has or have already defaulted. Where this is the case, institutions shall apply the treatment set out in Article 153(3) to the asset within the basket with the lowest risk-weighted exposure amount.

▼C2

Section 4

Calculating the effects of credit risk mitigation

Sub-Section 1

Funded credit protection

Article 218

Credit linked notes

Investments in credit linked notes issued by the lending institution may be treated as cash collateral for the purpose of calculating the effect of funded credit protection in accordance with this Sub-section, provided that the credit default swap embedded in the credit linked note qualifies as eligible unfunded credit protection. For the purpose of determining whether the credit default swap embedded in a credit linked note qualifies as eligible unfunded credit protection, the institution may consider the condition in point (c) of Article 194(6) to be met.

Article 219

On-balance sheet netting

Loans to and deposits with the lending institution subject to on-balance sheet netting are to be treated by that institution as cash collateral for the purpose of calculating the effect of funded credit protection for those loans and deposits of the lending institution subject to on-balance sheet netting which are denominated in the same currency.

Article 220

Using the Supervisory Volatility Adjustments Approach or the Own Estimates Volatility Adjustments Approach for master netting agreements

1. When institutions calculate the 'fully adjusted exposure value' (E*) for the exposures subject to an eligible master netting agreement covering repurchase transactions or securities or commodities lending or borrowing transactions or other capital market-driven transactions, they shall calculate the volatility adjustments that they need to apply either by using the Supervisory Volatility Adjustments Approach or the Own Estimates Volatility Adjustments Approach ('Own Estimates Approach') as set out in Articles 223 to 226 for the Financial Collateral Comprehensive Method.

The use of the Own Estimates Approach shall be subject to the same conditions and requirements as apply under the Financial Collateral Comprehensive Method.

2. For the purpose of calculating E*, institutions shall:

(a) calculate the net position in each group of securities or in each type of commodity by subtracting the amount in point (ii) from the amount in point (i):

▼C2

(i) the total value of a group of securities or of commodities of the same type lent, sold or provided under the master netting agreement;

(ii) the total value of a group of securities or of commodities of the same type borrowed, purchased or received under the master netting agreement;

(b) calculate the net position in each currency, other than the settlement currency of the master netting agreement, by subtracting the amount in point (ii) from the amount in point (i):

(i) the sum of the total value of securities denominated in that currency lent, sold or provided under the master netting agreement and the amount of cash in that currency lent or transferred under that agreement;

(ii) the sum of the total value of securities denominated in that currency borrowed, purchased or received under the master netting agreement and the amount of cash in that currency borrowed or received under that agreement;

(c) apply the volatility adjustment appropriate to a given group of securities or to a cash position to the absolute value of the positive or negative net position in the securities in that group;

(d) apply the foreign exchange risk (fx) volatility adjustment to the net positive or negative position in each currency other than the settlement currency of the master netting agreement.

3. Institutions shall calculate E* in accordance with the following formula:

$$E^* = max\left\{0, \left(\sum_i E_i - \sum_i C_i\right) + \sum_j |E_j^{sec}| \cdot H_j^{sec} + \sum_k |E_k^{fx}| \cdot H_k^{fx}\right\}$$

where:

E_i = the exposure value for each separate exposure i under the agreement that would apply in the absence of the credit protection, where institutions calculate risk-weighted exposure amounts under the Standardised Approach or where they calculate the risk-weighted exposure amounts and expected loss amounts under the IRB Approach;

C_i = the value of securities in each group or commodities of the same type borrowed, purchased or received or the cash borrowed or received in respect of each exposure i;

E_j^{sec} = the net position (positive or negative) in a given group of securities j;

E_k^{fx} = the net position (positive or negative) in a given currency k other than the settlement currency of the agreement as calculated under point (b) of paragraph 2;

▼C2

H_j^{sec} = the volatility adjustment appropriate to a particular group of securities j;

H_k^{fx} = the foreign exchange volatility adjustment for currency k.

4. For the purpose of calculating risk-weighted exposure amounts and expected loss amounts for repurchase transactions or securities or commodities lending or borrowing transactions or other capital market-driven transactions covered by master netting agreements, institutions shall use E* as calculated under paragraph 3 as the exposure value of the exposure to the counterparty arising from the transactions subject to the master netting agreement for the purposes of Article 113 under the Standardised Approach or Chapter 3 under the IRB Approach.

5. For the purposes of paragraphs 2 and 3, 'group of securities' means securities which are issued by the same entity, have the same issue date, the same maturity, are subject to the same terms and conditions, and are subject to the same liquidation periods as indicated in Articles 224 and 225, as applicable.

Article 221

Using the internal models approach for master netting agreements

1. Subject to permission of competent authorities, institutions may, as an alternative to using the Supervisory Volatility Adjustments Approach or the Own Estimates Approach in calculating the fully adjusted exposure value (E*) resulting from the application of an eligible master netting agreement covering repurchase transactions, securities or commodities lending or borrowing transactions, or other capital market driven transactions other than derivative transactions, use an internal models approach which takes into account correlation effects between security positions subject to the master netting agreement as well as the liquidity of the instruments concerned.

2. Subject to the permission of the competent authorities, institutions may also use their internal models for margin lending transactions, where the transactions are covered under a bilateral master netting agreement that meets the requirements set out in Chapter 6, Section 7.

3. An institution may choose to use an internal models approach independently of the choice it has made between the Standardised Approach and the IRB Approach for the calculation of risk-weighted exposure amounts. However, where an institution seeks to use an internal models approach, it shall do so for all counterparties and securities, excluding immaterial portfolios where it may use the Supervisory Volatility Adjustments Approach or the Own Estimates Approach as laid down in Article 220.

Institutions that have received permission for an internal risk-measurement model under Title IV, Chapter 5 may use the internal models approach. Where an institution has not received such permission, it may still apply for permission to the competent authorities to use an internal models approach for the purposes of this Article.

▼C2

4. Competent authorities shall permit an institution to use an internal models approach only where they are satisfied that the institution's system for managing the risks arising from the transactions covered by the master netting agreement is conceptually sound and implemented with integrity and where the following qualitative standards are met:

(a) the internal risk-measurement model used for calculating the potential price volatility for the transactions is closely integrated into the daily risk-management process of the institution and serves as the basis for reporting risk exposures to the senior management of the institution;

(b) the institution has a risk control unit that meets all the following requirements:

(i) it is independent from business trading units and reports directly to senior management;

(ii) it is responsible for designing and implementing the institution's risk-management system;

(iii) it produces and analyses daily reports on the output of the risk-measurement model and on the appropriate measures to be taken in terms of position limits;

(c) the daily reports produced by the risk-control unit are reviewed by a level of management with sufficient authority to enforce reductions of positions taken and of overall risk exposure;

(d) the institution has sufficient staff skilled in the use of sophisticated models in the risk control unit;

(e) the institution has established procedures for monitoring and ensuring compliance with a documented set of internal policies and controls concerning the overall operation of the risk-measurement system;

(f) the institution's models have a proven track record of reasonable accuracy in measuring risks demonstrated through the back-testing of its output using at least one year of data;

(g) the institution frequently conducts a rigorous programme of stress testing and the results of these tests are reviewed by senior management and reflected in the policies and limits it sets;

(h) the institution conducts, as part of its regular internal auditing process, an independent review of its risk-measurement system. This review shall include both the activities of the business trading units and of the independent risk-control unit;

▼C2

(i) at least once a year, the institution conducts a review of its risk-management system;

(j) the internal model meets the requirements set out in Article 292(8) and (9) and in Article 294.

5. An institution's internal risk-measurement model shall capture a sufficient number of risk factors in order to capture all material price risks.

An institution may use empirical correlations within risk categories and across risk categories where its system for measuring correlations is sound and implemented with integrity.

6. Institutions using the internal models approach shall calculate E* in accordance with the following formula:

$$E^* = max\left\{0, \left(\sum_i E_i - \sum_i C_i\right) + potential\ change\ in\ value\right\}$$

where:

E_i = the exposure value for each separate exposure i under the agreement that would apply in the absence of the credit protection, where institutions calculate the risk-weighted exposure amounts under the Standardised Approach or where they calculate risk-weighted exposure amounts and expected loss amounts under the IRB Approach;

C_i = the value of the securities borrowed, purchased or received or the cash borrowed or received in respect of each such exposure i.

When calculating risk-weighted exposure amounts using internal models, institutions shall use the previous business day's model output.

7. The calculation of the potential change in value referred to in paragraph 6 shall be subject to all the following standards:

(a) it shall be carried out at least daily;

(b) it shall be based on a 99th percentile, one-tailed confidence interval;

(c) it shall be based on a 5-day equivalent liquidation period, except in the case of transactions other than securities repurchase transactions or securities lending or borrowing transactions where a 10-day equivalent liquidation period shall be used;

(d) it shall be based on an effective historical observation period of at least one year except where a shorter observation period is justified by a significant upsurge in price volatility;

(e) the data set used in the calculation shall be updated every three months.

▼C2

Where an institution has a repurchase transaction, a securities or commodities lending or borrowing transaction and margin lending or similar transaction or netting set which meets the criteria set out in Article 285(2), (3) and (4), the minimum holding period shall be brought in line with the margin period of risk that would apply under those paragraphs, in combination with Article 285(5).

8. For the purpose of calculating risk-weighted exposure amounts and expected loss amounts for repurchase transactions or securities or commodities lending or borrowing transactions or other capital market-driven transactions covered by master netting agreements, institutions shall use E* as calculated under paragraph 6 as the exposure value of the exposure to the counterparty arising from the transactions subject to the master netting agreement for the purposes of Article 113 under the Standardised Approach or Chapter 3 under the IRB Approach.

9. EBA shall develop draft regulatory technical standards to specify the following:

(a) what constitutes an immaterial portfolio for the purpose of paragraph 3;

(b) the criteria for determining whether an internal model is sound and implemented with integrity for the purpose of paragraphs 4 and 5 and master netting agreements.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2015.

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

Article 222

Financial Collateral Simple Method

1. Institutions may use the Financial Collateral Simple Method only where they calculate risk-weighted exposure amounts under the Standardised Approach. Institution shall not use both the Financial Collateral Simple Method and the Financial Collateral Comprehensive Method, except for the purposes of Articles 148(1) and 150(1). Institutions shall not use this exception selectively with the purpose of achieving reduced own funds requirements or with the purpose of conducting regulatory arbitrage.

2. Under the Financial Collateral Simple Method institutions shall assign to eligible financial collateral a value equal to its market value as determined in accordance with point (d) of Article 207(4).

3. Institutions shall assign to those portions of exposure values that are collateralised by the market value of eligible collateral the risk weight that they would assign under Chapter 2 where the lending institution had a direct exposure to the collateral instrument. For this purpose, the exposure value of an off-balance sheet item listed in Annex I shall be equal to 100 % of the item's value rather than the exposure value indicated in Article 111(1).

▼C2

The risk weight of the collateralised portion shall be at least 20 % except as specified in paragraphs 4 to 6. Institutions shall apply to the remainder of the exposure value the risk weight that they would assign to an unsecured exposure to the counterparty under Chapter 2.

4. Institutions shall assign a risk weight of 0 % to the collateralised portion of the exposure arising from repurchase transaction and securities lending or borrowing transactions which fulfil the criteria in Article 227. Where the counterparty to the transaction is not a core market participant, institutions shall assign a risk weight of 10 %.

5. Institutions shall assign a risk weight of 0 %, to the extent of the collateralisation, to the exposure values determined under Chapter 6 for the derivative instruments listed in Annex II and subject to daily marking-to-market, collateralised by cash or cash assimilated instruments where there is no currency mismatch.

Institutions shall assign a risk weight of 10 %, to the extent of the collateralisation, to the exposure values of such transactions collateralised by debt securities issued by central governments or central banks which are assigned a 0 % risk weight under Chapter 2.

6. For transactions other than those referred to in paragraphs 4 and 5, institutions may assign a 0 % risk weight where the exposure and the collateral are denominated in the same currency, and either of the following conditions is met:

(a) the collateral is cash on deposit or a cash assimilated instrument;

(b) the collateral is in the form of debt securities issued by central governments or central banks eligible for a 0 % risk weight under Article 114, and its market value has been discounted by 20 %.

7. For the purpose of paragraphs 5 and 6 debt securities issued by central governments or central banks shall include:

(a) debt securities issued by regional governments or local authorities exposures to which are treated as exposures to the central government in whose jurisdiction they are established under Article 115;

(b) debt securities issued by multilateral development banks to which a 0 % risk weight is assigned under or by virtue of Article 117(2);

▼C2

(c) debt securities issued by international organisations which are assigned a 0 % risk weight under Article 118;

(d) debt securities issued by public sector entities which are treated as exposures to central governments in accordance with Article 116(4).

Article 223

Financial Collateral Comprehensive Method

1. In order to take account of price volatility, institutions shall apply volatility adjustments to the market value of collateral, as set out in Articles 224 to 227, when valuing financial collateral for the purposes of the Financial Collateral Comprehensive Method.

Where collateral is denominated in a currency that differs from the currency in which the underlying exposure is denominated, institutions shall add an adjustment reflecting currency volatility to the volatility adjustment appropriate to the collateral as set out in Articles 224 to 227.

In the case of OTC derivatives transactions covered by netting agreements recognised by the competent authorities under Chapter 6, institutions shall apply a volatility adjustment reflecting currency volatility when there is a mismatch between the collateral currency and the settlement currency. Even where multiple currencies are involved in the transactions covered by the netting agreement, institutions shall apply a single volatility adjustment.

2. Institutions shall calculate the volatility-adjusted value of the collateral (C_{VA}) they need to take into account as follows:

$$C_{VA} = C \cdot \left(1 - H_C - H_{fx}\right)$$

where:

C = the value of the collateral;

H_C = the volatility adjustment appropriate to the collateral, as calculated under Articles 224 and 227;

H_{fx} = the volatility adjustment appropriate to currency mismatch, as calculated under Articles 224 and 227.

Institutions shall use the formula in this paragraph when calculating the volatility-adjusted value of the collateral for all transactions except for those transactions subject to recognised master netting agreements to which the provisions set out in Articles 220 and 221 apply.

3. Institutions shall calculate the volatility-adjusted value of the exposure (E_{VA}) they need to take into account as follows:

$$E_{VA} = E \cdot \left(1 + H_E\right)$$

▼C2

where:

E = the exposure value as would be determined under Chapter 2 or Chapter 3, as applicable, where the exposure was not collateralised;

H_E = the volatility adjustment appropriate to the exposure, as calculated under Articles 224 and 227.

▼M8

In the case of OTC derivative transactions, institutions using the method laid down in Section 6 of Chapter 6 shall calculate E_{VA} as follows:

$$E_{VA} = E.$$

▼C2

4. For the purpose of calculating E in paragraph 3, the following shall apply:

(a) for institutions calculating risk-weighted exposure amounts under the Standardised Approach, the exposure value of an off-balance sheet item listed in Annex I shall be 100 % of that item's value rather than the exposure value indicated in Article 111(1);

(b) for institutions calculating risk-weighted exposure amounts under the IRB Approach, they shall calculate the exposure value of the items listed in Article 166(8) to (10) by using a conversion factor of 100 % rather than the conversion factors or percentages indicated in those paragraphs.

5. Institutions shall calculate the fully adjusted value of the exposure (E*), taking into account both volatility and the risk-mitigating effects of collateral as follows:

$$E^* = max\{0,\ E_{VA} - C_{VAM}\}$$

where:

E_{VA} = the volatility adjusted value of the exposure as calculated in paragraph 3;

C_{VAM} = C_{VA} further adjusted for any maturity mismatch in accordance with the provisions of Section 5;

▼M8

In the case of OTC derivative transactions, institutions using the methods laid down in Sections 3, 4 and 5 of Chapter 6 shall take into account the risk-mitigating effects of collateral in accordance with the provisions laid down in Sections 3, 4 and 5 of Chapter 6, as applicable.

▼C2

6. Institutions may calculate volatility adjustments either by using the Supervisory Volatility Adjustments Approach referred to in Article 224 or the Own Estimates Approach referred to in Article 225.

An institution may choose to use the Supervisory Volatility Adjustments Approach or the Own Estimates Approach independently of the choice it has made between the Standardised Approach and the IRB Approach for the calculation of risk-weighted exposure amounts.

▼C2

However, where an institution uses the Own Estimates Approach, it shall do so for the full range of instrument types, excluding immaterial portfolios where it may use the Supervisory Volatility Adjustments Approach.

7. Where the collateral consists of a number of eligible items, institutions shall calculate the volatility adjustment (H) as follows:

$$H = \sum_i a_i H_i$$

where:

a_i = the proportion of the value of an eligible item *i* in the total value of collateral;

H_i = the volatility adjustment applicable to eligible item *i*.

Article 224

Supervisory volatility adjustment under the Financial Collateral Comprehensive Method

1. The volatility adjustments to be applied by institutions under the Supervisory Volatility Adjustments Approach, assuming daily revaluation, shall be those set out in Tables 1 to 4 of this paragraph.

VOLATILITY ADJUSTMENTS

Table 1

Credit quality step with which the credit assessment of the debt security is associated	Residual Maturity	Volatility adjustments for debt securities issued by entities described in Article 197(1)(b)			Volatility adjustments for debt securities issued by entities described in Article 197(1) (c) and (d)			Volatility adjustments for securitisation positions and meeting the criteria in Article 197(1) (h)		
		20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)
1	≤ 1 year	0,707	0,5	0,354	1,414	1	0,707	2,829	2	1,414
	>1 ≤ 5 years	2,828	2	1,414	5,657	4	2,828	11,314	8	5,657
	> 5 years	5,657	4	2,828	11,314	8	5,657	22,628	16	11,313
2-3	≤ 1 year	1,414	1	0,707	2,828	2	1,414	5,657	4	2,828
	>1 ≤ 5 years	4,243	3	2,121	8,485	6	4,243	16,971	12	8,485
	> 5 years	8,485	6	4,243	16,971	12	8,485	33,942	24	16,970
4	≤ 1 year	21,213	15	10,607	N/A	N/A	N/A	N/A	N/A	N/A
	>1 ≤ 5 years	21,213	15	10,607	N/A	N/A	N/A	N/A	N/A	N/A
	> 5 years	21,213	15	10,607	N/A	N/A	N/A	N/A	N/A	N/A

▼C2

Table 2

Credit quality step with which the credit assessment of a short term debt security is associated	Volatility adjustments for debt securities issued by entities described in Article 197(1)(b) with short-term credit assessments			Volatility adjustments for debt securities issued by entities described in Article 197(1) (c) and (d) with short-term credit assessments			Volatility adjustments for securitisation positions and meeting the criteria in Article 197(1)(h)		
	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)
1	0,707	0,5	0,354	1,414	1	0,707	2,829	2	1,414
2-3	1,414	1	0,707	2,828	2	1,414	5,657	4	2,828

Table 3
Other collateral or exposure types

	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)
Main Index Equities, Main Index Convertible Bonds	21,213	15	10,607
Other Equities or Convertible Bonds listed on a recognised exchange	35,355	25	17,678
Cash	0	0	0
Gold	21,213	15	10,607

Table 4
Volatility adjustment for currency mismatch

20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period %)
11,314	8	5,657

2. The calculation of volatility adjustments in accordance with paragraph 1 shall be subject to the following conditions:

(a) for secured lending transactions the liquidation period shall be 20 business days;

(b) for repurchase transactions, except insofar as such transactions involve the transfer of commodities or guaranteed rights relating to title to commodities, and securities lending or borrowing transactions the liquidation period shall be 5 business days;

(c) for other capital market driven transactions, the liquidation period shall be 10 business days.

Where an institution has a transaction or netting set which meets the criteria set out in Article 285(2), (3) and (4), the minimum holding period shall be brought in line with the margin period of risk that would apply under those paragraphs.

▼C2

3. In Tables 1 to 4 of paragraph 1 and in paragraphs 4 to 6, the credit quality step with which a credit assessment of the debt security is associated is the credit quality step with which the credit assessment is determined by EBA to be associated under Chapter 2.

For the purpose of determining the credit quality step with which a credit assessment of the debt security is associated referred to in the first subparagraph, Article 197(7) also applies.

4. For non-eligible securities or for commodities lent or sold under repurchase transactions or securities or commodities lending or borrowing transactions, the volatility adjustment is the same as for non-main index equities listed on a recognised exchange.

5. For eligible units in CIUs the volatility adjustment is the weighted average volatility adjustments that would apply, having regard to the liquidation period of the transaction as specified in paragraph 2, to the assets in which the fund has invested.

Where the assets in which the fund has invested are not known to the institution, the volatility adjustment is the highest volatility adjustment that would apply to any of the assets in which the fund has the right to invest.

▼M9

6. For unrated debt securities issued by institutions or investment firms and satisfying the eligibility criteria in Article 197(4), the volatility adjustments is the same as for securities issued by institutions or corporates with an external credit assessment associated with credit quality step 2 or 3.

▼C2

Article 225

Own estimates of volatility adjustments under the Financial Collateral Comprehensive Method

1. The competent authorities shall permit institutions to use their own volatility estimates for calculating the volatility adjustments to be applied to collateral and exposures where those institutions comply with the requirements set out in paragraphs 2 and 3. Institutions which have obtained permission to use their own volatility estimates shall not revert to the use of other methods except for demonstrated good cause and subject to the permission of the competent authorities.

For debt securities that have a credit assessment from an ECAI equivalent to investment grade or better, institutions may calculate a volatility estimate for each category of security.

For debt securities that have a credit assessment from an ECAI equivalent to below investment grade, and for other eligible collateral, institutions shall calculate the volatility adjustments for each individual item.

Institutions using the Own Estimates Approach shall estimate volatility of the collateral or foreign exchange mismatch without taking into account any correlations between the unsecured exposure, collateral or exchange rates.

▼C2

In determining relevant categories, institutions shall take into account the type of issuer of the security, the external credit assessment of the securities, their residual maturity, and their modified duration. Volatility estimates shall be representative of the securities included in the category by the institution.

2. The calculation of the volatility adjustments shall be subject to all the following criteria:

(a) institutions shall base the calculation on a 99th percentile, one-tailed confidence interval;

(b) institutions shall base the calculation on the following liquidation periods:

(i) 20 business days for secured lending transactions;

(ii) 5 business days for repurchase transactions, except insofar as such transactions involve the transfer of commodities or guaranteed rights relating to title to commodities and securities lending or borrowing transactions;

(iii) 10 business days for other capital market driven transactions;

(c) institutions may use volatility adjustment numbers calculated in accordance with shorter or longer liquidation periods, scaled up or down to the liquidation period set out in point (b) for the type of transaction in question, using the square root of time formula:

$$H_M = H_N \cdot \sqrt{\frac{T_M}{T_N}}$$

where:

T_M = the relevant liquidation period;

H_M = the volatility adjustment based on the liquidation period T_M;

H_N = the volatility adjustment based on the liquidation period T_N.

(d) institutions shall take into account the illiquidity of lower-quality assets. They shall adjust the liquidation period upwards in cases where there is doubt concerning the liquidity of the collateral. They shall also identify where historical data may understate potential volatility. Such cases shall be dealt with by means of a stress scenario;

(e) the length of the historical observation period institutions use for calculating volatility adjustments shall be at least one year. For institutions that use a weighting scheme or other methods for the historical observation period, the length of the effective observation period shall be at least one year. The competent authorities may also require an institution to calculate its volatility adjustments using a shorter observation period where, in the competent authorities' judgement, this is justified by a significant upsurge in price volatility;

▼C2

(f) institutions shall update their data sets and calculate volatility adjustments at least once every three months. They shall also reassess their data sets whenever market prices are subject to material changes.

3. The estimation of volatility adjustments shall meet all the following qualitative criteria:

(a) an institutions shall use the volatility estimates in the day-to-day risk management process including in relation to its internal exposure limits;

(b) where the liquidation period used by an institution in its day-to-day risk management process is longer than that set out in this Section for the type of transaction in question, that institution shall scale up its volatility adjustments in accordance with the square root of time formula set out in point (c) of paragraph 2;

(c) an institution shall have in place established procedures for monitoring and ensuring compliance with a documented set of policies and controls for the operation of its system for the estimation of volatility adjustments and for the integration of such estimations into its risk management process;

(d) an independent review of the institution's system for the estimation of volatility adjustments shall be carried out regularly within the institution's own internal auditing process. A review of the overall system for the estimation of volatility adjustments and for the integration of those adjustments into the institution's risk management process shall take place at least once a year. The subject of that review shall include at least the following:

(i) the integration of estimated volatility adjustments into daily risk management;

(ii) the validation of any significant change in the process for the estimation of volatility adjustments;

(iii) the verification of the consistency, timeliness and reliability of data sources used to run the system for the estimation of volatility adjustments, including the independence of such data sources;

(iv) the accuracy and appropriateness of the volatility assumptions.

Article 226

Scaling up of volatility adjustment under the Financial Collateral Comprehensive Method

The volatility adjustments set out in Article 224 are the volatility adjustments an institution shall apply where there is daily revaluation. Similarly, where an institution uses its own estimates of the volatility adjustments in accordance with Article 225, it shall calculate them in the first instance on the basis of daily revaluation. Where the frequency of revaluation is less than daily, institutions shall apply larger volatility adjustments. Institutions shall calculate them by scaling up the daily revaluation volatility adjustments, using the following square-root-of-time formula:

▼C2

$$H = H_M \cdot \sqrt{\frac{N_R + (T_M - 1)}{T_M}}$$

where:

H = the volatility adjustment to be applied;

H_M = the volatility adjustment where there is daily revaluation;

N_R = the actual number of business days between revaluations;

T_M = the liquidation period for the type of transaction in question.

Article 227

Conditions for applying a 0 % volatility adjustment under the Financial Collateral Comprehensive Method

1. In relation to repurchase transactions and securities lending or borrowing transactions, where an institution uses the Supervisory Volatility Adjustments Approach under Article 224 or the Own Estimates Approach under Article 225 and where the conditions set out in points (a) to (h) of paragraph 2 are satisfied, institutions may, instead of applying the volatility adjustments calculated under Articles 224 to 226, apply a 0 % volatility adjustment. Institutions using the internal models approach set out in Article 221 shall not use the treatment set out in this Article.

2. Institutions may apply a 0 % volatility adjustment where all the following conditions are met:

(a) both the exposure and the collateral are cash or debt securities issued by central governments or central banks within the meaning of Article 197(1)(b) and eligible for a 0 % risk weight under Chapter 2;

(b) both the exposure and the collateral are denominated in the same currency;

(c) either the maturity of the transaction is no more than one day or both the exposure and the collateral are subject to daily marking-to-market or daily re-margining;

(d) the time between the last marking-to-market before a failure to re-margin by the counterparty and the liquidation of the collateral is no more than four business days;

(e) the transaction is settled in a settlement system proven for that type of transaction;

(f) the documentation covering the agreement or transaction is standard market documentation for repurchase transactions or securities lending or borrowing transactions in the securities concerned;

▼C2

(g) the transaction is governed by documentation specifying that where the counterparty fails to satisfy an obligation to deliver cash or securities or to deliver margin or otherwise defaults, then the transaction is immediately terminable;

(h) the counterparty is considered a core market participant by the competent authorities.

3. The core market participants referred to in point (h) of paragraph 2 shall include the following entities:

(a) the entities mentioned in Article 197(1)(b) exposures to which are assigned a 0 % risk weight under Chapter 2;

(b) institutions;

▼M9

(ba) investment firms;

▼C2

(c) other financial undertakings within the meaning of points (25)(b) and (d) of Article 13 of Directive 2009/138/EC exposures to which are assigned a 20 % risk weight under the Standardised Approach or which, in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts under the IRB Approach, do not have a credit assessment by a recognised ECAI and are internally rated by the institution;

(d) regulated CIUs that are subject to capital or leverage requirements;

(e) regulated pension funds;

(f) recognised clearing organisations.

Article 228

Calculating risk-weighted exposure amounts and expected loss amounts under the Financial Collateral Comprehensive method

1. Under the Standardised Approach, institutions shall use E* as calculated under Article 223(5) as the exposure value for the purposes of Article 113. In the case of off-balance sheet items listed in Annex I, institutions shall use E* as the value to which the percentages indicated in Article 111(1) shall be applied to arrive at the exposure value.

2. Under the IRB Approach, institutions shall use the effective LGD (LGD*) as the LGD for the purposes of Chapter 3. Institutions shall calculate LGD* as follows:

$$LGD^{*} = LGD \cdot \frac{E^{*}}{E}$$

where:

LGD = the LGD that would apply to the exposure under Chapter 3 where the exposure was not collateralised;

▼C2

E = the exposure value in accordance with Article 223(3);

E* = the fully adjusted exposure value in accordance with Article 223(5).

Article 229

Valuation principles for other eligible collateral under the IRB Approach

1. For immovable property collateral, the collateral shall be valued by an independent valuer at or at less than the market value. An institution shall require the independent valuer to document the market value in a transparent and clear manner.

In those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions the immovable property may instead be valued by an independent valuer at or at less than the mortgage lending value. Institutions shall require the independent valuer not to take into account speculative elements in the assessment of the mortgage lending value and to document that value in a transparent and clear manner.

The value of the collateral shall be the market value or mortgage lending value reduced as appropriate to reflect the results of the monitoring required under Article 208(3) and to take account of any prior claims on the immovable property.

2. For receivables, the value of receivables shall be the amount receivable.

3. Institutions shall value physical collateral other than immovable property at its market value. For the purposes of this Article, the market value is the estimated amount for which the property would exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction.

Article 230

Calculating risk-weighted exposure amounts and expected loss amounts for other eligible collateral under the IRB Approach

1. Institutions shall use LGD* calculated in accordance with this paragraph and paragraph 2 as the LGD for the purposes of Chapter 3.

Where the ratio of the value of the collateral (C) to the exposure value (E) is below the required minimum collateralisation level of the exposure (C*) as laid down in Table 5, LGD* shall be the LGD laid down in Chapter 3 for uncollateralised exposures to the counterparty. For this purpose, institutions shall calculate the exposure value of the items listed in Article 166(8) to (10) by using a conversion factor or percentage of 100 % rather than the conversion factors or percentages indicated in those paragraphs.

▼C2

Where the ratio of the value of the collateral to the exposure value exceeds a second, higher threshold level of C** as laid down in Table 5, LGD* shall be that prescribed in Table 5.

Where the required level of collateralisation C** is not achieved in respect of the exposure as a whole, institutions shall consider the exposure to be two exposures — one corresponding to the part in respect of which the required level of collateralisation C** is achieved and one corresponding to the remainder.

2. The applicable LGD* and required collateralisation levels for the secured parts of exposures are set out in Table 5 of this paragraph.

Table 5

Minimum LGD for secured parts of exposures

	LGD* for senior exposure	LGD* for subordinated exposures	Required minimum collateralisation level of the exposure (C*)	Required minimum collateralisation level of the exposure (C**)
Receivables	35 %	65 %	0 %	125 %
Residential property/ commercial immovable property	35 %	65 %	30 %	140 %
Other collateral	40 %	70 %	30 %	140 %

3. As an alternative to the treatment set out in paragraphs 1 and 2, and subject to Article 124(2), institutions may assign a 50 % risk weight to the part of the exposure that is, within the limits set out in Article 125(2)(d) and Article 126(2)(d) respectively, fully collateralised by residential property or commercial immovable property situated within the territory of a Member State where all the conditions in Article 199(3) or (4) are met.

Article 231

Calculating risk-weighted exposure amounts and expected loss amounts in the case of mixed pools of collateral

1. An institution shall calculate the value of LGD* that it shall use as the LGD for the purposes of Chapter 3 in accordance with paragraphs 2 and 3 where both the following conditions are met:

(a) the institution uses the IRB Approach to calculate risk-weighted exposure amounts and expected loss amounts;

(b) an exposure is collateralised by both financial collateral and other eligible collateral.

2. Institutions shall be required to subdivide the volatility-adjusted value of the exposure, obtained by applying the volatility adjustment as set out in Article 223(5) to the value of the exposure, into parts so as to obtain a part covered by eligible financial collateral, a part covered by receivables, a part covered by commercial immovable property collateral or residential property collateral, a part covered by other eligible collateral, and the unsecured part, as applicable.

▼C2

3. Institutions shall calculate LGD* for each part of the exposure obtained in paragraph 2 separately in accordance with the relevant provisions of this Chapter.

Article 232

Other funded credit protection

1. Where the conditions set out in Article 212(1) are met, a deposit with a third party institution may be treated as a guarantee by the third party institution.

2. Where the conditions set out in Article 212(2) are met, institutions shall subject the portion of the exposure collateralised by the current surrender value of life insurance policies pledged to the lending institution to the following treatment:

(a) where the exposure is subject to the Standardised Approach, it shall be risk-weighted by using the risk weights specified in paragraph 3;

(b) where the exposure is subject to the IRB Approach but not subject to the institution's own estimates of LGD, it shall be assigned an LGD of 40 %.

In the event of a currency mismatch, institutions shall reduce the current surrender value in accordance with Article 233(3), the value of the credit protection being the current surrender value of the life insurance policy.

3. For the purposes of point (a) of paragraph 2, institutions shall assign the following risk weights on the basis of the risk weight assigned to a senior unsecured exposure to the undertaking providing the life insurance:

(a) a risk weight of 20 %, where the senior unsecured exposure to the undertaking providing the life insurance is assigned a risk weight of 20 %;

(b) a risk weight of 35 %, where the senior unsecured exposure to the undertaking providing the life insurance is assigned a risk weight of 50 %;

(c) a risk weight of 70 %, where the senior unsecured exposure to the undertaking providing the life insurance is assigned a risk weight of 100 %;

(d) a risk weight of 150 %, where the senior unsecured exposure to the undertaking providing the life insurance is assigned a risk weight of 150 %.

4. Institutions may treat instruments repurchased on request that are eligible under Article 200(c) as a guarantee by the issuing institution. The value of the eligible credit protection shall be the following:

(a) where the instrument will be repurchased at its face value, the value of the protection shall be that amount;

▼C2

(b) where the instrument will be repurchased at market price, the value of the protection shall be the value of the instrument valued in the same way as the debt securities that meet the conditions in Article 197(4).

Sub-Section 2

Unfunded credit protection

Article 233

Valuation

1. For the purpose of calculating the effects of unfunded credit protection in accordance with this Sub-section, the value of unfunded credit protection (G) shall be the amount that the protection provider has undertaken to pay in the event of the default or non-payment of the borrower or on the occurrence of other specified credit events.

2. In the case of credit derivatives which do not include as a credit event restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that result in a credit loss event the following shall apply:

(a) where the amount that the protection provider has undertaken to pay is not higher than the exposure value, institutions shall reduce the value of the credit protection calculated under paragraph 1 by 40 %;

(b) where the amount that the protection provider has undertaken to pay is higher than the exposure value, the value of the credit protection shall be no higher than 60 % of the exposure value.

3. Where unfunded credit protection is denominated in a currency different from that in which the exposure is denominated, institutions shall reduce the value of the credit protection by the application of a volatility adjustment as follows:

$$G^* = G \cdot (1 - H_{fx})$$

where:

G^* = the amount of credit protection adjusted for foreign exchange risk,

G = the nominal amount of the credit protection;

H_{fx} = the volatility adjustment for any currency mismatch between the credit protection and the underlying obligation determined in accordance with paragraph 4.

Where there is no currency mismatch H_{fx} is equal to zero.

4. Institutions shall base the volatility adjustments for any currency mismatch on a 10 business day liquidation period, assuming daily revaluation, and may calculate them based on the Supervisory Volatility Adjustments Approach or the Own Estimates Approach as set out in Articles 224 and 225 respectively. Institutions shall scale up the volatility adjustments in accordance with Article 226.

▼C2

Article 234

Calculating risk-weighted exposure amounts and expected loss amounts in the event of partial protection and tranching

Where an institution transfers a part of the risk of a loan in one or more tranches, the rules set out in Chapter 5 shall apply. Institutions may consider materiality thresholds on payments below which no payment shall be made in the event of loss to be equivalent to retained first loss positions and to give rise to a tranched transfer of risk.

Article 235

Calculating risk-weighted exposure amounts under the Standardised Approach

1. For the purposes of Article 113(3) institutions shall calculate the risk-weighted exposure amounts in accordance with the following formula:

$$max\left\{0, E - G_A\right\} \cdot r + G_A \cdot g$$

where:

E = the exposure value in accordance with Article 111; for this purpose, the exposure value of an off-balance sheet item listed in Annex I shall be 100 % of its value rather than the exposure value indicated in Article 111(1);

G_A = the amount of credit risk protection as calculated under Article 233(3) (G*) further adjusted for any maturity mismatch as laid down in Section 5;

r = the risk weight of exposures to the obligor as specified under Chapter 2;

g = the risk weight of exposures to the protection provider as specified under Chapter 2.

2. Where the protected amount (G_A) is less than the exposure (E), institutions may apply the formula specified in paragraph 1 only where the protected and unprotected parts of the exposure are of equal seniority.

3. Institutions may extend the treatment set out in Article 114(4) and (7) to exposures or parts of exposures guaranteed by the central government or central bank, where the guarantee is denominated in the domestic currency of the borrower and the exposure is funded in that currency.

Article 236

Calculating risk-weighted exposure amounts and expected loss amounts under the IRB Approach

1. For the covered portion of the exposure value (E), based on the adjusted value of the credit protection G_A, the PD for the purposes of Section 4 of Chapter 3 may be the PD of the protection provider, or a PD between that of the borrower and that of the guarantor where a full substitution is deemed not to be warranted. In the case of subordinated exposures and non-subordinated unfunded protection, the LGD to be applied by institutions for the purposes of Section 4 of Chapter 3 may be that associated with senior claims.

▼C2

2. For any uncovered portion of the exposure value (E) the PD shall be that of the borrower and the LGD shall be that of the underlying exposure.

3. For the purposes of this Article, G_A is the value of G* as calculated under Article 233(3) further adjusted for any maturity mismatch as laid down in Section 5. E is the exposure value determined in accordance with Section 5 of Chapter 3. For this purpose, institutions shall calculate the exposure value of the items listed in Article 166(8) to (10) by using a conversion factor or percentage of 100 % rather than the conversion factors or percentages indicated in those paragraphs.

Section 5

Maturity mismatches

Article 237

Maturity mismatch

1. For the purpose of calculating risk-weighted exposure amounts, a maturity mismatch occurs when the residual maturity of the credit protection is less than that of the protected exposure. Where protection has a residual maturity of less than three months and the maturity of the protection is less than the maturity of the underlying exposure that protection does not qualify as eligible credit protection.

2. Where there is a maturity mismatch the credit protection shall not qualify as eligible where either of the following conditions is met:

(a) the original maturity of the protection is less than one year;

(b) the exposure is a short term exposure specified by the competent authorities as being subject to a one-day floor rather than a one-year floor in respect of the maturity value (M) under Article 162(3).

Article 238

Maturity of credit protection

1. Subject to a maximum of five years, the effective maturity of the underlying shall be the longest possible remaining time before the obligor is scheduled to fulfil its obligations. Subject to paragraph 2, the maturity of the credit protection shall be the time to the earliest date at which the protection may terminate or be terminated.

2. Where there is an option to terminate the protection which is at the discretion of the protection seller, institutions shall take the maturity of the protection to be the time to the earliest date at which that option may be exercised. Where there is an option to terminate the protection which is at the discretion of the protection buyer and the terms of the arrangement at origination of the protection contain a positive incentive for the institution to call the transaction before contractual maturity, an institution shall take the maturity of the protection to be the time to the earliest date at which that option may be exercised; otherwise the institution may consider that such an option does not affect the maturity of the protection.

▼C2

3. Where a credit derivative is not prevented from terminating prior to expiration of any grace period required for a default on the underlying obligation to occur as a result of a failure to pay institutions shall reduce the maturity of the protection by the length of the grace period.

Article 239

Valuation of protection

1. For transactions subject to funded credit protection under the Financial Collateral Simple Method, where there is a mismatch between the maturity of the exposure and the maturity of the protection, the collateral does not qualify as eligible funded credit protection.

2. For transactions subject to funded credit protection under the Financial Collateral Comprehensive Method, institutions shall reflect the maturity of the credit protection and of the exposure in the adjusted value of the collateral in accordance with the following formula:

$$C_{VAM} = C_{VA} \cdot \frac{t - t^*}{T - t^*}$$

where:

C_{VA} = the volatility adjusted value of the collateral as specified in Article 223(2) or the amount of the exposure, whichever is lower;

t = the number of years remaining to the maturity date of the credit protection calculated in accordance with Article 238, or the value of T, whichever is lower;

T = the number of years remaining to the maturity date of the exposure calculated in accordance with Article 238, or five years, whichever is lower;

t* = 0,25.

Institutions shall use C_{VAM} as C_{VA} further adjusted for maturity mismatch in the formula for the calculation of the fully adjusted value of the exposure (E*) set out in Article 223(5).

3. For transactions subject to unfunded credit protection, institutions shall reflect the maturity of the credit protection and of the exposure in the adjusted value of the credit protection in accordance with the following formula:

$$G_A = G^* \cdot \frac{t - t^*}{T - t^*}$$

where:

G_A = G* adjusted for any maturity mismatch;

G* = the amount of the protection adjusted for any currency mismatch;

▼C2

t = is the number of years remaining to the maturity date of the credit protection calculated in accordance with Article 238, or the value of T, whichever is lower;

T = is the number of years remaining to the maturity date of the exposure calculated in accordance with Article 238, or five years, whichever is lower;

t* = 0,25.

Institutions shall use G_A as the value of the protection for the purposes of Articles 233 to 236.

Section 6

Basket CRM techniques

Article 240

First-to-default credit derivatives

Where an institution obtains credit protection for a number of exposures under terms that the first default among the exposures shall trigger payment and that this credit event shall terminate the contract, the institution may amend the calculation of the risk-weighted exposure amount and, as relevant, the expected loss amount of the exposure which would, in the absence of the credit protection, produce the lowest risk-weighted exposure amount in accordance with this Chapter:

(a) for institutions using the Standardised Approach, the risk-weighted exposure amount shall be that calculated under the Standardised Approach;

(b) for institutions using the IRB Approach, the risk-weighted exposure amount shall be the sum of the risk-weighted exposure amount calculated under the IRB Approach and 12,5 times the expected loss amount.

The treatment set out in this Article applies only where the exposure value is less than or equal to the value of the credit protection.

Article 241

Nth-to-default credit derivatives

Where the nth default among the exposures triggers payment under the credit protection, the institution purchasing the protection may only recognise the protection for the calculation of risk-weighted exposure amounts and, as applicable, expected loss amounts where protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. In such cases, the institution may amend the calculation of the risk-weighted exposure amount and, as applicable, the expected loss amount of the exposure which would, in the absence of the credit protection, produce the n-th lowest risk-weighted exposure amount in accordance with this Chapter. Institutions shall calculate the nth lowest amount as specified in points (a) and (b) of Article 240.

▼C2

The treatment set out in this Article applies only where the exposure value is less than or equal to the value of the credit protection.

All exposures in the basket shall meet the requirements laid down in Article 204(2) and Article 216(1)(d).

▼M5

CHAPTER 5

Securitisation

Section 1

Definitions and criteria for simple, transparent and standardised securitisations

Article 242

Definitions

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

(1) ‘clean-up call option’ means a contractual option that entitles the originator to call the securitisation positions before all of the securitised exposures have been repaid, either by repurchasing the underlying exposures remaining in the pool in the case of traditional securitisations or by terminating the credit protection in the case of synthetic securitisations, in both cases when the amount of outstanding underlying exposures falls to or below certain pre-specified level;

(2) ‘credit-enhancing interest-only strip’ means an on-balance sheet asset that represents a valuation of cash flows related to future margin income and is a subordinated tranche in the securitisation;

(3) ‘liquidity facility’ means a liquidity facility as defined in point (14) of Article 2 of Regulation (EU) 2017/2402;

(4) ‘unrated position’ means a securitisation position which does not have an eligible credit assessment in accordance with Section 4;

(5) ‘rated position’ means a securitisation position which has an eligible credit assessment in accordance with Section 4;

(6) ‘senior securitisation position’ means a position backed or secured by a first claim on the whole of the underlying exposures, disregarding for these purposes amounts due under interest rate or currency derivative contracts, fees or other similar payments, and irrespective of any difference in maturity with one or more other senior tranches with which that position shares losses on a pro-rata basis;

(7) ‘IRB pool’ means a pool of underlying exposures of a type in relation to which the institution has permission to use the IRB Approach and is able to calculate risk- weighted exposure amounts in accordance with Chapter 3 for all of these exposures;

▼M5

(8) ‘mixed pool’ means a pool of underlying exposures of a type in relation to which the institution has permission to use the IRB Approach and is able to calculate risk- weighted exposure amounts in accordance with Chapter 3 for some, but not all, of the exposures;

(9) ‘overcollateralisation’ means any form of credit enhancement by virtue of which underlying exposures are posted in value which is higher than the value of the securitisation positions;

(10) ‘simple, transparent and standardised securitisation’ or ‘STS securitisation’ means a securitisation that meets the requirements set out in Article 18 of Regulation (EU) 2017/2402;

(11) ‘asset-backed commercial paper programme’ or ‘ABCP programme’ means an asset backed commercial paper programme or ABCP programme as defined in point (7) of Article 2 of Regulation (EU) 2017/2402;

(12) ‘asset-backed commercial paper transaction’ or ‘ABCP transaction’ means an asset-backed commercial paper transaction or ABCP transaction as defined in point (8) of Article 2 of Regulation (EU) 2017/2402;

(13) ‘traditional securitisation’ means a traditional securitisation as defined in point (9) of Article 2 of Regulation (EU) 2017/2402;

(14) ‘synthetic securitisation’ means a synthetic securitisation as defined in point (10) of Article 2 of Regulation (EU) 2017/2402;

(15) ‘revolving exposure’ means a revolving exposure as defined in point (15) of Article 2 of Regulation (EU) 2017/2402;

(16) ‘early amortisation provision’ means an early amortisation provision as defined in point (17) of Article 2 of Regulation (EU) 2017/2402;

(17) ‘first loss tranche’ means a first loss tranche as defined in point (18) of Article 2 of Regulation (EU) 2017/2402;

(18) ‘mezzanine securitisation position’ means a position in the securitisation which is subordinated to the senior securitisation position and more senior than the first loss tranche, and which is subject to a risk weight lower than 1 250 % and higher than 25 % in accordance with Subsections 2 and 3 of Section 3;

(19) ‘promotional entity’ means any undertaking or entity established by a Member State’s central, regional or local government, which grants promotional loans or grants promotional guarantees, whose primary goal is not to make profit or maximise market share but to promote that government’s public policy objectives, provided that, subject to State aid rules, that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original capital or funding or the promotional loan it grants is directly or indirectly guaranteed by the Member State’s central, regional or local government;

▼M13

(20) ‘synthetic excess spread’ means a synthetic excess spread as defined in point (29) of Article 2 of Regulation (EU) 2017/2402.

▼M5

Article 243

Criteria for STS securitisations qualifying for differentiated capital treatment

1. Positions in an ABCP programme or ABCP transaction that qualify as positions in an STS securitisation shall be eligible for the treatment set out in Articles 260, 262 and 264 where the following requirements are met:

(a) the underlying exposures meet, at the time of their inclusion in the ABCP programme, to the best knowledge of the originator or the original lender, the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than 75 % on an individual exposure basis where the exposure is a retail exposure or 100 % for any other exposures; and

(b) the aggregate exposure value of all exposures to a single obligor at ABCP programme level does not exceed 2 % of the aggregate exposure value of all exposures within the ABCP programme at the time the exposures were added to the ABCP programme. For the purposes of this calculation, loans or leases to a group of connected clients, to the best knowledge of the sponsor, shall be considered as exposures to a single obligor.

▼M9

In the case of trade receivables, point (b) of the first subparagraph shall not apply where the credit risk of those trade receivables is fully covered by eligible credit protection in accordance with Chapter 4, provided that in that case the protection provider is an institution, an investment firm, an insurance undertaking or a reinsurance undertaking.

▼M5

In the case of securitised residual leasing values, point (b) of the first subparagraph shall not apply where those values are not exposed to refinancing or resell risk due to a legally enforceable commitment to repurchase or refinance the exposure at a pre-determined amount by a third party eligible under Article 201(1).

By way of derogation from point (a) of the first subparagraph, where an institution applies Article 248(3) or has been granted permission to apply the Internal Assessment Approach in accordance with Article 265, the risk weight that institution would assign to a liquidity facility that completely covers the ABCP issued under the programme is equal to or smaller than 100 %.

2. Positions in a securitisation, other than an ABCP programme or ABCP transaction, that qualify as positions in an STS securitisation, shall be eligible for the treatment set out in Articles 260, 262 and 264 where the following requirements are met:

(a) at the time of inclusion in the securitisation, the aggregate exposure value of all exposures to a single obligor in the pool does not exceed 2 % of the exposure values of the aggregate outstanding exposure values of the pool of underlying exposures. For the purposes of this calculation, loans or leases to a group of connected clients shall be considered as exposures to a single obligor.

▼M5

In the case of securitised residual leasing values, the first subparagraph of this point shall not apply where those values are not exposed to refinancing or resell risk due to a legally enforceable commitment to repurchase or refinance the exposure at a predetermined amount by a third party eligible under Article 201(1);

(b) at the time of their inclusion in the securitisation, the underlying exposures meet the conditions for being assigned, under the Standardised Approach and taking into account any eligible credit risk mitigation, a risk weight equal to or smaller than:

(i) 40 % on an exposure value-weighted average basis for the portfolio where the exposures are loans secured by residential mortgages or fully guaranteed residential loans, as referred to in point (e) of Article 129(1);

(ii) 50 % on an individual exposure basis where the exposure is a loan secured by a commercial mortgage;

(iii) 75 % on an individual exposure basis where the exposure is a retail exposure;

(iv) for any other exposures, 100 % on an individual exposure basis;

(c) where points (b)(i) and (b)(ii) apply, the loans secured by lower ranking security rights on a given asset shall only be included in the securitisation where all loans secured by prior ranking security rights on that asset are also included in the securitisation;

(d) where point (b)(i) of this paragraph applies, no loan in the pool of underlying exposures shall have a loan-to-value ratio higher than 100 %, at the time of inclusion in the securitisation, measured in accordance with point (d)(i) of Article 129(1) and Article 229(1).

Section 2

Recognition of significant risk transfer

Article 244

Traditional securitisation

1. The originator institution of a traditional securitisation may exclude underlying exposures from its calculation of risk-weighted exposure amounts and, where relevant, expected loss amounts if either of the following conditions is fulfilled:

(a) significant credit risk associated with the underlying exposures has been transferred to third parties;

(b) the originator institution applies a 1 250 % risk weight to all securitisation positions it holds in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

▼M5

2. Significant credit risk shall be considered as transferred in either of the following cases:

(a) the risk-weighted exposure amounts of the mezzanine securitisation positions held by the originator institution in the securitisation do not exceed 50 % of the risk-weighted exposure amounts of all mezzanine securitisation positions existing in this securitisation;

(b) the originator institution does not hold more than 20 % of the exposure value of the first loss tranche in the securitisation, provided that both of the following conditions are met:

(i) the originator can demonstrate that the exposure value of the first loss tranche exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin;

(ii) there are no mezzanine securitisation positions.

Where the possible reduction in risk-weighted exposure amounts, which the originator institution would achieve by the securitisation under points (a) or (b), is not justified by a commensurate transfer of credit risk to third parties, competent authorities may decide on a case-by-case basis that significant credit risk shall not be considered as transferred to third parties.

3. By way of derogation from paragraph 2, competent authorities may allow originator institutions to recognise significant credit risk transfer in relation to a securitisation where the originator institution demonstrates in each case that the reduction in own funds requirements which the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. Permission may only be granted where the institution meets both of the following conditions:

(a) the institution has adequate internal risk management policies and methodologies to assess the transfer of credit risk;

(b) the institution has also recognised the transfer of credit risk to third parties in each case for the purposes of the institution's internal risk management and its internal capital allocation.

4. In addition to the requirements set out in paragraphs 1, 2 and 3, all of the following conditions shall be met:

(a) the transaction documentation reflects the economic substance of the securitisation;

(b) the securitisation positions do not constitute payment obligations of the originator institution;

(c) the underlying exposures are placed beyond the reach of the originator institution and its creditors in a manner that meets the requirement set out in Article 20(1) of Regulation (EU) 2017/2402;

(d) the originator institution does not retain control over the underlying exposures. It shall be considered that control is retained over the underlying exposures where the originator has the right to repurchase from the transferee the previously transferred exposures in order to realise their benefits or if it is otherwise required to re-assume transferred risk. The originator institution's retention of servicing rights or obligations in respect of the underlying exposures shall not of itself constitute control of the exposures;

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(e) the securitisation documentation does not contain terms or conditions that:

(i) require the originator institution to alter the underlying exposures to improve the average quality of the pool; or

(ii) increase the yield payable to holders of positions or otherwise enhance the positions in the securitisation in response to a deterioration in the credit quality of the underlying exposures;

(f) where applicable, the transaction documentation makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);

(g) where there is a clean-up call option, that option shall also meet all of the following conditions:

(i) it can be exercised at the discretion of the originator institution;

(ii) it may only be exercised when 10 % or less of the original value of the underlying exposures remains unamortised;

(iii) it is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors in the securitisation and is not otherwise structured to provide credit enhancement;

(h) the originator institution has received an opinion from a qualified legal counsel confirming that the securitisation complies with the conditions set out in point (c) of this paragraph.

5. The competent authorities shall inform the EBA of those cases where they have decided that the possible reduction in risk-weighted exposure amounts was not justified by a commensurate transfer of credit risk to third parties in accordance with paragraph 2, and the cases where institutions have chosen to apply paragraph 3.

6. The EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in traditional securitisations in accordance with this Article. In particular, the EBA shall review:

(a) the conditions for the transfer of significant credit risk to third parties in accordance with paragraphs 2, 3 and 4;

(b) the interpretation of 'commensurate transfer of credit risk to third parties' for the purposes of the competent authorities' assessment provided for in the second subparagraph of paragraph 2 and in paragraph 3;

(c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraph 2 or 3.

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The EBA shall report its findings to the Commission by 2 January 2021. The Commission may, having taken into account the report from the EBA, adopt a delegated act in accordance with Article 462, to supplement this Regulation by further specifying the items listed in points (a), (b) and (c) of this paragraph.

Article 245

Synthetic securitisation

1. The originator institution of a synthetic securitisation may calculate risk-weighted exposure amounts, and, where relevant, expected loss amounts with respect to the underlying exposures in accordance with Articles 251 and 252, where either of the following conditions is met:

(a) significant credit risk has been transferred to third parties either through funded or unfunded credit protection;

(b) the originator institution applies a 1 250 % risk weight to all securitisation positions that it retains in the securitisation or deducts these securitisation positions from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

2. Significant credit risk shall be considered as transferred in either of the following cases:

(a) the risk-weighted exposure amounts of the mezzanine securitisation positions held by the originator institution in the securitisation do not exceed 50 % of the risk-weighted exposure amounts of all mezzanine securitisation positions existing in this securitisation;

(b) the originator institution does not hold more than 20 % of the exposure value of the first loss tranche in the securitisation, provided that both of the following conditions are met:

(i) the originator can demonstrate that the exposure value of the first loss tranche exceeds a reasoned estimate of the expected loss on the underlying exposures by a substantial margin;

(ii) there are no mezzanine securitisation positions.

Where the possible reduction in risk-weighted exposure amounts, which the originator institution would achieve by the securitisation, is not justified by a commensurate transfer of credit risk to third parties, competent authorities may decide on a case-by-case basis that significant credit risk shall not be considered as transferred to third parties.

3. By way of derogation from paragraph 2, competent authorities may allow originator institutions to recognise significant credit risk transfer in relation to a securitisation where the originator institution demonstrates in each case that the reduction in own funds requirements which the originator achieves by the securitisation is justified by a commensurate transfer of credit risk to third parties. Permission may only be granted where the institution meets both of the following conditions:

(a) the institution has adequate internal risk-management policies and methodologies to assess the transfer of risk;

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(b) the institution has also recognised the transfer of credit risk to third parties in each case for the purposes of the institution's internal risk management and its internal capital allocation.

4. In addition to the requirements set out in paragraphs 1, 2 and 3, all of the following conditions shall be met:

(a) the transaction documentation reflects the economic substance of the securitisation;

(b) the credit protection by virtue of which credit risk is transferred complies with Article 249;

(c) the securitisation documentation does not contain terms or conditions that:

(i) impose significant materiality thresholds below which credit protection is deemed not to be triggered if a credit event occurs;

(ii) allow for the termination of the protection due to deterioration of the credit quality of the underlying exposures;

(iii) require the originator institution to alter the composition of the underlying exposures to improve the average quality of the pool; or

(iv) increase the institution's cost of credit protection or the yield payable to holders of positions in the securitisation in response to a deterioration in the credit quality of the underlying pool;

(d) the credit protection is enforceable in all relevant jurisdictions;

(e) where applicable, the transaction documentation makes it clear that the originator or the sponsor may only purchase or repurchase securitisation positions or repurchase, restructure or substitute the underlying exposures beyond their contractual obligations where such arrangements are executed in accordance with prevailing market conditions and the parties to them act in their own interest as free and independent parties (arm's length);

(f) where there is a clean-up call option, that option meets all the following conditions:

(i) it may be exercised at the discretion of the originator institution;

(ii) it may only be exercised when 10 % or less of the original value of the underlying exposures remains unamortised;

(iii) it is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors in the securitisation and is not otherwise structured to provide credit enhancement;

(g) the originator institution has received an opinion from a qualified legal counsel confirming that the securitisation complies with the conditions set out in point (d) of this paragraph;

5. The competent authorities shall inform the EBA of the cases where they have decided that the possible reduction in risk-weighted exposure amounts was not justified by a commensurate transfer of credit risk to third parties in accordance with paragraph 2, and the cases where institutions have chosen to apply paragraph 3.

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6. The EBA shall monitor the range of supervisory practices in relation to the recognition of significant risk transfer in synthetic securitisations in accordance with this Article. In particular, the EBA shall review:

(a) the conditions for the transfer of significant credit risk to third parties in accordance with paragraphs 2, 3 and 4;

(b) the interpretation of 'commensurate transfer of credit risk to third parties' for the purposes of the competent authorities' assessment provided for in the second subparagraph of paragraph 2 and in paragraph 3; and

(c) the requirements for the competent authorities' assessment of securitisation transactions in relation to which the originator seeks recognition of significant credit risk transfer to third parties in accordance with paragraph 2 or 3.

The EBA shall report its findings to the Commission by 2 January 2021. The Commission may, having taken into account the report from the EBA, adopt a delegated act in accordance with Article 462, to supplement this Regulation by further specifying the items listed in points (a), (b) and (c) of this paragraph.

Article 246

Operational requirements for early amortisation provisions

Where the securitisation includes revolving exposures and early amortisation provisions or similar provisions, significant credit risk shall only be considered transferred by the originator institution where the requirements laid down in Articles 244 and 245 are met and the early amortisation provision, once triggered, does not:

(a) subordinate the institution's senior or *pari passu* claim on the underlying exposures to the other investors' claims;

(b) subordinate further the institution's claim on the underlying exposures relative to other parties' claims; or

(c) otherwise increase the institution's exposure to losses associated with the underlying revolving exposures.

Section 3

Calculation of risk-weighted exposure amounts

Subsection 1

General Provisions

Article 247

Calculation of risk-weighted exposure amounts

1. Where an originator institution has transferred significant credit risk associated with the underlying exposures of the securitisation in accordance with Section 2, that institution may:

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(a) in the case of a traditional securitisation, exclude the underlying exposures from its calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts;

(b) in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, and, where relevant, expected loss amounts, with respect to the underlying exposures in accordance with Articles 251 and 252.

2. Where the originator institution has decided to apply paragraph 1, it shall calculate the risk-weighted exposure amounts as set out in this Chapter for the positions that it may hold in the securitisation.

Where the originator institution has not transferred significant credit risk or has decided not to apply paragraph 1, it shall not be required to calculate risk-weighted exposure amounts for any position it may have in the securitisation but shall continue including the underlying exposures in its calculation of risk-weighted exposure amounts and, where relevant, expected loss amounts as if they had not been securitised.

3. Where there is an exposure to positions in different tranches in a securitisation, the exposure to each tranche shall be considered a separate securitisation position. The providers of credit protection to securitisation positions shall be considered as holding positions in the securitisation. Securitisation positions shall include exposures to a securitisation arising from interest rate or currency derivative contracts that the institution has entered into with the transaction.

4. Unless a securitisation position is deducted from Common Equity Tier 1 items pursuant to point (k) of Article 36(1), the risk-weighted exposure amount shall be included in the institution's total of risk-weighted exposure amounts for the purposes of Article 92(3).

5. The risk-weighted exposure amount of a securitisation position shall be calculated by multiplying the exposure value of the position, calculated as set out in Article 248, by the relevant total risk weight.

6. The total risk weight shall be determined as the sum of the risk weight set out in this Chapter and any additional risk weight in accordance with Article 270a.

Article 248

Exposure value

1. The exposure value of a securitisation position shall be calculated as follows:

(a) the exposure value of an on-balance sheet securitisation position shall be its accounting value remaining after any relevant specific credit risk adjustments on the securitisation position have been applied in accordance with Article 110;

(b) the exposure value of an off-balance sheet securitisation position shall be its nominal value less any relevant specific credit risk adjustments on the securitisation position in accordance with Article 110, multiplied by the relevant conversion factor as set out in this point. The conversion factor shall be 100 %, except in the case of cash advance facilities. To determine the exposure value of the undrawn portion of the cash advance facilities, a conversion

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factor of 0 % may be applied to the nominal amount of a liquidity facility that is unconditionally cancellable provided that repayment of draws on the facility are senior to any other claims on the cash flows arising from the underlying exposures and the institution has demonstrated to the satisfaction of the competent authority that it is applying an appropriately conservative method for measuring the amount of the undrawn portion;

(c) the exposure value for the counterparty credit risk of a securitisation position that results from a derivative instrument listed in Annex II, shall be determined in accordance with Chapter 6;

(d) an originator institution may deduct from the exposure value of a securitisation position which is assigned 1 250 % risk weight in accordance with Subsection 3 or deducted from Common Equity Tier 1 in accordance with point (k) of Article 36(1), the amount of the specific credit risk adjustments on the underlying exposures in accordance with Article 110, and any non-refundable purchase price discounts connected with such underlying exposures to the extent that such discounts have caused the reduction of own funds;

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(e) the exposure value of a synthetic excess spread shall include, as applicable, the following:

(i) any income from the securitised exposures already recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as synthetic excess spread and that is still available to absorb losses;

(ii) any synthetic excess spread that is contractually designated by the originator institution in any previous periods and that is still available to absorb losses;

(iii) any synthetic excess spread that is contractually designated by the originator institution for the current period and that is still available to absorb losses;

(iv) any synthetic excess spread contractually designated by the originator institution for future periods.

For the purposes of this point, any amount that is provided as collateral or credit enhancement in relation to the synthetic securitisation and that is already subject to an own funds requirement in accordance with this Chapter shall not be included in the exposure value.

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The EBA shall develop draft regulatory technical standards to specify what constitutes an appropriately conservative method for measuring the amount of the undrawn portion referred to in point (b) of the first subparagraph.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

2. Where an institution has two or more overlapping positions in a securitisation, it shall include only one of the positions in its calculation of risk-weighted exposure amounts.

Where the positions partially overlap, the institution may split the position into two parts and recognise the overlap in relation to one part only in accordance with the first subparagraph. Alternatively, the institution may treat the positions as if they were fully overlapping by expanding for capital calculation purposes the position that produces the higher risk-weighted exposure amounts.

The institution may also recognise an overlap between the specific risk own funds requirements for positions in the trading book and the own funds requirements for securitisation positions in the non-trading book, provided that the institution is able to calculate and compare the own funds requirements for the relevant positions.

For the purposes of this paragraph, two positions shall be deemed to be overlapping where they are mutually offsetting in such a manner that the institution is able to preclude the losses arising from one position by performing the obligations required under the other position.

3. Where point (d) of Article 270c applies to positions in an ABCP, the institution may use the risk weight assigned to a liquidity facility in order to calculate the risk-weighted exposure amount for the ABCP, provided that the liquidity facility covers 100 % of the ABCP issued by the ABCP programme and the liquidity facility ranks *pari passu* with the ABCP in a manner that they form an overlapping position. The institution shall notify the competent authorities where it has applied the provisions laid down in this paragraph. For the purposes of determining the 100 % coverage set out in this paragraph, the institution may take into account other liquidity facilities in the ABCP programme, provided that they form an overlapping position with the ABCP.

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4. EBA shall develop draft regulatory technical standards to specify how originator institutions are to determine the exposure value referred to in point (e) of paragraph 1, taking into account the relevant losses expected to be covered by the synthetic excess spread.

EBA shall submit those draft regulatory technical standards to the Commission by 10 October 2021.

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

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Article 249

Recognition of credit risk mitigation for securitisation positions

1. An institution may recognise funded or unfunded credit protection with respect to a securitisation position where the requirements for credit risk mitigation laid down in this Chapter and in Chapter 4 are met.

2. Eligible funded credit protection shall be limited to financial collateral which is eligible for the calculation of risk-weighted exposure amounts under Chapter 2 as laid down under Chapter 4 and recognition of credit risk mitigation shall be subject to compliance with the relevant requirements as laid down under Chapter 4.

Eligible unfunded credit protection and unfunded credit protection providers shall be limited to those which are eligible in accordance with Chapter 4 and recognition of credit risk mitigation shall be subject to compliance with the relevant requirements as laid down under Chapter 4.

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3. By way of derogation from paragraph 2 of this Article, the eligible providers of unfunded credit protection listed in point (g) of Article 201(1), shall have been assigned a credit assessment by a recognised ECAI which was credit quality step 2 or above at the time the credit protection was first recognised and is currently credit quality step 3 or above.

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Institutions which are allowed to apply the IRB Approach to a direct exposure to the protection provider may assess eligibility in accordance with the first subparagraph based on the equivalence of the PD for the protection provider to the PD associated with the credit quality steps referred to in Article 136.

4. By way of derogation from paragraph 2, SSPEs shall be eligible protection providers where all of the following conditions are met:

(a) the SSPE owns assets that qualify as eligible financial collateral in accordance with Chapter 4;

(b) the assets referred to in point (a) are not subject to claims or contingent claims ranking ahead or *pari passu* with the claim or contingent claim of the institution receiving unfunded credit protection; and

(c) all the requirements for the recognition of financial collateral set out in Chapter 4 are met.

5. For the purposes of paragraph 4, the amount of the protection adjusted for any currency and maturity mismatches (Ga) in accordance with Chapter 4 shall be limited to the volatility adjusted market value of

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those assets and the risk weight of exposures to the protection provider as specified under the Standardised Approach (g) shall be determined as the weighted-average risk weight that would apply to those assets as financial collateral under the Standardised Approach.

6. Where a securitisation position benefits from full credit protection or a partial credit protection on a pro-rata basis, the following requirements shall apply:

(a) the institution providing credit protection shall calculate risk-weighted exposure amounts for the portion of the securitisation position benefiting from credit protection in accordance with Subsection 3 as if it held that portion of the position directly;

(b) the institution buying credit protection shall calculate risk-weighted exposure amounts in accordance with Chapter 4 for the protected portion.

7. In all cases not covered by paragraph 6, the following requirements shall apply:

(a) the institution providing credit protection shall treat the portion of the position benefiting from credit protection as a securitisation position and shall calculate risk-weighted exposure amounts as if it held that position directly in accordance with Subsection 3, subject to paragraphs 8, 9 and 10;

(b) the institution buying credit protection shall calculate risk-weighted exposure amounts for the protected portion of the position referred to in point (a) in accordance with Chapter 4. The institution shall treat the portion of the securitisation position not benefiting from credit protection as a separate securitisation position and shall calculate risk-weighted exposure amounts in accordance with Subsection 3, subject to paragraphs 8, 9 and 10.

8. Institutions using the Securitisation Internal Ratings Based Approach (SEC-IRBA) or the Securitisation Standardised Approach (SEC-SA) under Subsection 3 shall determine the attachment point (A) and detachment point (D) separately for each of the positions derived in accordance with paragraph 7 as if these had been issued as separate securitisation positions at the time of origination of the transaction. The value of K_{IRB} or K_{SA}, respectively, shall be calculated taking into account the original pool of exposures underlying the securitisation.

9. Institutions using the Securitisation External Ratings Based Approach (SEC-ERBA) under Subsection 3 for the original securitisation position shall calculate risk-weighted exposure amounts for the positions derived in accordance with paragraph 7 as follows:

(a) where the derived position has the higher seniority, it shall be assigned the risk weight of the original securitisation position;

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(b) where the derived position has the lower seniority, it may be assigned an inferred rating in accordance with Article 263(7). In that case, thickness input T shall only be computed on the basis of the derived position. Where a rating may not be inferred, the institution shall apply the higher of the risk weight resulting from either:

(i) applying the SEC-SA in accordance with paragraph 8 and Subsection 3; or

(ii) the risk weight of the original securitisation position under the SEC-ERBA.

10. The derived position with the lower seniority shall be treated as a non-senior securitisation position even if the original securitisation position prior to protection qualifies as senior.

Article 250

Implicit support

1. A sponsor institution, or an originator institution which in respect of a securitisation has made use of Article 247(1) and (2) in the calculation of risk-weighted exposure amounts or has sold instruments from its trading book to the effect that it is no longer required to hold own funds for the risks of those instruments shall not provide support, directly or indirectly, to the securitisation beyond its contractual obligations with a view to reducing potential or actual losses to investors.

2. A transaction shall not be considered as support for the purposes of paragraph 1 where the transaction has been duly taken into account in the assessment of significant credit risk transfer and both parties have executed the transaction acting in their own interest as free and independent parties (arm's length). For these purposes, the institution shall undertake a full credit review of the transaction and, at a minimum, take into account all of the following items:

(a) the repurchase price;

(b) the institution's capital and liquidity position before and after repurchase;

(c) the performance of the underlying exposures;

(d) the performance of the securitisation positions;

(e) the impact of support on the losses expected to be incurred by the originator relative to investors.

3. The originator institution and the sponsor institution shall notify the competent authority of any transaction entered into in relation to the securitisation in accordance with paragraph 2.

4. The EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on what constitutes 'arm's length' for the purposes of this Article and the circumstances under which a transaction is not structured to provide support.

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5. If an originator institution or a sponsor institution fails to comply with paragraph 1 in respect of a securitisation, the institution shall include all of the underlying exposures of that securitisation in its calculation of risk-weighted exposure amounts as if they had not been securitised and disclose:

(a) that it has provided support to the securitisation in breach of paragraph 1; and

(b) the impact of the support provided in terms of own funds requirements.

Article 251

Originator institutions' calculation of risk-weighted exposure amounts securitised in a synthetic securitisation

1. For the purpose of calculating risk-weighted exposure amounts for the underlying exposures, the originator institution of a synthetic securitisation shall use the calculation methodologies set out in this Section where applicable instead of those set out in Chapter 2. For institutions calculating risk-weighted exposure amounts and, where relevant, expected loss amounts with respect to the underlying exposures under Chapter 3, the expected loss amount in respect of such exposures shall be zero.

2. The requirements set out in paragraph 1 of this Article shall apply to the entire pool of exposures backing the securitisation. Subject to Article 252, the originator institution shall calculate risk-weighted exposure amounts with respect to all tranches in the securitisation in accordance with this Section, including the positions in relation to which the institution is able to recognise credit risk mitigation in accordance with Article 249. The risk weight to be applied to positions which benefit from credit risk mitigation may be amended in accordance with Chapter 4.

Article 252

Treatment of maturity mismatches in synthetic securitisations

For the purposes of calculating risk-weighted exposure amounts in accordance with Article 251, any maturity mismatch between the credit protection by which the transfer of risk is achieved and the underlying exposures shall be calculated as follows:

(a) the maturity of the underlying exposures shall be taken to be the longest maturity of any of those exposures subject to a maximum of 5 years. The maturity of the credit protection shall be determined in accordance with Chapter 4;

(b) an originator institution shall ignore any maturity mismatch in calculating risk-weighted exposure amounts for securitisation positions subject to a risk weight of 1 250 % in accordance with this Section. For all other positions, the maturity mismatch treatment set out in Chapter 4 shall be applied in accordance with the following formula:

$$RW^{*} = RW_{SP} \cdot [(t - t^{*})/(T - t^{*})] + RW_{Ass} \cdot [(T - t)/(T - t^{*})]$$

where:

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RW^* = risk-weighted exposure amounts for the purposes of point (a) of Article 92(3);

RW_{Ass} = risk-weighted exposure amounts for the underlying exposures as if they had not been securitised, calculated on a pro-rata basis;

RW_{SP} = risk-weighted exposure amounts calculated under Article 251 as if there was no maturity mismatch;

T = maturity of the underlying exposures, expressed in years;

t = maturity of credit protection, expressed in years;

t^* = 0,25

Article 253

Reduction in risk-weighted exposure amounts

1. Where a securitisation position is assigned a 1 250 % risk weight under this Section, institutions may deduct the exposure value of such position from Common Equity Tier 1 capital in accordance with point (k) of Article 36(1) as an alternative to including the position in their calculation of risk-weighted exposure amounts. For that purpose, the calculation of the exposure value may reflect eligible funded credit protection in accordance with Article 249.

2. Where an institution makes use of the alternative set out in paragraph 1, it may subtract the amount deducted in accordance with point (k) of Article 36(1) from the amount specified in Article 268 as maximum capital requirement that would be calculated in respect of the underlying exposures as if they had not been securitised.

Subsection 2

Hierarchy of methods and common parameters

Article 254

Hierarchy of methods

1. Institutions shall use one of the methods set out in Subsection 3 to calculate risk-weighted exposure amounts in accordance with the following hierarchy:

(a) where the conditions set out in Article 258 are met, an institution shall use the SEC-IRBA in accordance with Articles 259 and 260;

(b) where the SEC-IRBA may not be used, an institution shall use the SEC-SA in accordance with Articles 261 and 262;

(c) where the SEC-SA may not be used, an institution shall use the SEC-ERBA in accordance with Articles 263 and 264 for rated positions or positions in respect of which an inferred rating may be used.

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2. For rated positions or positions in respect of which an inferred rating may be used, an institution shall use the SEC-ERBA instead of the SEC-SA in each of the following cases:

(a) where the application of the SEC-SA would result in a risk weight higher than 25 % for positions qualifying as positions in an STS securitisation;

(b) where the application of the SEC-SA would result in a risk weight higher than 25 % or the application of the SEC-ERBA would result in a risk weight higher than 75 % for positions not qualifying as positions in an STS securitisation;

(c) for securitisation transactions backed by pools of auto loans, auto leases and equipment leases.

3. In cases not covered by paragraph 2, and by way of derogation from point (b) of paragraph 1, an institution may decide to apply the SEC-ERBA instead of the SEC-SA to all of its rated securitisation positions or positions in respect of which an inferred rating may be used.

For the purposes of the first subparagraph, an institution shall notify its decision to the competent authority no later than 17 November 2018.

Any subsequent decision to further change the approach applied to all of its rated securitisation positions shall be notified by the institution to its competent authority before the 15th November immediately following that decision.

In the absence of any objection by the competent authority by 15 December immediately following the deadline referred to in the second or third subparagraph, as appropriate, the decision notified by the institution shall take effect from 1 January of the following year and shall be valid until a subsequently notified decision comes into effect. An institution shall not use different approaches in the course of the same year.

4. By way of derogation from paragraph 1, competent authorities may prohibit institutions, on a case by case basis, from applying the SEC-SA when the risk-weighted exposure amount resulting from the application of the SEC-SA is not commensurate to the risks posed to the institution or to financial stability, including but not limited to the credit risk embedded in the exposures underlying the securitisation. In the case of exposures not qualifying as positions in an STS securitisation, particular regard shall be had to securitisations with highly complex and risky features.

5. Without prejudice to paragraph 1 of this Article, an institution may apply the Internal Assessment Approach to calculate risk-weighted exposure amounts in relation to an unrated position in an ABCP programme or ABCP transaction in accordance with Article 266, provided that the conditions set out in Article 265 are met. Where an institution has received permission to apply the Internal Assessment Approach in accordance with Article 265(2), and a specific position in an ABCP programme or ABCP transaction falls within the scope of application covered by such permission, the institution shall apply that approach to calculate the risk-weighted exposure amount of that position.

6. For a position in a re-securitisation, institutions shall apply the SEC-SA in accordance with Article 261, with the modifications set out in Article 269.

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7. In all other cases, a risk weight of 1 250 % shall be assigned to securitisation positions.

8. The competent authorities shall inform the EBA of any notification made pursuant to paragraph 3 of this Article. The EBA shall monitor the impact of this Article on capital requirements and the range of supervisory practices in connection with paragraph 4 of this Article, and shall report annually to the Commission on its findings and issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 255

Determination of K_{IRB} and K_{SA}

1. Where an institution applies the SEC-IRBA under Subsection 3, the institution shall calculate K_{IRB} in accordance with paragraphs 2 to 5.

2. Institutions shall determine K_{IRB} by multiplying the risk-weighted exposure amounts that would be calculated under Chapter 3 in respect of the underlying exposures as if they had not been securitised by 8 % divided by the exposure value of the underlying exposures. K_{IRB} shall be expressed in decimal form between zero and one.

3. For K_{IRB} calculation purposes, the risk-weighted exposure amounts that would be calculated under Chapter 3 in respect of the underlying exposures shall include:

(a) the amount of expected losses associated with all the underlying exposures of the securitisation including defaulted underlying exposures that are still part of the pool in accordance with Chapter 3; and

(b) the amount of unexpected losses associated with all the underlying exposures including defaulted underlying exposures in the pool in accordance with Chapter 3.

4. Institutions may calculate K_{IRB} in relation to the underlying exposures of the securitisation in accordance with the provisions set out in Chapter 3 for the calculation of capital requirements for purchased receivables. For these purposes, retail exposures shall be treated as purchased retail receivables and non-retail exposures as purchased corporate receivables.

5. Institutions shall calculate K_{IRB} separately for dilution risk in relation to the underlying exposures of a securitisation where dilution risk is material to such exposures.

Where losses from dilution and credit risks are treated in an aggregate manner in the securitisation, institutions shall combine the respective K_{IRB} for dilution and credit risk into a single K_{IRB} for the purposes of Subsection 3. The presence of a single reserve fund or overcollateralisation available to cover losses from either credit or dilution risk may be regarded as an indication that these risks are treated in an aggregate manner.

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Where dilution and credit risk are not treated in an aggregate manner in the securitisation, institutions shall modify the treatment set out in the second subparagraph to combine the respective K_{IRB} for dilution and credit risk in a prudent manner.

6. Where an institution applies the SEC-SA under Subsection 3, it shall calculate K_{SA} by multiplying the risk-weighted exposure amounts that would be calculated under Chapter 2 in respect of the underlying exposures as if they had not been securitised by 8 % divided by the value of the underlying exposures. K_{SA} shall be expressed in decimal form between zero and one.

For the purposes of this paragraph, institutions shall calculate the exposure value of the underlying exposures without netting any specific credit risk adjustments and additional value adjustments in accordance with Articles 34 and 110 and other own funds reductions.

7. For the purposes of paragraphs 1 to 6, where a securitisation structure involves the use of an SSPE, all the SSPE's exposures related to the securitisation shall be treated as underlying exposures. Without prejudice to the preceding, the institution may exclude the SSPE's exposures from the pool of underlying exposures for K_{IRB} or K_{SA} calculation purposes if the risk from the SSPE's exposures is immaterial or if it does not affect the institution's securitisation position.

In the case of funded synthetic securitisations, any material proceeds from the issuance of credit-linked notes or other funded obligations of the SSPE that serve as collateral for the repayment of the securitisation positions shall be included in the calculation of K_{IRB} or K_{SA} if the credit risk of the collateral is subject to the tranched loss allocation.

8. For the purposes of the third subparagraph of paragraph 5 of this Article, the EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the appropriate methods to combine K_{IRB} for dilution and credit risk where these risks are not treated in an aggregate manner in a securitisation.

9. The EBA shall develop draft regulatory technical standards to further specify the conditions to allow institutions to calculate K_{IRB} for the pools of underlying exposures in accordance with paragraph 4, in particular with regard to:

(a) internal credit policy and models for calculating K_{IRB} for securitisations;

(b) use of different risk factors relating to the pool of underlying exposures and, where sufficient accurate or reliable data on that pool are not available, of proxy data to estimate PD and LGD; and

(c) due diligence requirements to monitor the actions and policies of sellers of receivables or other originators.

The EBA shall submit those draft regulatory technical standards to the Commission by 18 January 2019.

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

Article 256

Determination of attachment point (A) and detachment point (D)

1. For the purposes of Subsection 3, institutions shall set the attachment point (A) at the threshold at which losses within the pool of underlying exposures would start to be allocated to the relevant securitisation position.

The attachment point (A) shall be expressed as a decimal value between zero and one and shall be equal to the greater of zero and the ratio of the outstanding balance of the pool of underlying exposures in the securitisation minus the outstanding balance of all tranches that rank senior or *pari passu* to the tranche containing the relevant securitisation position including the exposure itself to the outstanding balance of all the underlying exposures in the securitisation.

2. For the purposes of Subsection 3, institutions shall set the detachment point (D) at the threshold at which losses within the pool of underlying exposures would result in a complete loss of principal for the tranche containing the relevant securitisation position.

The detachment point (D) shall be expressed as a decimal value between zero and one and shall be equal to the greater of zero and the ratio of the outstanding balance of the pool of underlying exposures in the securitisation minus the outstanding balance of all tranches that rank senior to the tranche containing the relevant securitisation position to the outstanding balance of all the underlying exposures in the securitisation.

3. For the purposes of paragraphs 1 and 2, institutions shall treat overcollateralisation and funded reserve accounts as tranches and the assets comprising such reserve accounts as underlying exposures.

4. For the purposes of paragraphs 1 and 2, institutions shall disregard unfunded reserve accounts and assets that do not provide credit enhancement, such as those that only provide liquidity support, currency or interest rate swaps and cash collateral accounts related to those positions in the securitisation. For funded reserve accounts and assets providing credit enhancement, the institution shall only treat as securitisation positions the parts of those accounts or assets that are loss-absorbing.

5. Where two or more positions of the same transaction have different maturities but share pro rata loss allocation, the calculation of the attachment points (A) and the detachment points (D) shall be based on the aggregated outstanding balance of those positions and the resulting attachment points (A) and detachment points (D) shall be the same.

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6. For the purposes of calculating the attachment points (A) and detachment points (D) of a synthetic securitisation, the originator institution of the securitisation shall treat the exposure value of the securitisation position corresponding to synthetic excess spread referred to in

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point (e) of Article 248(1) as a tranche, and adjust the attachment points (A) and detachment points (D) of the other tranches it retains by adding that exposure value to the outstanding balance of the pool of underlying exposures in the securitisation. Institutions other than the originator institution shall not make this adjustment.

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Article 257

Determination of tranche maturity (M_T)

1. For the purposes of Subsection 3 and subject to paragraph 2, institutions may measure the maturity of a tranche (M_T) as either:

(a) the weighted average maturity of the contractual payments due under the tranche in accordance with the following formula:

$$\sum_t t \cdot CF_t / \sum_t CF_t,$$

where CF_t denotes all contractual payments (principal, interests and fees) payable by the borrower during period t; or

(b) the final legal maturity of the tranche in accordance with the following formula:

$$M_T = 1 + (M_L - 1) * 80\ \%,$$

where M_L is the final legal maturity of the tranche.

2. For the purposes of paragraph 1, the determination of a tranche maturity (M_T) shall be subject in all cases to a floor of 1 year and a cap of 5 years.

3. Where an institution may become exposed to potential losses from the underlying exposures by virtue of contract, the institution shall determine the maturity of the securitisation position by taking into account the maturity of the contract plus the longest maturity of such underlying exposures. For revolving exposures, the longest contractually possible remaining maturity of the exposure that might be added during the revolving period shall apply.

4. The EBA shall monitor the range of practices in this area, with particular regard to the application of point (a) of paragraph 1 of this Article, and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines by 31 December 2019.

Subsection 3

Methods to calculate risk-weighted exposure amounts

Article 258

Conditions for the use of the Internal Ratings Based Approach (SEC-IRBA)

1. Institutions shall use the SEC-IRBA to calculate risk-weighted exposure amounts in relation to a securitisation position where the following conditions are met:

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(a) the position is backed by an IRB pool or a mixed pool, provided that, in the latter case, the institution is able to calculate K_{IRB} in accordance with Section 3 on a minimum of 95 % of the underlying exposure amount;

(b) there is sufficient information available in relation to the underlying exposures of the securitisation for the institution to be able to calculate K_{IRB}; and

(c) the institution has not been precluded from using the SEC-IRBA in relation to a specified securitisation position in accordance with paragraph 2.

2. Competent authorities may on a case-by-case basis preclude the use of the SEC-IRBA where securitisations have highly complex or risky features. For these purposes, the following may be regarded as highly complex or risky features:

(a) credit enhancement that can be eroded for reasons other than portfolio losses;

(b) pools of underlying exposures with a high degree of internal correlation as a result of concentrated exposures to single sectors or geographical areas;

(c) transactions where the repayment of the securitisation positions is highly dependent on risk drivers not reflected in K_{IRB}; or

(d) highly complex loss allocations between tranches.

Article 259

Calculation of risk-weighted exposure amounts under the SEC-IRBA

1. Under the SEC-IRBA, the risk-weighted exposure amount for a securitisation position shall be calculated by multiplying the exposure value of the position calculated in accordance with Article 248 by the applicable risk weight determined as follows, in all cases subject to a floor of 15 %:

$RW = 1\,250\,\%$ when $D \leq K_{IRB}$

$RW = 12{,}5 \cdot K_{SSFA(K_{IRB})}$ when $A \geq K_{IRB}$

$RW = \left[\left(\frac{K_{IRB}-A}{D-A}\right) \cdot 12.5\right] + \left[\left(\frac{D-K_{IRB}}{D-A}\right) \cdot 12.5 \cdot K_{SSFA(K_{IRB})}\right]$ when $A < K_{IRB} < D$

where:

K_{IRB} is the capital charge of the pool of underlying exposures as defined in Article 255

D is the detachment point as determined in accordance with Article 256

A is the attachment point as determined in accordance with Article 256

$$K_{SSFA(K_{IRB})} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

where:

$a = -(1/(p * K_{IRB}))$

$u = D - K_{IRB}$

$l = \max(A - K_{IRB}; 0)$

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where:

$p = \max [0{,}3;\ (A + B^{*}(1/N) + C^{*}K_{IRB} + D^{*}LGD + E^{*}M_T)]$

where:

N is the effective number of exposures in the pool of underlying exposures, calculated in accordance with paragraph 4;

LGD is the exposure-weighted average loss-given-default of the pool of underlying exposures, calculated in accordance with paragraph 5;

M_T is the maturity of the tranche as determined in accordance with Article 257.

The parameters A, B, C, D, and E shall be determined according to the following look-up table:

		A	B	C	D	E
Non-retail	Senior, granular (N ≥ 25)	0	3,56	–1,85	0,55	0,07
	Senior, non-granular (N < 25)	0,11	2,61	–2,91	0,68	0,07
	Non-senior, granular (N ≥ 25)	0,16	2,87	–1,03	0,21	0,07
	Non-senior, non-granular (N < 25)	0,22	2,35	–2,46	0,48	0,07
Retail	Senior	0	0	–7,48	0,71	0,24
	Non-senior	0	0	–5,78	0,55	0,27

2. If the underlying IRB pool comprises both retail and non-retail exposures, the pool shall be divided into one retail and one non-retail subpool and, for each subpool, a separate p-parameter (and the corresponding input parameters N, K_{IRB} and LGD) shall be estimated. Subsequently, a weighted average p-parameter for the transaction shall be calculated on the basis of the p-parameters of each subpool and the nominal size of the exposures in each subpool.

3. Where an institution applies the SEC-IRBA to a mixed pool, the calculation of the p-parameter shall be based on the underlying exposures subject to the IRB Approach only. The underlying exposures subject to the Standardised Approach shall be ignored for these purposes.

4. The effective number of exposures (N) shall be calculated as follows:

$$N = \frac{(\sum_i EAD_i)^2}{\sum_i EAD_i^2}$$

where EAD_i represents the exposure value associated with the ith exposure in the pool.

Multiple exposures to the same obligor shall be consolidated and treated as a single exposure.

5. The exposure-weighted average LGD shall be calculated as follows:

$$LGD = \frac{\sum_i LGD_i \cdot EAD_i}{\sum_i EAD_i}$$

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where LGD_i represents the average LGD associated with all exposures to the ith obligor.

Where credit and dilution risks for purchased receivables are managed in an aggregate manner in a securitisation, the LGD input shall be construed as a weighted average of the LGD for credit risk and 100 % LGD for dilution risk. The weights shall be the stand-alone IRB Approach capital requirements for credit risk and dilution risk, respectively. For these purposes, the presence of a single reserve fund or overcollateralisation available to cover losses from either credit or dilution risk may be regarded as an indication that these risks are managed in an aggregate manner.

6. Where the share of the largest underlying exposure in the pool (C_1) is no more than 3 %, institutions may use the following simplified method to calculate N and the exposure-weighted average LGDs:

$$N = \left(C_1 \cdot C_m + \left(\frac{C_m - C_1}{m - 1} \right) \cdot \max\{1 - m \cdot C_1, 0\} \right)^{-1}$$

$$LGD = 0{,}50$$

where

C_m denotes the share of the pool corresponding to the sum of the largest m exposures; and

m is set by the institution.

If only C_1 is available and this amount is no more than 0,03, then the institution may set LGD as 0,50 and N as $1/C_1$.

7. Where the position is backed by a mixed pool and the institution is able to calculate K_{IRB} on at least 95 % of the underlying exposure amounts in accordance with point (a) of Article 258(1), the institution shall calculate the capital charge for the pool of underlying exposures as:

$$d \cdot K_{IRB} + (1 - d) \cdot K_{SA},$$

where

d is the share of the exposure amount of underlying exposures for which the institution can calculate K_{IRB} over the exposure amount of all underlying exposures.

8. Where an institution has a securitisation position in the form of a derivative to hedge market risks, including interest rate or currency risks, the institution may attribute to that derivative an inferred risk weight equivalent to the risk weight of the reference position calculated in accordance with this Article.

For the purposes of the first subparagraph, the reference position shall be the position that is *pari passu* in all respects to the derivative or, in the absence of such *pari passu* position, the position that is immediately subordinate to the derivative.

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Article 260

Treatment of STS securitisations under the SEC-IRBA

Under the SEC-IRBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 259, subject to the following modifications:

risk-weight floor for senior securitisation positions = 10 %

$$p = \max [0{,}3;\ 0{,}5 \cdot (A + B \cdot (1/N) + C \cdot K_{IRB} + D \cdot LGD + E \cdot M_T)]$$

Article 261

Calculation of risk-weighted exposure amounts under the Standardised Approach (SEC-SA)

1. Under the SEC-SA, the risk-weighted exposure amount for a position in a securitisation shall be calculated by multiplying the exposure value of the position as calculated in accordance with Article 248 by the applicable risk weight determined as follows, in all cases subject to a floor of 15 %:

$RW = 1\,250\,\%$ when $D \leq K_A$

$RW = 12.5 \cdot K_{SSFA(K_A)}$ when $A \geq K_A$

$RW = \left[\left(\frac{K_A - A}{D - A}\right) \cdot 12.5\right] + \left[\left(\frac{D - K_A}{D - A}\right) \cdot 12.5 \cdot K_{SSFA(K_A)}\right]$ when $A < K_A < D$

where:

D is the detachment point as determined in accordance with Article 256;

A is the attachment point as determined in accordance with Article 256;

K_A is a parameter calculated in accordance with paragraph 2;

$$K_{SSFA(K_A)} = \frac{e^{a \cdot u} - e^{a \cdot l}}{a(u - l)}$$

where:

$a = -(1/(p \cdot K_A))$

$u = D - K_A$

$l = \max (A - K_A;\ 0)$

p = 1 for a securitisation exposure that is not a re-securitisation exposure

2. For the purposes of paragraph 1, K_A shall be calculated as follows:

$$K_A = (1 - W) \cdot K_{SA} + W \cdot 0.5$$

where:

K_{SA} is the capital charge of the underlying pool as defined in Article 255;

W = ratio of:

(a) the sum of the nominal amount of underlying exposures in default, to

(b) the sum of the nominal amount of all underlying exposures.

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For these purposes, an exposure in default shall mean an underlying exposure which is either: (i) 90 days or more past due; (ii) subject to bankruptcy or insolvency proceedings; (iii) subject to foreclosure or similar proceeding; or (iv) in default in accordance with the securitisation documentation.

Where an institution does not know the delinquency status for 5 % or less of underlying exposures in the pool, the institution may use the SEC-SA subject to the following adjustment in the calculation K_A:

$$K_A = \left(\frac{EAD_{\text{Subpool 1 where W known}}}{\text{EAD Total}} \times K_A^{\text{Subpool 1 where W known}} \right) + \frac{EAD_{\text{Subpool 2 where W unknown}}}{\text{EAD Total}}$$

Where the institution does not know the delinquency status for more than 5 % of underlying exposures in the pool, the position in the securitisation must be risk-weighted at 1 250 %.

3. Where an institution has a securitisation position in the form of a derivative to hedge market risks, including interest rate or currency risks, the institution may attribute to that derivative an inferred risk weight equivalent to the risk weight of the reference position calculated in accordance with this Article.

For the purposes of this paragraph, the reference position shall be the position that is *pari passu* in all respects to the derivative or, in the absence of such *pari passu* position, the position that is immediately subordinate to the derivative.

Article 262

Treatment of STS securitisations under the SEC-SA

Under the SEC-SA the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 261, subject to the following modifications:

risk-weight floor for senior securitisation positions = 10 %

p = 0,5

Article 263

Calculation of risk-weighted exposure amounts under the External Ratings Based Approach (SEC-ERBA)

1. Under the SEC-ERBA, the risk-weighted exposure amount for a securitisation position shall be calculated by multiplying the exposure value of the position as calculated in accordance with Article 248 by the applicable risk weight in accordance with this Article.

2. For exposures with short-term credit assessments or when a rating based on a short-term credit assessment may be inferred in accordance with paragraph 7, the following risk weights shall apply:

Table 1

Credit Quality Step	1	2	3	All other ratings
Risk weight	15 %	50 %	100 %	1 250 %

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3. For exposures with long-term credit assessments or when a rating based on a long-term credit assessment may be inferred in accordance with paragraph 7 of this Article, the risk weights set out in Table 2 shall apply, adjusted as applicable for tranche maturity (M_T) in accordance with Article 257 and paragraph 4 of this Article and for tranche thickness for non-senior tranches in accordance with paragraph 5 of this Article:

Table 2

Credit Quality Step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (M_T)		Tranche maturity (M_T)	
	1 year	5 years	1 year	5 years
1	15 %	20 %	15 %	70 %
2	15 %	30 %	15 %	90 %
3	25 %	40 %	30 %	120 %
4	30 %	45 %	40 %	140 %
5	40 %	50 %	60 %	160 %
6	50 %	65 %	80 %	180 %
7	60 %	70 %	120 %	210 %
8	75 %	90 %	170 %	260 %
9	90 %	105 %	220 %	310 %
10	120 %	140 %	330 %	420 %
11	140 %	160 %	470 %	580 %
12	160 %	180 %	620 %	760 %
13	200 %	225 %	750 %	860 %
14	250 %	280 %	900 %	950 %
15	310 %	340 %	1 050 %	1 050 %
16	380 %	420 %	1 130 %	1 130 %
17	460 %	505 %	1 250 %	1 250 %
All other	1 250 %	1 250 %	1 250 %	1 250 %

4. In order to determine the risk weight for tranches with a maturity between 1 and 5 years, institutions shall use linear interpolation between the risk weights applicable for 1 and 5 years maturity respectively in accordance with Table 2.

5. In order to account for tranche thickness, institutions shall calculate the risk weight for non-senior tranches as follows:

$$RW = [\text{RW after adjusting for maturity according to paragraph 4}] \cdot [1 - \min(T;\ 50\ \%)]$$

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where

T = tranche thickness measured as D – A

where

D is the detachment point as determined in accordance with Article 256

A is the attachment point as determined in accordance with Article 256

6. The risk weights for non-senior tranches resulting from paragraphs 3, 4 and 5 shall be subject to a floor of 15 %. In addition, the resulting risk weights shall be no lower than the risk weight corresponding to a hypothetical senior tranche of the same securitisation with the same credit assessment and maturity.

7. For the purposes of using inferred ratings, institutions shall attribute to an unrated position an inferred rating equivalent to the credit assessment of a rated reference position which meets all of the following conditions:

(a) the reference position ranks *pari passu* in all respects to the unrated securitisation position or, in the absence of a *pari passu* ranking position, the reference position is immediately subordinate to the unrated position;

(b) the reference position does not benefit from any third-party guarantees or other credit enhancements that are not available to the unrated position;

(c) the maturity of the reference position shall be equal to or longer than that of the unrated position in question;

(d) on an ongoing basis, any inferred rating shall be updated to reflect any changes in the credit assessment of the reference position.

8. Where an institution has a securitisation position in the form of a derivative to hedge market risks, including interest rate or currency risks, the institution may attribute to that derivative an inferred risk weight equivalent to the risk weight of the reference position calculated in accordance with this Article.

For the purposes of the first subparagraph, the reference position shall be the position that is pari passu in all respects to the derivative or, in the absence of such pari passu position, the position that is immediately subordinate to the derivative.

Article 264

Treatment of STS securitisations under the SEC-ERBA

1. Under the SEC-ERBA, the risk weight for a position in an STS securitisation shall be calculated in accordance with Article 263, subject to the modifications laid down in this Article.

2. For exposures with short-term credit assessments or when a rating based on a short-term credit assessment may be inferred in accordance with Article 263(7), the following risk weights shall apply:

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Table 3

Credit Quality Step	1	2	3	All other ratings
Risk weight	10 %	30 %	60 %	1 250 %

3. For exposures with long-term credit assessments or when a rating based on a long-term credit assessment may be inferred in accordance with Article 263(7), risk weights shall be determined in accordance with Table 4, adjusted for tranche maturity (M_T) in accordance with Article 257 and Article 263(4) and for tranche thickness for non-senior tranches in accordance with Article 263(5):

Table 4

Credit Quality Step	Senior tranche		Non-senior (thin) tranche	
	Tranche maturity (M_T)		Tranche maturity (M_T)	
	1 year	5 years	1 year	5 years
1	10 %	10 %	15 %	40 %
2	10 %	15 %	15 %	55 %
3	15 %	20 %	15 %	70 %
4	15 %	25 %	25 %	80 %
5	20 %	30 %	35 %	95 %
6	30 %	40 %	60 %	135 %
7	35 %	40 %	95 %	170 %
8	45 %	55 %	150 %	225 %
9	55 %	65 %	180 %	255 %
10	70 %	85 %	270 %	345 %
11	120 %	135 %	405 %	500 %
12	135 %	155 %	535 %	655 %
13	170 %	195 %	645 %	740 %
14	225 %	250 %	810 %	855 %
15	280 %	305 %	945 %	945 %
16	340 %	380 %	1 015 %	1 015 %
17	415 %	455 %	1 250 %	1 250 %
All other	1 250 %	1 250 %	1 250 %	1 250 %

Article 265

Scope and operational requirements for the Internal Assessment Approach

1. Institutions may calculate the risk-weighted exposure amounts for unrated positions in ABCP programmes or ABCP transactions under the Internal Assessment Approach in accordance with Article 266 where the conditions set out in paragraph 2 of this Article are met.

Where an institution has received permission to apply the Internal Assessment Approach in accordance with paragraph 2 of this Article, and a specific position in an ABCP programme or ABCP transaction

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falls within the scope of application covered by such permission, the institution shall apply that approach to calculate the risk-weighted exposure amount of that position.

2. The competent authorities shall grant institutions permission to apply the Internal Assessment Approach within a clearly defined scope of application where all of the following conditions are met:

(a) all positions in the commercial paper issued from the ABCP programme are rated positions;

(b) the internal assessment of the credit quality of the position reflects the publicly available assessment methodology of one or more ECAIs for the rating of securitisation positions backed by underlying exposures of the type securitised;

(c) the commercial paper issued from the ABCP programme is predominantly issued to third-party investors;

(d) the institution's internal assessment process is at least as conservative as the publicly available assessments of those ECAIs which have provided an external rating for the commercial paper issued from the ABCP programme, in particular with regard to stress factors and other relevant quantitative elements;

(e) the institution's internal assessment methodology takes into account all relevant publicly available rating methodologies of the ECAIs that rate the commercial paper of the ABCP programme and includes rating grades corresponding to the credit assessments of ECAIs. The institution shall document in its internal records an explanatory statement describing how the requirements set out in this point have been met and shall update such statement on a regular basis;

(f) the institution uses the internal assessment methodology for internal risk management purposes, including in its decision-making, management information and internal capital allocation processes;

(g) internal or external auditors, an ECAI, or the institution's internal credit review or risk management function perform regular reviews of the internal assessment process and the quality of the internal assessments of the credit quality of the institution's exposures to an ABCP programme or ABCP transaction;

(h) the institution tracks the performance of its internal ratings over time to evaluate the performance of its internal assessment methodology and makes adjustments, as necessary, to that methodology when the performance of the exposures routinely diverges from that indicated by the internal ratings;

(i) the ABCP programme includes underwriting and liability management standards in the form of guidelines to the programme administrator on, at least:

(i) the asset eligibility criteria, subject to point (j);

(ii) the types and monetary value of the exposures arising from the provision of liquidity facilities and credit enhancements;

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(iii) the loss distribution between the securitisation positions in the ABCP programme or ABCP transaction;

(iv) the legal and economic isolation of the transferred assets from the entity selling the assets;

(j) the asset eligibility criteria in the ABCP programme provide for, at least:

(i) exclusion of the purchase of assets that are significantly past due or defaulted;

(ii) limitation of excessive concentration to individual obligor or geographic area; and

(iii) limitation of the tenor of the assets to be purchased;

(k) an analysis of the asset seller's credit risk and business profile is performed including, at least, an assessment of the seller's:

(i) past and expected future financial performance;

(ii) current market position and expected future competitiveness;

(iii) leverage, cash flow, interest coverage and debt rating; and

(iv) underwriting standards, servicing capabilities, and collection processes;

(l) the ABCP programme has collection policies and processes that take into account the operational capability and credit quality of the servicer and comprises features that mitigate performance-related risks of the seller and the servicer. For the purposes of this point, performance-related risks may be mitigated through triggers based on the seller or servicer's current credit quality to prevent commingling of funds in the event of the seller's or servicer's default;

(m) the aggregated estimate of loss on an asset pool that may be purchased under the ABCP programme takes into account all sources of potential risk, such as credit and dilution risk;

(n) where the seller-provided credit enhancement is sized based only on credit-related losses and dilution risk is material for the particular asset pool, the ABCP programme comprises a separate reserve for dilution risk;

(o) the size of the required enhancement level in the ABCP programme is calculated taking into account several years of historical information, including losses, delinquencies, dilutions, and the turnover rate of the receivables;

(p) the ABCP programme comprises structural features in the purchase of exposures in order to mitigate potential credit deterioration of the underlying portfolio. Such features may include wind-down triggers specific to a pool of exposures;

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(q) the institution evaluates the characteristics of the underlying asset pool, such as its weighted-average credit score, and identifies any concentrations to an individual obligor or geographic area and the granularity of the asset pool.

3. Where the institution's internal audit, credit review, or risk management functions perform the review provided for in point (g) of paragraph 2, those functions shall be independent from the institution's internal functions dealing with ABCP programme business and customer relations.

4. Institutions which have received permission to apply the Internal Assessment Approach shall not revert to the use of other methods for positions that fall within scope of application of the Internal Assessment Approach unless both of the following conditions are met:

(a) the institution has demonstrated to the satisfaction of the competent authority that the institution has good cause to do so;

(b) the institution has received the prior permission of the competent authority.

Article 266

Calculation of risk-weighted exposure amounts under the Internal Assessment Approach

1. Under the Internal Assessment Approach, the institution shall assign the unrated position in the ABCP programme or ABCP transaction to one of the rating grades laid down in point (e) of Article 265(2) on the basis of its internal assessment. The position shall be attributed a derived rating which shall be the same as the credit assessments corresponding to that rating grade as laid down in point (e) of Article 265(2).

2. The rating derived in accordance with paragraph 1 shall be at least at the level of investment grade or better at the time it was first assigned and shall be regarded as an eligible credit assessment by an ECAI for the purposes of calculating risk-weighted exposure amounts in accordance with Article 263 or Article 264, as applicable.

Subsection 4

Caps for securitisation positions

Article 267

Maximum risk weight for senior securitisation positions: look-through approach

1. An institution which has knowledge at all times of the composition of the underlying exposures may assign the senior securitisation position a maximum risk weight equal to the exposure-weighted-average risk weight that would be applicable to the underlying exposures as if the underlying exposures had not been securitised.

2. In the case of pools of underlying exposures where the institution uses exclusively the Standardised Approach or the IRB Approach, the maximum risk weight of the senior securitisation position shall be equal

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to the exposure-weighted-average risk weight that would apply to the underlying exposures under Chapter 2 or 3, respectively, as if they had not been securitised.

In the case of mixed pools the maximum risk weight shall be calculated as follows:

(a) where the institution applies the SEC-IRBA, the Standardised Approach portion and the IRB Approach portion of the underlying pool shall each be assigned the corresponding Standardised Approach risk weight and IRB Approach risk weight respectively;

(b) where the institution applies the SEC-SA or the SEC-ERBA, the maximum risk weight for senior securitisation positions shall be equal to the Standardised Approach weighted-average risk weight of the underlying exposures.

3. For the purposes of this Article, the risk weight that would be applicable under the IRB Approach in accordance with Chapter 3 shall include the ratio of:

(a) expected losses multiplied by 12,5 to

(b) the exposure value of the underlying exposures.

4. Where the maximum risk weight calculated in accordance with paragraph 1 results in a lower risk weight than the risk-weight floors set out in Articles 259 to 264, as applicable, the former shall be used instead.

Article 268

Maximum capital requirements

1. An originator institution, a sponsor institution or other institution using the SEC-IRBA or an originator institution or sponsor institution using the SEC-SA or the SEC-ERBA may apply a maximum capital requirement for the securitisation position it holds equal to the capital requirements that would be calculated under Chapter 2 or 3 in respect of the underlying exposures had they not been securitised. For the purposes of this Article, the IRB Approach capital requirement shall include the amount of the expected losses associated with those exposures calculated under Chapter 3 and that of unexpected losses.

2. In the case of mixed pools, the maximum capital requirement shall be determined by calculating the exposure-weighted average of the capital requirements of the IRB Approach and Standardised Approach portions of the underlying exposures in accordance with paragraph 1.

3. The maximum capital requirement shall be the result of multiplying the amount calculated in accordance with paragraphs 1 or 2 by the largest proportion of interest that the institution holds in the relevant tranches (V), expressed as a percentage and calculated as follows:

(a) for an institution that has one or more securitisation positions in a single tranche, V shall be equal to the ratio of the nominal amount of the securitisation positions that the institution holds in that given tranche to the nominal amount of the tranche;

▼M5

(b) for an institution that has securitisation positions in different tranches, V shall be equal to the maximum proportion of interest across tranches. For these purposes, the proportion of interest for each of the different tranches shall be calculated as set out in point (a).

4. When calculating the maximum capital requirement for a securitisation position in accordance with this Article, the entire amount of any gain on sale and credit-enhancing interest-only strips arising from the securitisation transaction shall be deducted from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

Subsection 5

Miscellaneous provisions

Article 269

Re-securitisations

1. For a position in a re-securitisation, institutions shall apply the SEC-SA in accordance with Article 261, with the following changes:

(a) W = 0 for any exposure to a securitisation tranche within the pool of underlying exposures;

(b) p = 1,5;

(c) the resulting risk weight shall be subject to a risk-weight floor of 100 %.

2. K_{SA} for the underlying securitisation exposures shall be calculated in accordance with Subsection 2.

3. The maximum capital requirements set out in Subsection 4 shall not be applied to re-securitisation positions.

4. Where the pool of underlying exposures consists of a mix of securitisation tranches and other types of assets, the K_A parameter shall be determined as the nominal exposure weighted-average of the K_A calculated individually for each subset of exposures.

▼M13

Article 269a

Treatment of non-performing exposures (NPE) securitisations

1. For the purposes of this Article:

(a) ‘NPE securitisation’ means an NPE securitisation as defined in point (25) of Article 2 of Regulation (EU) 2017/2402;

(b) ‘qualifying traditional NPE securitisation’ means a traditional NPE securitisation where the non-refundable purchase price discount is at least 50 % of the outstanding amount of the underlying exposures at the time they were transferred to the SSPE.

2. The risk weight for a position in an NPE securitisation shall be calculated in accordance with Article 254 or 267. The risk weight shall be subject to a floor of 100 %, except when Article 263 is applied.

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3. By way of derogation from paragraph 2 of this Article, institutions shall assign a risk weight of 100 % to the senior securitisation position in a qualifying traditional NPE securitisation, except when Article 263 is applied.

4. Institutions that apply the IRB Approach to any exposures in the pool of underlying exposures in accordance with Chapter 3 and that are not permitted to use own estimates of LGD and conversion factors for such exposures shall not use the SEC-IRBA for the calculation of risk-weighted exposure amounts for a position in an NPE securitisation and shall not apply paragraph 5 or 6.

5. For the purposes of Article 268(1), expected losses associated with exposures underlying a qualifying traditional NPE securitisation shall be included after deduction of the non-refundable purchase price discount and, where applicable, any additional specific credit risk adjustments.

Institutions shall perform the calculation in accordance with the following formula:

$$CR_{max} = RWEA_{IRB} \cdot 8\,\% + max\left[EL_{IRB} - NRPPD \cdot \frac{EV_{IRB}}{EV_{Pool}} - SCRA_{IRB}; 0\right] + RWEA_{SA} \cdot 8\,\%$$

where:

CR_{max} = the maximum capital requirement in the case of a qualifying traditional NPE securitisation;

$RWEA_{IRB}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the IRB Approach;

EL_{IRB} = the sum of expected loss amounts of the underlying exposures subject to the IRB Approach;

NRPPD = the non-refundable purchase price discount;

EV_{IRB} = the sum of exposure values of the underlying exposures that are subject to the IRB Approach;

EV_{Pool} = the sum of exposure values of all underlying exposures in the pool;

$SCRA_{IRB}$ = for originator institutions, the specific credit risk adjustments made by the institution with respect to those underlying exposures subject to the IRB Approach only if and to the extent these adjustments exceed the NRPPD; for investor institutions the amount is zero;

$RWEA_{SA}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the Standardised Approach.

6. By way of derogation from paragraph 3 of this Article, where the exposure-weighted average risk weight calculated in accordance with the look-through approach set out in Article 267 is lower than 100 %, institutions may apply the lower risk weight, subject to a 50 % risk-weight floor.

▼M13

For the purposes of the first subparagraph, originator institutions that apply the SEC-IRBA to a position and that are permitted to use own estimates of LGD and conversion factors for all underlying exposures subject to the IRB Approach in accordance with Chapter 3, shall deduct the non-refundable purchase price discount and, where applicable, any additional specific credit risk adjustments from the expected losses and exposure values of the underlying exposures associated with a senior position in a qualifying traditional NPE securitisation, in accordance with the following formula:

$$RW_{max} = \frac{RWEA_{IRB} + \max\left[12{,}5 \cdot \left(EL_{IRB} - NRPPD \cdot \frac{EV_{IRB}}{EV_{Pool}} - SCRA_{IRB}\right); 0\right] + RWEA_{SA}}{\max\left[EV_{IRB} - NRPPD \cdot \frac{EV_{IRB}}{EV_{Pool}} - SCRA_{IRB}; 0\right] + EV_{SA}}$$

where:

RW_{max} = the risk weight, before applying the floor, applicable to a senior position in a qualifying traditional NPE securitisation when the look-through approach is used;

$RWEA_{IRB}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the IRB Approach;

$RWEA_{SA}$ = the sum of risk-weighted exposure amounts of the underlying exposures subject to the Standardised Approach;

EL_{IRB} = the sum of expected loss amounts of the underlying exposures subject to the IRB Approach;

NRPPD = the non-refundable purchase price discount;

EV_{IRB} = the sum of exposure values of the underlying exposures that are subject to the IRB Approach;

EV_{pool} = the sum of exposure values of all underlying exposures in the pool;

EV_{SA} = the sum of exposure values of the underlying exposures that are subject to the Standardised Approach;

$SCRA_{IRB}$ = the specific credit risk adjustments made by the originator institution with respect to the underlying exposures subject to the IRB Approach only if and to the extent these adjustments exceed the NRPPD.

7. For the purposes of this Article, the non-refundable purchase price discount shall be calculated by subtracting the amount referred to in point (b) from the amount referred to in point (a):

(a) the outstanding amount of the underlying exposures of the NPE securitisation at the time those exposures were transferred to the SSPE;

(b) the sum of the following:

(i) the initial sale price of the tranches or, where applicable, parts of the tranches of the NPE securitisation sold to third party investors; and

▼M13

(ii) the outstanding amount, at the time the underlying exposures were transferred to the SSPE, of the tranches or, where applicable, parts of tranches of that securitisation held by the originator.

For the purposes of paragraphs 5 and 6, throughout the life of the transaction, the calculation of the non-refundable purchase price discount shall be adjusted downwards taking into account the realised losses. Any reduction in the outstanding amount of the underlying exposures resulting from realised losses shall reduce the non-refundable purchase price discount, subject to a floor of zero.

Where a discount is structured in such a way that it can be refunded in whole or in part to the originator, such discount shall not count as a non-refundable purchase price discount for the purposes of this Article.

Article 270

Senior positions in STS on-balance sheet securitisations

1. An originator institution may calculate the risk-weighted exposure amounts of a securitisation position in an STS on-balance sheet securitisation as referred to in Article 26a(1) of Regulation (EU) 2017/2402 in accordance with Article 260, 262 or 264 of this Regulation, as applicable, where that position meets both of the following conditions:

(a) the securitisation meets the requirements set out in Article 243(2);

(b) the position qualifies as the senior securitisation position.

2. EBA shall monitor the application of paragraph 1 in particular with regard to:

(a) the market volume and market share of STS on-balance sheet securitisations in respect of which the originator institution applies paragraph 1, across different asset classes;

(b) the observed allocation of losses to the senior tranche and to other tranches of STS on-balance sheet securitisations, where the originator institution applies paragraph 1 in respect of the senior position held in such securitisations;

(c) the impact of the application of paragraph 1 on the leverage of institutions;

(d) the impact of the use of STS on-balance sheet securitisations in respect of which the originator institution applies paragraph 1 on the issuance of capital instruments by the respective originator institutions.

3. EBA shall submit a report on its findings to the Commission by 10 April 2023.

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4. By 10 October 2023, the Commission shall, on the basis of the report referred to in paragraph 3, submit a report to the European Parliament and to the Council, on the application of this Article with particular regard to the risk of excessive leverage resulting from the use of STS on-balance sheet securitisations qualifying for the treatment in accordance with paragraph 1 and to the potential substitution of the issuance of capital instruments by originator institutions through that use. That report shall, where appropriate, be accompanied by a legislative proposal.

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Article 270a

Additional risk weight

1. Where an institution does not meet the requirements in Chapter 2 of Regulation (EU) 2017/2402 in any material respect by reason of negligence or omission by the institution, the competent authorities shall impose a proportionate additional risk weight of no less than 250 % of the risk weight, capped at 1 250 %, which shall apply to the relevant securitisation positions in the manner specified in Article 247(6) or Article 337(3) of this Regulation respectively. The additional risk weight shall progressively increase with each subsequent infringement of the due diligence and risk management provisions. The competent authorities shall take into account the exemptions for certain securitisations provided for in Article 6(5)) of Regulation (EU) 2017/2402 by reducing the risk weight they would otherwise impose under this Article in respect of a securitisation to which Article 6(5) of Regulation (EU) 2017/2402 applies.

2. The EBA shall develop draft implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of paragraph 1, including the measures to be taken in the case of breach of the due diligence and risk management obligations. The EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

Section 4

External credit assessments

Article 270b

Use of credit assessments by ECAIs

Institutions may use only credit assessments to determine the risk weight of a securitisation position in accordance with this Chapter where the credit assessment has been issued or has been endorsed by an ECAI in accordance with Regulation (EC) No 1060/2009.

▼M5

Article 270c

Requirements to be met by the credit assessments of ECAIs

For the purposes of calculating risk-weighted exposure amounts in accordance with Section 3, institutions shall only use a credit assessment of an ECAI where all of the following conditions are met:

(a) there is no mismatch between the types of payments reflected in the credit assessment and the types of payments to which the institution is entitled under the contract giving rise to the securitisation position in question;

(b) the ECAI publishes the credit assessments and information on loss and cash-flow analysis, sensitivity of ratings to changes in the underlying ratings assumptions, including the performance of underlying exposures, and on the procedures, methodologies, assumptions, and key elements underpinning the credit assessments in accordance with Regulation (EC) No 1060/2009. For the purposes of this point, information shall be considered as publicly available where it is published in accessible format. Information that is made available only to a limited number of entities shall not be considered as publicly available;

(c) the credit assessments are included in the ECAI's transition matrix;

(d) the credit assessments are not based or partly based on unfunded support provided by the institution itself. Where a position is based or partly based on unfunded support, the institution shall consider that position as if it were unrated for the purposes of calculating risk-weighted exposure amounts for this position in accordance with Section 3;

(e) the ECAI has committed to publishing explanations on how the performance of underlying exposures affects the credit assessment.

Article 270d

Use of credit assessments

1. An institution may decide to nominate one or more ECAIs the credit assessments of which shall be used in the calculation of its risk-weighted exposure amounts under this Chapter (a 'nominated ECAI').

2. An institution shall use the credit assessments of its securitisation positions in a consistent and non-selective manner and, for these purposes, shall comply with the following requirements:

(a) an institution shall not use an ECAI's credit assessments for its positions in some tranches and another ECAI's credit assessments for its positions in other tranches within the same securitisation that may or may not be rated by the first ECAI;

(b) where a position has two credit assessments by nominated ECAIs, the institution shall use the less favourable credit assessment;

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(c) where a position has three or more credit assessments by nominated ECAIs, the two most favourable credit assessments shall be used. Where the two most favourable assessments are different, the less favourable of the two shall be used;

(d) an institution shall not actively solicit the withdrawal of less favourable ratings.

3. Where the exposures underlying a securitisation benefit from full or partial eligible credit protection in accordance with Chapter 4, and the effect of such protection has been reflected in the credit assessment of a securitisation position by a nominated ECAI, the institution shall use the risk weight associated with that credit assessment. Where the credit protection referred to in this paragraph is not eligible under Chapter 4, the credit assessment shall not be recognised and the securitisation position shall be treated as unrated.

4. Where a securitisation position benefits from eligible credit protection in accordance with Chapter 4 and the effect of such protection has been reflected in its credit assessment by a nominated ECAI, the institution shall treat the securitisation position as if it were unrated and calculate the risk-weighted exposure amounts in accordance with Chapter 4.

Article 270e

Securitisation mapping

The EBA shall develop draft implementing technical standards to map in an objective and consistent manner the credit quality steps set out in this Chapter relative to the relevant credit assessments of all ECAIs. For the purposes of this Article, the EBA shall in particular:

(a) differentiate between the relative degrees of risk expressed by each assessment;

(b) consider quantitative factors, such as default or loss rates and the historical performance of credit assessments of each ECAI across different asset classes;

(c) consider qualitative factors such as the range of transactions assessed by the ECAI, its methodology and the meaning of its credit assessments in particular whether such assessments take into account expected loss or first Euro loss, and timely payment of interests or ultimate payment of interests;

(d) seek to ensure that securitisation positions to which the same risk weight is applied on the basis of the credit assessments of ECAIs are subject to equivalent degrees of credit risk.

The EBA shall submit those draft implementing technical standards to the Commission by 1 July 2014.

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

▼C2

CHAPTER 6

Counterparty credit risk

Section 1

Definitions

Article 271

Determination of the exposure value

1. An institution shall determine the exposure value of derivative instruments listed in Annex II in accordance with this Chapter.

2. An institution may determine the exposure value of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions in accordance with this Chapter instead of making use of Chapter 4.

Article 272

Definitions

For the purposes of this Chapter and of Title VI of this Part, the following definitions shall apply:

General terms

(1) ‘counterparty credit risk’ or ‘CCR’ means the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows;

Transaction types

(2) ‘long settlement transactions’ means transactions where a counterparty undertakes to deliver a security, a commodity, or a foreign exchange amount against cash, other financial instruments, or commodities, or vice versa, at a settlement or delivery date specified by contract that is later than the market standard for this particular type of transaction or five business days after the date on which the institution enters into the transaction, whichever is earlier;

(3) ‘margin lending transactions’ means transactions in which an institution extends credit in connection with the purchase, sale, carrying or trading of securities. Margin lending transactions do not include other loans that are secured by collateral in the form of securities;

Netting set, hedging sets, and related terms

(4) ‘netting set’ means a group of transactions between an institution and a single counterparty that is subject to a legally enforceable bilateral netting arrangement that is recognised under Section 7 and Chapter 4.

Each transaction that is not subject to a legally enforceable bilateral netting arrangement which is recognised under Section 7 shall be treated as its own netting set for the purposes of this Chapter.

▼C2

Under the Internal Model Method set out in Section 6, all netting sets with a single counterparty may be treated as a single netting set if negative simulated market values of the individual netting sets are set to 0 in the estimation of expected exposure (hereinafter referred to as 'EE');

(5) 'risk position' means a risk number that is assigned to a transaction under the Standardised Method set out in Section5 following a predetermined algorithm;

▼M8

(6) 'hedging set' means a group of transactions within a single netting set for which full or partial offsetting is allowed for determining the potential future exposure under the methods set out in Section 3 or 4 of this Chapter;

▼C2

(7) 'margin agreement' means an agreement or provisions of an agreement under which one counterparty must supply collateral to a second counterparty when an exposure of that second counterparty to the first counterparty exceeds a specified level;

▼M8

(7a) 'one way margin agreement' means a margin agreement under which an institution is required to post variation margin to a counterparty but is not entitled to receive variation margin from that counterparty or vice-versa;

▼C2

(8) 'margin threshold' means the largest amount of an exposure that remains outstanding before one party has the right to call for collateral;

(9) 'margin period of risk' means the time period from the most recent exchange of collateral covering a netting set of transactions with a defaulting counterparty until the transactions are closed out and the resulting market risk is re-hedged;

(10) 'effective maturity' under the Internal Model Method for a netting set with maturity greater than one year means the ratio of the sum of expected exposure over the life of the transactions in the netting set discounted at the risk-free rate of return, divided by the sum of expected exposure over one year in the netting set discounted at the risk-free rate.

This effective maturity may be adjusted to reflect rollover risk by replacing expected exposure with effective expected exposure for forecasting horizons under one year;

(11) 'cross-product netting' means the inclusion of transactions of different product categories within the same netting set pursuant to the cross-product netting rules set out in this Chapter;

▼M8

(12) 'current market value' or 'CMV' means the net market value of all the transactions within a netting set gross of any collateral held or posted where positive and negative market values are netted in computing the CMV;

▼M8

(12a) ‘net independent collateral amount’ or ‘NICA’ means the sum of the volatility-adjusted value of net collateral received or posted, as applicable, to the netting set other than variation margin;

▼C2

Distributions

(13) ‘distribution of market values’ means the forecast of the probability distribution of net market values of transactions within a netting set for a future date (the forecasting horizon), given the realised market value of those transactions at the date of the forecast;

(14) ‘distribution of exposures’ means the forecast of the probability distribution of market values that is generated by setting forecast instances of negative net market values equal to zero;

(15) ‘risk-neutral distribution’ means a distribution of market values or exposures over a future time period where the distribution is calculated using market implied values such as implied volatilities;

(16) ‘actual distribution’ means a distribution of market values or exposures at a future time period where the distribution is calculated using historic or realised values such as volatilities calculated using past price or rate changes;

Exposure measures and adjustments

(17) ‘current exposure’ means the larger of zero and the market value of a transaction or portfolio of transactions within a netting set with a counterparty that would be lost upon the default of the counterparty, assuming no recovery on the value of those transactions in insolvency or liquidation;

(18) ‘peak exposure’ means a high percentile of the distribution of exposures at particular future date before the maturity date of the longest transaction in the netting set;

(19) ‘expected exposure’ (hereinafter referred to as ‘EE’) means the average of the distribution of exposures at a particular future date before the longest maturity transaction in the netting set matures;

(20) ‘effective expected exposure at a specific date’ (hereinafter referred to as ‘Effective EE’) means the maximum expected exposure that occurs at that date or any prior date. Alternatively, it may be defined for a specific date as the greater of the expected exposure at that date or the effective expected exposure at any prior date;

(21) ‘expected positive exposure’ (hereinafter referred to as ‘EPE’) means the weighted average over time of expected exposures, where the weights are the proportion of the entire time period that an individual expected exposure represents.

When calculating the own funds requirement, institutions shall take the average over the first year or, if all the contracts within the netting set mature within less than one year, over the time period until the contract with the longest maturity in the netting set has matured;

▼C2

(22) ‘effective expected positive exposure’ (hereinafter referred to as ‘Effective EPE’) means the weighted average of effective expected exposure over the first year of a netting set or, if all the contracts within the netting set mature within less than one year, over the time period of the longest maturity contract in the netting set, where the weights are the proportion of the entire time period that an individual expected exposure represents;

CCR related risks

(23) ‘rollover risk’ means the amount by which EPE is understated when future transactions with a counterparty are expected to be conducted on an ongoing basis.

The additional exposure generated by those future transactions is not included in calculation of EPE;

(24) ‘counterparty’ for the purposes of Section 7 means any legal or natural person that enters into a netting agreement, and has the contractual capacity to do so;

(25) ‘contractual cross product netting agreement’ means a bilateral contractual agreement between an institution and a counterparty which creates a single legal obligation (based on netting of covered transactions) covering all bilateral master agreements and transactions belonging to different product categories that are included within the agreement;

For the purposes of this definition, ‘different product categories’ means:

(a) repurchase transactions, securities and commodities lending and borrowing transactions;

(b) margin lending transactions;

(c) the contracts listed in Annex II;

(26) ‘payment leg’ means the payment agreed in an OTC derivative transaction with a linear risk profile which stipulates the exchange of a financial instrument for a payment.

In the case of transactions that stipulate the exchange of payment against payment, those two payment legs shall consist of the contractually agreed gross payments, including the notional amount of the transaction.

Section 2

Methods for calculating the exposure value

Article 273

Methods for calculating the exposure value

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1. Institutions shall calculate the exposure value for the contracts listed in Annex II on the basis of one of the methods set out in Sections 3 to 6 in accordance with this Article.

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An institution which does not meet the conditions set out in Article 273a(1) shall not use the method set out in Section 4. An institution which does not meet the conditions set out in Article 273a(2) shall not use the method set out in Section 5.

Institutions may use in combination the methods set out in Sections 3 to 6 on a permanent basis within a group. A single institution shall not use in combination the methods set out in Sections 3 to 6 on a permanent basis.

▼C2

2. Where permitted by the competent authorities in accordance with Article 283(1) and (2), an institution may determine the exposure value for the following items using the Internal Model Method set out in Section 6:

(a) the contracts listed in Annex II;

(b) repurchase transactions;

(c) securities or commodities lending or borrowing transactions;

(d) margin lending transactions;

(e) long settlement transactions.

3. When an institution purchases protection through a credit derivative against a non-trading book exposure or against a counterparty risk exposure, it may calculate its own funds requirement for the hedged exposure in accordance with either of the following:

(a) Articles 233 to 236;

(b) in accordance with Article 153(3), or Article 183, where permission has been granted in accordance with Article 143.

The exposure value for CCR for those credit derivatives shall be zero, unless an institution applies the approach in point (h)(ii) of Article 299(2).

4. Notwithstanding paragraph 3, an institution may choose consistently to include for the purposes of calculating own funds requirements for counterparty credit risk all credit derivatives not included in the trading book and purchased as protection against a non-trading book exposure or against a counterparty credit risk exposure where the credit protection is recognised under this Regulation.

5. Where credit default swaps sold by an institution are treated by an institution as credit protection provided by that institution and are subject to own funds requirement for credit risk of the underlying for the full notional amount, their exposure value for the purposes of CCR in the non-trading book shall be zero.

▼M8

6. Under the methods set out in Sections 3 to 6, the exposure value for a given counterparty shall be equal to the sum of the exposure values calculated for each netting set with that counterparty.

By way of derogation from the first subparagraph, where one margin agreement applies to multiple netting sets with that counterparty and the institution is using one of the methods set out in Sections 3 to 6 to calculate the exposure value of those netting sets, the exposure value shall be calculated in accordance with the relevant Section.

▼M8

For a given counterparty, the exposure value for a given netting set of OTC derivative instruments listed in Annex II calculated in accordance with this Chapter shall be the greater of zero and the difference between the sum of exposure values across all netting sets with the counterparty and the sum of credit valuation adjustments for that counterparty being recognised by the institution as an incurred write-down. The credit valuation adjustments shall be calculated without taking into account any offsetting debit value adjustment attributed to the own credit risk of the firm that has been already excluded from own funds in accordance with point (c) of Article 33(1).

7. In calculating the exposure value in accordance with the methods set out in Sections 3, 4 and 5, institutions may treat two OTC derivative contracts included in the same netting agreement that are perfectly matching as if they were a single contract with a notional principal equal to zero.

For the purposes of the first subparagraph, two OTC derivative contracts are perfectly matching when they meet all the following conditions:

(a) their risk positions are opposite;

(b) their features, with the exception of the trade date, are identical;

(c) their cash flows fully offset each other.

8. Institutions shall determine the exposure value for exposures arising from long settlement transactions by any of the methods set out in Sections 3 to 6 of this Chapter, regardless of which method the institution has chosen for treating OTC derivatives and repurchase transactions, securities or commodities lending or borrowing transactions, and margin lending transactions. In calculating the own funds requirements for long settlement transactions, an institution that uses the approach set out in Chapter 3 may assign the risk weights under the approach set out in Chapter 2 on a permanent basis and irrespective of the materiality of those positions.

9. For the methods set out in Sections 3 to 6 of this Chapter, institutions shall treat transactions where Specific Wrong-Way risk has been identified in accordance with Article 291(2), (4), (5), and (6).

Article 273a

Conditions for using simplified methods for calculating the exposure value

1. An institution may calculate the exposure value of its derivative positions in accordance with the method set out in Section 4, provided that the size of its on- and off-balance-sheet derivative business is equal to or less than both of the following thresholds on the basis of an assessment carried out on a monthly basis using the data as of the last day of the month:

(a) 10 % of the institution's total assets;

(b) EUR 300 million.

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2. An institution may calculate the exposure value of its derivative positions in accordance with the method set out in Section 5, provided that the size of its on- and off-balance-sheet derivative business is equal to or less than both of the following thresholds on the basis of an assessment carried out on a monthly basis using the data as of the last day of the month:

(a) 5 % of the institution's total assets;

(b) EUR 100 million.

3. For the purposes of paragraphs 1 and 2, institutions shall calculate the size of their on- and off-balance-sheet derivative business on the basis of data as of the last day of each month in accordance with the following requirements:

(a) derivative positions shall be valued at their market values on that given date; where the market value of a position is not available on a given date, institutions shall take a fair value for the position on that date; where the market value and fair value of a position are not available on a given date, institutions shall take the most recent of the market value or fair value for that position;

(b) the absolute value of long derivative positions shall be summed with the absolute value of short derivative positions;

(c) all derivative positions shall be included, except credit derivatives that are recognised as internal hedges against non-trading book credit risk exposures.

4. By way of derogation from paragraph 1 or 2, as applicable, where the derivative business on a consolidated basis does not exceed the thresholds set out in paragraph 1 or 2, as applicable, an institution which is included in the consolidation and which would have to apply the method set out in Section 3 or 4 because it exceeds those thresholds on an individual basis, may, subject to the approval of competent authorities, instead choose to apply the method that would apply on a consolidated basis.

5. Institutions shall notify the competent authorities of the methods set out in Section 4 or 5 that they use, or cease to use, as applicable, to calculate the exposure value of their derivative positions.

6. Institutions shall not enter into a derivative transaction or buy or sell a derivative instrument for the sole purpose of complying with any of the conditions set out in paragraphs 1 and 2 during the monthly assessment.

Article 273b

Non-compliance with the conditions for using simplified methods for calculating the exposure value of derivatives

1. An institution that no longer meets one or more of the conditions set out in Article 273a(1) or (2) shall immediately notify the competent authority thereof.

2. An institution shall cease to calculate the exposure values of its derivative positions in accordance with Section 4 or 5, as applicable, within three months of one of the following occurring:

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(a) the institution does not meet the conditions set out in point (a) of Article 273a(1) or (2), as applicable, or the conditions set out in point (b) of Article 273a(1) or (2), as applicable, for three consecutive months;

(b) the institution does not meet the conditions set out in point (a) of Article 273a(1) or (2), as applicable, or the conditions set out in point (b) of Article 273a(1) or (2), as applicable, for more than six of the preceding 12 months.

3. Where an institution has ceased to calculate the exposure values of its derivative positions in accordance with Section 4 or 5, as applicable, it shall only be permitted to resume calculating the exposure value of its derivative positions as set out in Section 4 or 5 where it demonstrates to the competent authority that all the conditions set out in Article 273a(1) or (2) have been met for an uninterrupted period of one year.

Section 3

Standardised approach for counterparty credit risk

Article 274

Exposure value

1. An institution may calculate a single exposure value at netting set level for all the transactions covered by a contractual netting agreement where all the following conditions are met:

(a) the netting agreement belongs to one of the types of contractual netting agreements referred to in Article 295;

(b) the netting agreement has been recognised by competent authorities in accordance with Article 296;

(c) the institution has fulfilled the obligations laid down in Article 297 in respect of the netting agreement.

Where any of the conditions set out in the first subparagraph are not met, the institution shall treat each transaction as if it was its own netting set.

2. Institutions shall calculate the exposure value of a netting set under the standardised approach for counterparty credit risk as follows:

$$\text{Exposure value} = \alpha \cdot (RC + PFE)$$

where:

RC = the replacement cost calculated in accordance with Article 275; and

PFE = the potential future exposure calculated in accordance with Article 278;

α = 1,4.

3. The exposure value of a netting set that is subject to a contractual margin agreement shall be capped at the exposure value of the same netting set not subject to any form of margin agreement.

▼M8

4. Where multiple margin agreements apply to the same netting set, institutions shall allocate each margin agreement to the group of transactions in the netting set to which that margin agreement contractually applies to and calculate an exposure value separately for each of those grouped transactions.

5. Institutions may set to zero the exposure value of a netting set that satisfies all the following conditions:

(a) the netting set is solely composed of sold options;

(b) the current market value of the netting set is at all times negative;

(c) the premium of all the options included in the netting set has been received upfront by the institution to guarantee the performance of the contracts;

(d) the netting set is not subject to any margin agreement.

6. In a netting set, institutions shall replace a transaction which is a finite linear combination of bought or sold call or put options with all the single options that form that linear combination, taken as an individual transaction, for the purpose of calculating the exposure value of the netting set in accordance with this Section. Each such combination of options shall be treated as an individual transaction in the netting set in which the combination is included for the purpose of calculating the exposure value.

7. The exposure value of a credit derivative transaction representing a long position in the underlying may be capped to the amount of outstanding unpaid premium provided it is treated as its own netting set that is not subject to a margin agreement.

Article 275

Replacement cost

1. Institutions shall calculate the replacement cost RC for netting sets that are not subject to a margin agreement, in accordance with the following formula:

$$RC = \max\{CMV - NICA, 0\}$$

2. Institutions shall calculate the replacement cost for single netting sets that are subject to a margin agreement in accordance with the following formula:

$$RC = \max\{CMV - VM - NICA, TH + MTA - NICA, 0\}$$

where:

RC = the replacement cost;

VM = the volatility-adjusted value of the net variation margin received or posted, as applicable, to the netting set on a regular basis to mitigate changes in the netting set's CMV;

TH = the margin threshold applicable to the netting set under the margin agreement below which the institution cannot call for collateral; and

▼M8

MTA = the minimum transfer amount applicable to the netting set under the margin agreement.

3. Institutions shall calculate the replacement cost for multiple netting sets that are subject to the same margin agreement in accordance with the following formula:

$$RC = \max\left\{\sum_i \max\{CMV_i,\ 0\} - \max\{VM_{MA} + NICA_{MA},\ 0\},\ 0\right\} + \max\left\{\sum_i \min\{CMV_i,\ 0\} - \min\{VM_{MA} + NICA_{MA},\ 0\},\ 0\right\}$$

where:

RC = the replacement cost;

i = the index that denotes the netting sets that are subject to the single margin agreement;

CMV_i = the CMV of netting set i;

VM_{MA} = the sum of the volatility-adjusted value of collateral received or posted, as applicable, to multiple netting sets on a regular basis to mitigate changes in their CMV; and

$NICA_{MA}$ = the sum of the volatility-adjusted value of collateral received or posted, as applicable, to multiple netting sets other than VM_{MA}.

For the purposes of the first subparagraph, $NICA_{MA}$ may be calculated at trade level, at netting set level or at the level of all the netting sets to which the margin agreement applies depending on the level at which the margin agreement applies.

Article 276

Recognition and treatment of collateral

1. For the purposes of this Section, institutions shall calculate the collateral amounts of VM, VM_{MA}, NICA and $NICA_{MA}$, by applying all the following requirements:

(a) where all the transactions included in a netting set belong to the trading book, only collateral that is eligible under Articles 197 and 299 shall be recognised;

(b) where a netting set contains at least one transaction that belongs to the non-trading book, only collateral that is eligible under Article 197 shall be recognised;

(c) collateral received from a counterparty shall be recognised with a positive sign and collateral posted to a counterparty shall be recognised with a negative sign;

(d) the volatility-adjusted value of any type of collateral received or posted shall be calculated in accordance with Article 223; for the purposes of that calculation, institutions shall not use the method set out in Article 225;

(e) the same collateral item shall not be included in both VM and NICA at the same time;

(f) the same collateral item shall not be included in both VM_{MA} and $NICA_{MA}$ at the same time;

▼M8

(g) any collateral posted to the counterparty that is segregated from the assets of that counterparty and, as a result of that segregation, is bankruptcy remote in the event of the default or insolvency of that counterparty shall not be recognised in the calculation of NICA and $NICA_{MA}$.

2. For the calculation of the volatility-adjusted value of collateral posted referred to in point (d) of paragraph 1 of this Article, institutions shall replace the formula set out in Article 223(2) with the following formula:

$$C_{VA} = C \cdot (1 + H_C + H_{fx})$$

where:

C_{VA} = the volatility-adjusted value of collateral posted; and

C = the collateral;

H_c and H_{fx} are defined in accordance with Article 223(2).

3. For the purposes of point (d) of paragraph 1, institutions shall set the liquidation period relevant for the calculation of the volatility-adjusted value of any collateral received or posted in accordance with one of the following time horizons:

(a) one year for the netting sets referred to in Article 275(1);

(b) the margin period of risk determined in accordance with point (b) of Article 279c(1) for the netting sets referred to in Article 275(2) and (3).

Article 277

Mapping of transactions to risk categories

1. Institutions shall map each transaction of a netting set to one of the following risk categories to determine the potential future exposure of the netting set referred to in Article 278:

(a) interest rate risk;

(b) foreign exchange risk;

(c) credit risk;

(d) equity risk;

(e) commodity risk;

(f) other risks.

2. Institutions shall conduct the mapping referred to in paragraph 1 on the basis of the primary risk driver of a derivative transaction. The primary risk driver shall be the only material risk driver of a derivative transaction.

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3. By way of derogation from paragraph 2, institutions shall map derivative transactions that have more than one material risk driver to more than one risk category. Where all the material risk drivers of one of those transactions belong to the same risk category, institutions shall only be required to map that transaction once to that risk category on the basis of the most material of those risk drivers. Where the material risk drivers of one of those transactions belong to different risk categories, institutions shall map that transaction once to each risk category for which the transaction has at least one material risk driver, on the basis of the most material of the risk drivers in that risk category.

4. Notwithstanding paragraphs 1, 2 and 3, when mapping transactions to the risk categories listed in paragraph 1, institutions shall apply the following requirements:

(a) where the primary risk driver of a transaction, or the most material risk driver in a given risk category for transactions referred to in paragraph 3, is an inflation variable, institutions shall map the transaction to the interest rate risk category;

(b) where the primary risk driver of a transaction, or the most material risk driver in a given risk category for transactions referred to in paragraph 3, is a climatic conditions variable, institutions shall map the transaction to the commodity risk category.

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

(a) the method for identifying transactions with only one material risk driver;

(b) the method for identifying transactions with more than one material risk driver and for identifying the most material of those risk drivers for the purposes of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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

Article 277a

Hedging sets

1. Institutions shall establish the relevant hedging sets for each risk category of a netting set and assign each transaction to those hedging sets as follows:

(a) transactions mapped to the interest rate risk category shall be assigned to the same hedging set only where their primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is denominated in the same currency;

▼M8

(b) transactions mapped to the foreign exchange risk category shall be assigned to the same hedging set only where their primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is based on the same currency pair;

(c) all the transactions mapped to the credit risk category shall be assigned to the same hedging set;

(d) all the transactions mapped to the equity risk category shall be assigned to the same hedging set;

(e) transactions mapped to the commodity risk category shall be assigned to one of the following hedging sets on the basis of the nature of their primary risk driver or the most material risk driver in the given risk category for transactions referred to in Article 277(3):

(i) energy;

(ii) metals;

(iii) agricultural goods;

(iv) other commodities;

(v) climatic conditions;

(f) transactions mapped to the other risks category shall be assigned to the same hedging set only where their primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is identical.

For the purposes of point (a) of the first subparagraph of this paragraph, transactions mapped to the interest rate risk category that have an inflation variable as the primary risk driver shall be assigned to separate hedging sets, other than the hedging sets established for transactions mapped to the interest rate risk category that do not have an inflation variable as the primary risk driver. Those transactions shall be assigned to the same hedging set only where their primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is denominated in the same currency.

2. By way of derogation from paragraph 1 of this Article, institutions shall establish separate individual hedging sets in each risk category for the following transactions:

(a) transactions for which the primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is either the market implied volatility or the realised volatility of a risk driver or the correlation between two risk drivers;

(b) transactions for which the primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is the difference between two risk drivers mapped to the same risk category or transactions that consist of two payment legs denominated in the same currency and for which a risk driver from the same risk category of the primary risk driver is contained in the other payment leg than the one containing the primary risk driver.

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For the purposes of point (a) of the first subparagraph of this paragraph, institutions shall assign transactions to the same hedging set of the relevant risk category only where their primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), is identical.

For the purposes of point (b) of the first subparagraph, institutions shall assign transactions to the same hedging set of the relevant risk category only where the pair of risk drivers in those transactions as referred to therein is identical and the two risk drivers contained in this pair are positively correlated. Otherwise, institutions shall assign transactions referred to in point (b) of the first subparagraph to one of the hedging sets established in accordance with paragraph 1, on the basis of only one of the two risk drivers referred to in point (b) of the first subparagraph.

3. Institutions shall make available upon request by the competent authorities the number of hedging sets established in accordance with paragraph 2 of this Article for each risk category, with the primary risk driver, or the most material risk driver in the given risk category for transactions referred to in Article 277(3), or the pair of risk drivers of each of those hedging sets and with the number of transactions in each of those hedging sets.

Article 278

Potential future exposure

1. Institutions shall calculate the potential future exposure of a netting set as follows:

$$\text{PFE} = \text{multiplier} \cdot \sum_{a} \text{AddOn}^{(a)}$$

where:

PFE = the potential future exposure;

a = the index that denotes the risk categories included in the calculation of the potential future exposure of the netting set;

$\text{AddOn}^{(a)}$ = the add-on for risk category a calculated in accordance with Articles 280a to 280f, as applicable; and

multiplier = the multiplication factor calculated in accordance with the formula referred to in paragraph 3.

For the purpose of this calculation, institutions shall include the add-on of a given risk category in the calculation of the potential future exposure of a netting set where at least one transaction of the netting set has been mapped to that risk category.

2. The potential future exposure of multiple netting sets that are subject to one margin agreement, as referred in Article 275(3), shall be calculated as the sum of the potential future exposures of all the individual netting sets as if they were not subject to any form of a margin agreement.

▼M8

3. For the purposes of paragraph 1, the multiplier shall be calculated as follows:

$$\text{multiplier} = \begin{cases} 1 \text{ if } z \geq 0 \\ \min\{1,\ \text{Floor}_m + (1 - \text{Floor}_m) \cdot \exp\left(\frac{z}{y}\right)\} \text{ if } z < 0 \end{cases}$$

where:

$\text{Floor}_m = 5\ \%$;

$y = 2 \cdot (1 - \text{Floor}_m) \cdot \Sigma_a \text{AddOn}^{(a)}$

$$z = \begin{cases} \text{CMV} - \text{NICA for the netting sets referred to in Article 275(1)} \\ \text{CMV} - \text{VM} - \text{NICA for the netting sets referred to in Article 275(2)} \\ \text{CMV}_i - \text{NICA}_i \text{ for the netting sets referred to in Article 275(3)} \end{cases}$$

NICA_i = the net independent collateral amount calculated only for transactions that are included in netting set i. NICA_i shall be calculated at trade level or at netting set level depending on the margin agreement.

Article 279

Calculation of the risk position

For the purpose of calculating the risk category add-ons referred to in Articles 280a to 280f, institutions shall calculate the risk position of each transaction of a netting set as follows:

$\text{RiskPosition} = \delta \cdot \text{AdjNot} \cdot \text{MF}$

where:

δ = the supervisory delta of the transaction calculated in accordance with the formula laid down in Article 279a;

AdjNot = the adjusted notional amount of the transaction calculated in accordance with Article 279b; and

MF = the maturity factor of the transaction calculated in accordance with the formula laid down in Article 279c.

Article 279a

Supervisory delta

1. Institutions shall calculate the supervisory delta as follows:

(a) for call and put options that entitle the option buyer to purchase or sell an underlying instrument at a positive price on a single or multiple dates in the future, except where those options are mapped to the interest rate risk category, institutions shall use the following formula:

$$\delta = \text{sign} \cdot N\left(\text{type} \cdot \frac{\ln(P/K) + 0{,}5 \cdot \sigma^2 \cdot T}{\sigma \cdot \sqrt{T}}\right)$$

where:

δ = the supervisory delta;

sign = – 1 where the transaction is a sold call option or a bought put option;

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sign = + 1 where the transaction is a bought call option or sold put option;

type = – 1 where the transaction is a put option;

type = + 1 where the transaction is a call option;

N(x) = the cumulative distribution function for a standard normal random variable meaning the probability that a normal random variable with mean zero and variance of one is less than or equal to x;

P = the spot or forward price of the underlying instrument of the option; for options the cash flows of which depend on an average value of the price of the underlying instrument, P shall be equal to the average value at the calculation date;

K = the strike price of the option;

▼C7

T = the period between the expiry date of the option (T_{exp}) and the reporting date; for options which can be exercised at one future date only, T_{exp} is equal to that date; for options which can be exercised at multiple future dates, T_{exp} is equal to the latest of those dates; T shall be expressed in years using the relevant business day convention; and

▼M8

σ = the supervisory volatility of the option determined in accordance with Table 1 on the basis of the risk category of the transaction and the nature of the underlying instrument of the option.

Table 1

Risk category	Underlying instrument	Supervisory volatility
Foreign exchange	All	15 %
Credit	Single-name instrument	100 %
	Multiple-names instrument	80 %
Equity	Single-name instrument	120 %
	Multiple-names instrument	75 %
Commodity	Electricity	150 %
	Other commodities (excluding electricity)	70 %
Others	All	150 %

Institutions using the forward price of the underlying instrument of an option shall ensure that:

(i) the forward price is consistent with the characteristics of the option;

(ii) the forward price is calculated using a relevant interest rate prevailing at the reporting date;

(iii) the forward price integrates the expected cash flows of the underlying instrument before the expiry of the option;

▼M8

(b) for tranches of a synthetic securitisation and a nth-to-default credit derivative, institutions shall use the following formula:

$$\delta = \text{sign} \cdot \frac{15}{(1 + 14 \cdot A) \cdot (1 + 14 \cdot D)}$$

where:

$$\text{sign} = \begin{cases} +1 \text{ where credit protection has been obtained through the transaction} \\ -1 \text{ where credit protection has been provided through the transaction} \end{cases}$$

A = the attachment point of the tranche; for a nth-to-default credit derivative transaction based on reference entities k, A = (n – 1)/k; and

D = the detachment point of the tranche; for a nth-to-default credit derivative transaction based on reference entities k, D = n/k;

(c) for transactions not referred to in point (a) or (b), institutions shall use the following supervisory delta:

$$\delta = \begin{cases} +1 \text{ if the transaction is a long position in the primary risk driver or in the most material risk driver in the given risk category} \\ -1 \text{ if the transaction is a short position in the primary risk driver or in the most material risk driver in the given risk category} \end{cases}$$

2. For the purposes of this Section, a long position in the primary risk driver or in the most material risk driver in the given risk category for transactions referred to in Article 277(3) means that the market value of the transaction increases when the value of that risk driver increases and a short position in the primary risk driver or in the most material risk driver in the given risk category for transactions referred to in Article 277(3) means that the market value of the transaction decreases when the value of that risk driver increases.

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

(a) in accordance with international regulatory developments, the formula that institutions shall use to calculate the supervisory delta of call and put options mapped to the interest rate risk category compatible with market conditions in which interest rates may be negative as well as the supervisory volatility that is suitable for that formula;

(b) the method for determining whether a transaction is a long or short position in the primary risk driver or in the most material risk driver in the given risk category for transactions referred to in Article 277(3).

EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

▼M8

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

Article 279b

Adjusted notional amount

1. Institutions shall calculate the adjusted notional amount as follows:

(a) for transactions mapped to the interest rate risk category or the credit risk category, institutions shall calculate the adjusted notional amount as the product of the notional amount of the derivative contract and the supervisory duration factor, which shall be calculated as follows:

▼C7

$$\text{supervisory duration factor} = \max\left\{\frac{\exp(-R \cdot S) - \exp(-R \cdot E)}{R}; 10/\text{OneBusinessYear}\right\}$$

where:

R = the supervisory discount rate; R = 5 %;

S = the period between the start date of a transaction and the reporting date, which shall be expressed in years using the relevant business day convention;

E = the period between the end date of a transaction and the reporting date, which shall be expressed in years using the relevant business day convention; and OneBusinessYear = one year expressed in business days using the relevant business day convention.

▼M8

The start date of a transaction is the earliest date at which at least a contractual payment under the transaction, to or from the institution, is either fixed or exchanged, other than payments related to the exchange of collateral in a margin agreement. Where the transaction has already been fixing or making payments at the reporting date, the start date of a transaction shall be equal to 0.

Where a transaction involves one or more contractual future dates on which the institution or the counterparty may decide to terminate the transaction prior to its contractual maturity, the start date of a transaction shall be equal to the earliest of the following:

(i) the date or the earliest of the multiple future dates at which the institution or the counterparty may decide to terminate the transaction earlier than its contractual maturity;

(ii) the date at which a transaction starts fixing or making payments, other than payments related to the exchange of collateral in a margin agreement.

Where a transaction has a financial instrument as the underlying instrument that may give rise to contractual obligations additional to those of the transaction, the start date of a transaction shall be determined on the basis of the earliest date at which the underlying instrument starts fixing or making payments.

▼M8

The end date of a transaction is the latest date at which a contractual payment under the transaction, to or from the institution, is or may be exchanged.

Where a transaction has a financial instrument as an underlying instrument that may give rise to contractual obligations additional to those of the transaction, the end date of a transaction shall be determined on the basis of the last contractual payment of the underlying instrument of the transaction.

Where a transaction is structured to settle an outstanding exposure following specified payment dates and where the terms are reset so that the market value of the transaction is zero on those specified dates, the settlement of the outstanding exposure at those specified dates is considered a contractual payment under the same transaction;

(b) for transactions mapped to the foreign exchange risk category, institutions shall calculate the adjusted notional amount as follows:

(i) where the transaction consists of one payment leg, the adjusted notional amount shall be the notional amount of the derivative contract;

(ii) where the transaction consists of two payment legs and the notional amount of one payment leg is denominated in the institution's reporting currency, the adjusted notional amount shall be the notional amount of the other payment leg;

(iii) where the transaction consists of two payment legs and the notional amount of each payment leg is denominated in a currency other than the institution's reporting currency, the adjusted notional amount shall be the largest of the notional amounts of the two payment legs after those amounts have been converted into the institution's reporting currency at the prevailing spot exchange rate;

(c) for transactions mapped to the equity risk category or commodity risk category, institutions shall calculate the adjusted notional amount as the product of the market price of one unit of the underlying instrument of the transaction and the number of units in the underlying instrument referenced by the transaction;

where a transaction mapped to the equity risk category or commodity risk category is contractually expressed as a notional amount, institutions shall use the notional amount of the transaction rather than the number of units in the underlying instrument as the adjusted notional amount;

(d) for transactions mapped to the other risks category, institutions shall calculate the adjusted notional amount on the basis of the most appropriate method among the methods set out in points (a), (b) and (c), depending on the nature and characteristics of the underlying instrument of the transaction.

2. Institutions shall determine the notional amount or number of units of the underlying instrument for the purpose of calculating the adjusted notional amount of a transaction referred to in paragraph 1 as follows:

(a) where the notional amount or the number of units of the underlying instrument of a transaction is not fixed until its contractual maturity:

▼M8

(i) for deterministic notional amounts and numbers of units of the underlying instrument, the notional amount shall be the weighted average of all the deterministic values of notional amounts or number of units of the underlying instrument, as applicable, until the contractual maturity of the transaction, where the weights are the proportion of the time period during which each value of notional amount applies;

(ii) for stochastic notional amounts and numbers of units of the underlying instrument, the notional amount shall be the amount determined by fixing current market values within the formula for calculating the future market values;

(b) for contracts with multiple exchanges of the notional amount, the notional amount shall be multiplied by the number of remaining payments still to be made in accordance with the contracts;

(c) for contracts that provide for a multiplication of the cash-flow payments or a multiplication of the underlying of the derivative contract, the notional amount shall be adjusted by an institution to take into account the effects of the multiplication on the risk structure of those contracts.

3. Institutions shall convert the adjusted notional amount of a transaction into their reporting currency at the prevailing spot exchange rate where the adjusted notional amount is calculated under this Article from a contractual notional amount or a market price of the number of units of the underlying instrument denominated in another currency.

Article 279c

Maturity Factor

1. Institutions shall calculate the maturity factor as follows:

(a) for transactions included in the netting sets referred to in Article 275(1), institutions shall use the following formula:

$$MF = \sqrt{\min\{\max\{M,\ 10/\text{OneBusinessYear}\},\ 1\}}$$

where:

MF = the maturity factor;

M = the remaining maturity of the transaction which is equal to the period of time needed for the termination of all contractual obligations of the transaction; for that purpose, any optionality of a derivative contract shall be considered to be a contractual obligation; the remaining maturity shall be expressed in years using the relevant business day convention;

where a transaction has another derivative contract as underlying instrument that may give rise to additional contractual obligations beyond the contractual obligations of the transaction, the remaining maturity of the transaction shall be equal to the period of time needed for the termination of all contractual obligations of the underlying instrument;

▼M8

where a transaction is structured to settle outstanding exposure following specified payment dates and where the terms are reset so that the market value of the transaction is zero on those specified dates, the remaining maturity of the transaction shall be equal to the time until the next reset date; and

OneBusinessYear = one year expressed in business days using the relevant business day convention;

(b) for transactions included in the netting sets referred to in Article 275(2) and (3), the maturity factor is defined as:

$$MF = \frac{3}{2}\sqrt{\frac{MPOR}{OneBusinessYear}}$$

where:

MF = the maturity factor;

MPOR = the margin period of risk of the netting set determined in accordance with Article 285(2) to (5); and

OneBusinessYear = one year expressed in business days using the relevant business day convention.

When determining the margin period of risk for transactions between a client and a clearing member, an institution acting either as the client or as the clearing member shall replace the minimum period set out in point (b) of Article 285(2) with five business days.

2. For the purposes of paragraph 1, the remaining maturity shall be equal to the period of time until the next reset date for transactions that are structured to settle outstanding exposure following specified payment dates and where the terms are reset in such a way that the market value of the contract shall be zero on those specified payment dates.

Article 280

Hedging set supervisory factor coefficient

For the purpose of calculating the add-on of a hedging set as referred to in Articles 280a to 280f, the hedging set supervisory factor coefficient ‘ϵ’ shall be the following:

$$\epsilon = \begin{cases} 1 \text{ for the hedging sets established in accordance with Article 277a(1)} \\ 5 \text{ for the hedging sets established in accordance with point (a) of Article 277a(2)} \\ 0{,}5 \text{ for the hedging sets established in accordance with point (b) of Article 277a(2)} \end{cases}$$

▼M8

Article 280a

Interest rate risk category add-on

1. For the purposes of Article 278, institutions shall calculate the interest rate risk category add-on for a given netting set as follows:

$$\text{AddOn}^{\text{IR}} = \sum_{j} \text{AddOn}_{j}^{\text{IR}}$$

where:

AddOn^{IR} = the interest rate risk category add-on;

j = the index that denotes all the interest rate risk hedging sets established in accordance with point (a) of Article 277a(1) and with Article 277a(2) for the netting set; and

$\text{AddOn}_{j}^{\text{IR}}$ = the interest rate risk category add-on for hedging set j calculated in accordance with paragraph 2.

2. Institutions shall calculate the interest rate risk category add-on for hedging set j as follows:

$$\text{AddOn}_{j}^{\text{IR}} = \epsilon_{j} \cdot \text{SF}^{\text{IR}} \cdot \text{EffNot}_{j}^{\text{IR}}$$

where:

ϵ_{j} = the hedging set supervisory factor coefficient of hedging set j determined in accordance with the applicable value specified in Article 280;

SF^{IR} = the supervisory factor for the interest rate risk category with a value equal to 0,5 %; and

$\text{EffNot}_{j}^{\text{IR}}$ = the effective notional amount of hedging set j calculated in accordance with paragraph 3.

3. For the purpose of calculating the effective notional amount of hedging set j, institutions shall first map each transaction of the hedging set to the appropriate bucket in Table 2. They shall do so on the basis of the end date of each transaction as determined under point (a) of Article 279b(1):

Table 2

Bucket	End date (in years)
1	> 0 and <= 1
2	> 1 and <= 5
3	> 5

Institutions shall then calculate the effective notional amount of hedging set j in accordance with the following formula:

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$$\mathrm{EffNot}_j^{IR} = \sqrt{\left[(D_{j,1})^2 + (D_{j,2})^2 + (D_{j,3})^2 + 1{,}4 \cdot D_{j,1} \cdot D_{j,2} + 1{,}4 \cdot D_{j,2} \cdot D_{j,3} + 0{,}6 \cdot D_{j,1} \cdot D_{j,3}\right]}$$

▼M8

where:

EffNot_j^{IR} = the effective notional amount of hedging set j; and

$D_{j,k}$ = the effective notional amount of bucket k of hedging set j calculated as follows:

$$D_{j,k} = \sum_{l \in \text{Bucket k}} \mathrm{RiskPosition}_l$$

where:

l = the index that denotes the risk position.

Article 280b

Foreign exchange risk category add-on

1. For the purposes of Article 278, institutions shall calculate the foreign exchange risk category add-on for a given netting set as follows:

$$\mathrm{AddOn}^{FX} = \sum_j \mathrm{AddOn}_j^{FX}$$

where:

AddOn^{FX} = the foreign exchange risk category add on;

j = the index that denotes the foreign exchange risk hedging sets established in accordance with point (b) of Article 277a(1) and with Article 277a(2) for the netting set; and

AddOn_j^{FX} = the foreign exchange risk category add-on for hedging set j calculated in accordance with paragraph 2.

2. Institutions shall calculate the foreign exchange risk category add-on for hedging set j as follows:

$$\mathrm{AddOn}_j^{FX} = \epsilon_j \cdot \mathrm{SF}^{FX} \cdot |\mathrm{EffNot}_j^{FX}|$$

where:

ϵ_j = the hedging set supervisory factor coefficient of hedging set j determined in accordance with Article 280;

SF^{FX} = the supervisory factor for the foreign exchange risk category with a value equal to 4 %;

EffNot_j^{FX} = the effective notional amount of hedging set j calculated as follows:

$$\mathrm{EffNot}_j^{FX} = \sum_{l \in \text{Hedging set j}} \mathrm{RiskPosition}_l$$

where:

l = the index that denotes the risk position.

▼M8

Article 280c

Credit risk category add-on

1. For the purposes of paragraph 2, institutions shall establish the relevant credit reference entities of the netting set in accordance with the following:

(a) there shall be one credit reference entity for each issuer of a reference debt instrument that underlies a single-name transaction allocated to the credit risk category; single-name transactions shall be assigned to the same credit reference entity only where the underlying reference debt instrument of those transactions is issued by the same issuer;

(b) there shall be one credit reference entity for each group of reference debt instruments or single-name credit derivatives that underlie a multi-name transaction allocated to the credit risk category; multi-names transactions shall be assigned to the same credit reference entity only where the group of underlying reference debt instruments or single-name credit derivatives of those transactions have the same constituents.

2. For the purposes of Article 278, institution shall calculate the credit risk category add-on for a given netting set as follows:

$$\text{AddOn}^{\text{Credit}} = \sum_{j} \text{AddOn}_{j}^{\text{Credit}}$$

where:

$\text{AddOn}^{\text{Credit}}$ = credit risk category add-on;

j = the index that denotes all the credit risk hedging sets established in accordance with point (c) of Article 277a(1) and with Article 277a(2) for the netting set; and

$\text{AddOn}_{j}^{\text{Credit}}$ = the credit risk category add-on for hedging set j calculated in accordance with paragraph 3.

3. Institutions shall calculate the credit risk category add-on for hedging set j as follows:

▼C7

$$\text{AddOn}_{j}^{\text{Credit}} = \epsilon_{j} \sqrt{\left(\sum_{k} \rho_{k}^{\text{Credit}} \cdot \text{AddOn}(\text{Entity}_{k})\right)^{2} + \sum_{k} \left(1 - \left(\rho_{k}^{\text{Credit}}\right)^{2}\right) \cdot \left(\text{AddOn}(\text{Entity}_{k})\right)^{2}}$$

▼M8

where:

$\text{AddOn}_{j}^{\text{Credit}}$ = the credit risk category add-on for hedging set j;

ϵ_{j} = the hedging set supervisory factor coefficient of hedging set j determined in accordance with Article 280;

k = the index that denotes the credit reference entities of the netting set established in accordance with paragraph 1;

ρ_{k}^{Credit} = the correlation factor of the credit reference entity k; where the credit reference entity k has been established in accordance with point (a) of paragraph 1, $\rho_{k}^{\text{Credit}} = 50\%$, where the credit reference entity k has been established in accordance with point (b) of paragraph 1, $\rho_{k}^{\text{Credit}} = 80\%$; and

▼M8

$\text{AddOn}(\text{Entity}_k)$ = the add-on for the credit reference entity k determined in accordance with paragraph 4.

4. Institutions shall calculate the add-on for the credit reference entity k as follows:

$$\text{AddOn}(\text{Entity}_k) = \text{EffNot}_k^{\text{Credit}}$$

where:

$\text{EffNot}_k^{\text{Credit}}$ = the effective notional amount of the credit reference entity k calculated as follows:

$$\text{EffNot}_k^{\text{Credit}} = \sum_{l \in \text{Credit reference entity k}} \text{SF}_{k,l}^{\text{Credit}} \cdot \text{RiskPosition}_l$$

where:

l = the index that denotes the risk position; and

$\text{SF}_{k,l}^{\text{Credit}}$ = the supervisory factor applicable to the credit reference entity k calculated in accordance with paragraph 5.

5. Institutions shall calculate the supervisory factor applicable to the credit reference entity k as follows:

(a) for the credit reference entity k established in accordance with point (a) of paragraph 1,$\text{SF}_{k,l}^{\text{Credit}}$ shall be mapped to one of the six supervisory factors set out in Table 3 of this paragraph on the basis of an external credit assessment by a nominated ECAI of the corresponding individual issuer; for an individual issuer for which a credit assessment by a nominated ECAI is not available:

(i) an institution using the approach referred to in Chapter 3 shall map the internal rating of the individual issuer to one of the external credit assessments;

(ii) an institution using the approach referred to in Chapter 2 shall assign $\text{SF}_{k,l}^{\text{Credit}} = 0{,}54\%$ to that credit reference entity; however, where an institution applies Article 128 to risk weight counterparty credit risk exposures to that individual issuer, $\text{SF}_{k,l}^{\text{Credit}} = 1{,}6\%$ shall be assigned to that credit reference entity;

(b) for the credit reference entity k established in accordance with point (b) of paragraph 1:

(i) where a risk position l assigned to the credit reference entity k is a credit index listed on a recognised exchange, $\text{SF}_{k,l}^{\text{Credit}}$ shall be mapped to one of the two supervisory factors set out in Table 4 of this paragraph on the basis of the credit quality of the majority of its individual constituents;

(ii) where a risk position l assigned to the credit reference entity k is not referred to in point (i) of this point, $\text{SF}_{k,l}^{\text{Credit}}$ shall be the weighted average of the supervisory factors mapped to each constituent in accordance with the method set out in point (a), where the weights are defined by the proportion of notional of the constituents in that position.

▼M8

Table 3

Credit quality step	Supervisory factor for single-name transactions
1	0,38 %
2	0,42 %
3	0,54 %
4	1,06 %
5	1,6 %
6	6,0 %

Table 4

Dominant credit quality	Supervisory factor for quoted indices
Investment grade	0,38 %
Non-investment grade	1,06 %

Article 280d

Equity risk category add-on

1. For the purposes of paragraph 2, institutions shall establish the relevant equity reference entities of the netting set in accordance with the following:

(a) there shall be one equity reference entity for each issuer of a reference equity instrument that underlies a single-name transaction allocated to the equity risk category; single-name transactions shall be assigned to the same equity reference entity only where the underlying reference equity instrument of those transactions is issued by the same issuer;

(b) there shall be one equity reference entity for each group of reference equity instruments or single-name equity derivatives that underlie a multi-name transaction allocated to the equity risk category; multi-names transactions shall be assigned to the same equity reference entity only where the group of underlying reference equity instruments or single-name equity derivatives of those transactions, as applicable, has the same constituents.

2. For the purposes of Article 278, institutions shall calculate the equity risk category add-on for a given netting set as follows:

$$\text{AddOn}^{\text{Equity}} = \sum_{j} \text{AddOn}_{j}^{\text{Equity}}$$

where:

$\text{AddOn}^{\text{Equity}}$ = the equity risk category add-on;

j = the index that denotes all the equity risk hedging sets established in accordance with point (d) of Article 277a(1) and Article 277a(2) for the netting set; and

$\text{AddOn}_{j}^{\text{Equity}}$ = the equity risk category add-on for hedging set j calculated in accordance with paragraph 3.

▼M8

3. Institutions shall calculate the equity risk category add-on for hedging set j as follows:

▼C7

$$\mathrm{AddOn}_j^{\mathrm{Equity}} = \epsilon_j \sqrt{\left(\sum_k \rho_k^{\mathrm{Equity}} \cdot \mathrm{AddOn}(\mathrm{Entity}_k)\right)^2 + \sum_k \left(1 - \left(\rho_k^{\mathrm{Equity}}\right)^2\right) \cdot \left(\mathrm{AddOn}(\mathrm{Entity}_k)\right)^2}$$

▼M8

where:

$\mathrm{AddOn}_j^{\mathrm{Equity}}$ = the equity risk category add-on for hedging set j;

ϵ_j = the hedging set supervisory factor coefficient of hedging set j determined in accordance with Article 280;

k = the index that denotes the equity reference entities of the netting set established in accordance with paragraph 1;

ρ_k^{Equity} = the correlation factor of the equity reference entity k; where the equity reference entity k has been established in accordance with point (a) of paragraph 1, $\rho_k^{\mathrm{Equity}} = 50\%$; where the equity reference entity k has been established in accordance with point (b) of paragraph 1, $\rho_k^{\mathrm{Equity}} = 80\%$; and

$\mathrm{AddOn}(\mathrm{Entity}_k)$ = the add-on for the equity reference entity k determined in accordance with paragraph 4.

4. Institutions shall calculate the add-on for the equity reference entity k as follows:

▼C7

$$\mathrm{AddOn}(\mathrm{Entity}_k) = \mathrm{SF}_k^{\mathrm{Equity}} \cdot \mathrm{EffNot}_k^{\mathrm{Equity}}$$

▼M8

where:

$\mathrm{AddOn}(\mathrm{Entity}_k)$ = the add-on for the equity reference entity k;

$\mathrm{SF}_k^{\mathrm{Equity}}$ = the supervisory factor applicable to the equity reference entity k; where the equity reference entity k has been established in accordance with point (a) of paragraph 1, $\mathrm{SF}_k^{\mathrm{Equity}} = 32\%$; where the equity reference entity k has been established in accordance with point (b) of paragraph 1, $\mathrm{SF}_k^{\mathrm{Equity}} = 20\%$; and

$\mathrm{EffNot}_k^{\mathrm{Equity}}$ = the effective notional amount of the equity reference entity k calculated as follows:

$$\mathrm{EffNot}_k^{\mathrm{Equity}} = \sum_{l \in \text{ Equity reference entity k}} \mathrm{RiskPosition}_l$$

where:

l = the index that denotes the risk position.

Article 280e

Commodity risk category add-on

1. For the purposes of Article 278, institutions shall calculate the commodity risk category add-on for a given netting set as follows:

▼C7

$$\mathrm{AddOn}^{\mathrm{Com}} = \sum_j \mathrm{AddOn}_j^{\mathrm{Com}}$$

▼M8

where:

$AddOn^{Com}$ = the commodity risk category add-on;

j = the index that denotes the commodity hedging sets established in accordance with point (e) of Article 277a(1) and with Article 277a(2) for the netting set; and

$AddOn_j^{Com}$ = the commodity risk category add-on for hedging set j calculated in accordance with paragraph 4.

2. For the purpose of calculating the add-on for a commodity hedging set of a given netting set in accordance with paragraph 4, institutions shall establish the relevant commodity reference types of each hedging set. Commodity derivative transactions shall be assigned to the same commodity reference type only where the underlying commodity instrument of those transactions has the same nature, irrespective of the delivery location and quality of the commodity instrument.

3. By way of derogation from paragraph 2, competent authorities may require an institution which is significantly exposed to the basis risk of different positions sharing the same nature as referred to in paragraph 2 to establish the commodity reference types for those positions using more characteristics than just the nature of the underlying commodity instrument. In such a situation, commodity derivative transactions shall be assigned the same commodity reference type only where they share those characteristics.

4. Institutions shall calculate the commodity risk category add-on for hedging set j as follows:

▼C7

$$AddOn_j^{Com} = \epsilon_j \sqrt{\left(\rho^{Com} \cdot \sum_k AddOn\left(Type_k^j\right)\right)^2 + \left(1 - (\rho^{Com})^2\right) \cdot \sum_k \left(AddOn\left(Type_k^j\right)\right)^2}$$

▼M8

where:

$AddOn_j^{Com}$ = the commodity risk category add-on for hedging set j;

ϵ_j = the hedging set supervisory factor coefficient of hedging set j determined in accordance with Article 280;

ρ^{Com} = the correlation factor of the commodity risk category with a value equal to 40 %;

k = the index that denotes the commodity reference types of the netting set established in accordance with paragraph 2; and

$AddOn(Type_k^j)$ = the add-on for the commodity reference type k calculated in accordance with paragraph 5.

5. Institutions shall calculate the add-on for the commodity reference type k as follows:

$$AddOn(Type_k^j) = SF_k^{Com} \cdot EffNot_k^{Com}$$

where:

$AddOn(Type_k^j)$ = the add-on for the commodity reference type k;

▼M8
▼C7

SF_k^{Com} = the supervisory factor applicable to the commodity reference type k;where the commodity reference type k corresponds to transactions allocated to the hedging set referred to in point (e) of Article 277a(1), excluding transactions concerning electricity,$SF_k^{Com} = 18\ \%$; for transactions concerning electricity,$SF_k^{Com} = 40\ \%$; and

▼M8

$EffNot_k^{Com}$ = the effective notional amount of the commodity reference type k calculated as follows:

$$EffNot_k^{Com} = \sum_{l \in \text{Commodity reference type k}} RiskPosition_l$$

where:

l = the index that denotes the risk position.

Article 280f

Other risks category add-on

1. For the purposes of Article 278, institutions shall calculate the other risks category add-on for a given netting set as follows:

$$AddOn^{Other} = \sum_j AddOn_j^{Other}$$

where:

$AddOn^{Other}$ = the other risks category add-on;

ϵ_j = the index that denotes the other risk hedging sets established in accordance with point (f) of Article 277a(1) and Article 277a(2) for the netting set; and

$AddOn_j^{Other}$ = the other risks category add-on for hedging set j calculated in accordance with paragraph 2.

2. Institutions shall calculate the other risks category add-on for hedging set j as follows:

$$AddOn_j^{Other} = \epsilon_j \cdot SF^{Other} \cdot |EffNot_j^{Other}|$$

where:

$AddOn_j^{Other}$ = the other risks category add-on for hedging set j;

ϵ_j = the hedging set supervisory factor coefficient of hedging set j determined in accordance with Article 280; and

SF^{Other} = the supervisory factor for the other risk category with a value equal to 8 %;

$EffNot_j^{Other}$ = the effective notional amount of hedging set j calculated as follows:

$$EffNot_j^{Other} = \sum_{l \in \text{Hedging set j}} RiskPosition_l$$

where:

l = the index that denotes the risk position.

▼M8

Section 4

Simplified standardised approach for counterparty credit risk

Article 281

Calculation of the exposure value

1. Institutions shall calculate a single exposure value at netting set level in accordance with Section 3, subject to paragraph 2 of this Article.

2. The exposure value of a netting set shall be calculated in accordance with the following requirements:

(a) institutions shall not apply the treatment referred to in Article 274(6);

(b) by way of derogation from Article 275(1), for netting sets that are not referred to in Article 275(2), institutions shall calculate the replacement cost in accordance with the following formula:

$$RC = \max\{CMV, 0\}$$

where:

RC = the replacement cost; and

CMV = the current market value.

(c) by way of derogation from Article 275(2) of this Regulation, for netting sets of transactions: that are traded on a recognised exchange; that are centrally cleared by a central counterparty authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation; or for which collateral is exchanged bilaterally with the counterparty in accordance with Article 11 of Regulation (EU) No 648/2012, institutions shall calculate the replacement cost in accordance with the following formula:

$$RC = TH + MTA$$

where:

RC = the replacement cost;

TH = the margin threshold applicable to the netting set under the margin agreement below which the institution cannot call for collateral; and

MTA = the minimum transfer amount applicable to the netting set under the margin agreement;

(d) by way of derogation from Article 275(3), for multiple netting sets that are subject to a margin agreement, institutions shall calculate the replacement cost as the sum of the replacement cost of each individual netting set, calculated in accordance with paragraph 1 as if they were not margined;

(e) all hedging sets shall be established in accordance with Article 277a(1);

▼M8

(f) institutions shall set to 1 the multiplier in the formula that is used to calculate the potential future exposure in Article 278(1), as follows:

$$PFE = \sum_{a} AddOn^{(a)}$$

where:

PFE = the potential future exposure; and

$AddOn^{(a)}$ = the add-on for risk category a;

(g) by way of derogation from Article 279a(1), for all transactions, institutions shall calculate the supervisory delta as follows:

$$\delta = \begin{cases} +1 \text{ where the transaction is a long position in the primary risk driver} \\ -1 \text{ where the transaction is a short position in the primary risk driver} \end{cases}$$

where:

δ = the supervisory delta;

(h) the formula referred to in point (a) of Article 279b(1) that is used to compute the supervisory duration factor shall read as follows:

supervisory duration factor = E – S

where:

E = the period between the end date of a transaction and the reporting date; and

S = the period between the start date of a transaction and the reporting date;

(i) the maturity factor referred to in Article 279c(1) shall be calculated as follows:

(i) for transactions included in netting sets referred to in Article 275(1), MF = 1;

(ii) for transactions included in netting sets referred to in Article 275(2) and (3), MF = 0,42;

(j) the formula referred to in Article 280a(3) that is used to calculate the effective notional amount of hedging set j shall read as follows:

$$EffNot_j^{IR} = |D_{j,1}| + |D_{j,2}| + |D_{j,3}|$$

where:

$EffNot_j^{IR}$ = the effective notional amount of hedging set j; and

$D_{j,k}$ = the effective notional amount of bucket k of hedging set j;

▼M8

(k) the formula referred to in Article 280c(3) that is used to calculate the credit risk category add-on for hedging set j shall read as follows:

$$\text{AddOn}_j^{\text{Credit}} = \sum_k |\text{AddOn}(\text{Entity}_k)|$$

where:

$\text{AddOn}_j^{\text{Credit}}$ = the credit risk category add-on for hedging set j; and

$\text{AddOn}(\text{Entity}_k)$ = the add-on for the credit reference entity k;

(l) the formula referred to in Article 280d(3) that is used to calculate the equity risk category add-on for hedging set j shall read as follows:

$$\text{AddOn}_j^{\text{Equity}} = \sum_k |\text{AddOn}(\text{Entity}_k)|$$

where:

$\text{AddOn}_j^{\text{Equity}}$ = the equity risk category add-on for hedging set j; and

$\text{AddOn}(\text{Entity}_k)$ = the add-on for the credit reference entity k;

(m) the formula referred to in Article 280e(4) that is used to calculate the commodity risk category add-on for hedging set j shall read as follows:

$$\text{AddOn}_j^{\text{Com}} = \sum_k |\text{AddOn}(\text{Type}_k^j)|$$

where:

$\text{AddOn}_j^{\text{Com}}$ = the commodity risk category add-on for hedging set j; and

$\text{AddOn}(\text{Type}_k^j)$ = the add-on for the commodity reference type k.

Section 5

Original exposure method

Article 282

Calculation of the exposure value

1. Institutions may calculate a single exposure value for all the transactions within a contractual netting agreement where all the conditions set out in Article 274(1) are met. Otherwise, institutions shall calculate an exposure value separately for each transaction, which shall be treated as its own netting set.

2. The exposure value of a netting set or a transaction shall be the product of 1,4 times the sum of the current replacement cost and the potential future exposure.

▼M8

3. The current replacement cost referred to in paragraph 2 shall be calculated as follows:

(a) for netting sets of transactions: that are traded on a recognised exchange; centrally cleared by a central counterparty authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation; or for which collateral is exchanged bilaterally with the counterparty in accordance with Article 11 of Regulation (EU) No 648/2012, institutions shall use the following formula:

$$RC = TH + MTA$$

where:

RC = the replacement cost;

TH = the margin threshold applicable to the netting set under the margin agreement below which the institution cannot call for collateral; and

MTA = the minimum transfer amount applicable to the netting set under the margin agreement;

(b) for all other netting sets or individual transactions, institutions shall use the following formula:

$$RC = \max\{CMV, 0\}$$

where:

RC = the replacement cost; and

CMV = the current market value.

In order to calculate the current replacement cost, institutions shall update current market values at least monthly.

4. Institutions shall calculate the potential future exposure referred to in paragraph 2 as follows:

(a) the potential future exposure of a netting set is the sum of the potential future exposure of all the transactions included in the netting set, calculated in accordance with point (b);

(b) the potential future exposure of a single transaction is its notional amount multiplied by:

(i) the product of 0,5 % and the residual maturity of the transaction expressed in years for interest-rate derivative contracts;

(ii) the product of 6 % and the residual maturity of the transaction expressed in years for credit derivative contracts;

(iii) 4 % for foreign-exchange derivatives;

(iv) 18 % for gold and commodity derivatives other than electricity derivatives;

(v) 40 % for electricity derivatives;

(vi) 32 % for equity derivatives;

(c) the notional amount referred to in point (b) of this paragraph shall be determined in accordance with Article 279b(2) and (3) for all derivatives listed in that point; in addition, the notional amount of the derivatives referred to in points (b)(iii) to (b)(vi) of this paragraph shall be determined in accordance with points (b) and (c) of Article 279b(1);

▼M8

(d) the potential future exposure of netting sets referred to in point (a) of paragraph 3 shall be multiplied by 0,42.

For calculating the potential exposure of interest-rate derivatives and credit derivatives in accordance with points b(i) and (b)(ii), an institution may choose to use the original maturity instead of the residual maturity of the contracts.

▼C2

Section 6

Internal Model Method

Article 283

Permission to use the Internal Model Method

1. Provided that the competent authorities are satisfied that the requirement in paragraph 2 have been met by an institution, they shall permit that institution to use the Internal Model Method (IMM) to calculate the exposure value for any of the following transactions:

(a) transactions in Article 273(2)(a);

(b) transactions in Article 273(2)(b), (c) and (d);

(c) transactions in Article 273(2)(a) to (d),

Where an institution is permitted to use the IMM to calculate exposure value for any of the transactions mentioned in points (a) to (c) of the first subparagraph, it may also use the IMM for the transactions in Article 273(2)(e).

Notwithstanding the third subparagraph of Article 273(1), an institution may choose not to apply this method to exposures that are immaterial in size and risk. In such case, an institution shall apply one of the methods set out in Sections 3 to 5 to these exposures where the relevant requirements for each approach are met.

2. Competent authorities shall permit institutions to use IMM for the calculations referred to in paragraph 1 only if the institution has demonstrated that it complies with the requirements set out in this Section, and the competent authorities verified that the systems for the management of CCR maintained by the institution are sound and properly implemented.

3. The competent authorities may permit institutions for a limited period to implement the IMM sequentially across different transaction types. During this period of sequential implementation institutions may use the methods set out in Section 3 or Section 5 for transaction type for which they do not use the IMM.

▼M8

4. For all OTC derivative transactions, and for long settlement transactions for which an institution has not received permission under paragraph 1 to use the IMM, the institution shall use the methods set out in Section 3. Those methods may be used in combination on a permanent basis within a group.

▼C2

5. An institution which is permitted in accordance with paragraph 1 to use the IMM shall not revert to the use of the methods set out in Section 3 or Section 5 unless it is permitted by the competent authority to do so. Competent authorities shall give such permission if the institution demonstrates good cause.

6. If an institution ceases to comply with the requirements laid down in this Section, it shall notify the competent authority and do one of the following:

(a) present to the competent authority a plan for a timely return to compliance;

(b) demonstrate to the satisfaction of the competent authority that the effect of non-compliance is immaterial.

Article 284

Exposure value

1. Where an institution is permitted, in accordance with Article 283(1), to use the IMM to calculate the exposure value of some or all transactions mentioned in that paragraph, it shall measure the exposure value of those transactions at the level of the netting set.

The model used by the institution for that purpose shall:

(a) specify the forecasting distribution for changes in the market value of the netting set attributable to joint changes in relevant market variables, such as interest rates, foreign exchange rates;

(b) calculate the exposure value for the netting set at each of the future dates on the basis of the joint changes in the market variables.

2. In order for the model to capture the effects of margining, the model of the collateral value shall meet the quantitative, qualitative and data requirements for the IMM in accordance with this Section and the institution may include in its forecasting distributions for changes in the market value of the netting set only eligible financial collateral as referred to in Articles 197 and 198 and points (c) and (d) of Article 299(2).

3. The own funds requirement for counterparty credit risk with respect to the CCR exposures to which an institution applies the IMM, shall be the higher of the following:

(a) the own funds requirement for those exposures calculated on the basis of Effective EPE using current market data;

(b) the own funds requirement for those exposures calculated on the basis of Effective EPE using a single consistent stress calibration for all CCR exposures to which they apply the IMM.

▼C2

4. Except for counterparties identified as having Specific Wrong-Way risk that fall within the scope of Article 291(4) and (5), institutions shall calculate the exposure value as the product of alpha (α) times Effective EPE, as follows:

$$Exposure\ value = \alpha \cdot Effective\ EPE$$

where:

α = 1.4, unless competent authorities require a higher α or permit institutions to use their own estimates in accordance with paragraph 9;

Effective EPE shall be calculated by estimating expected exposure (EEt) as the average exposure at future date t, where the average is taken across possible future values of relevant market risk factors.

The model shall estimate EE at a series of future dates t1, t2, t3, etc.

5. Effective EE shall be calculated recursively as:

$$Effective\ EE_{tk} = max\ \{Effective\ EE_{tk-1},\ EE_{tk}\}$$

where:

the current date is denoted as t_0;

Effective EE_{t0} equals current exposure.

6. Effective EPE is the average Effective EE during the first year of future exposure. If all contracts in the netting set mature within less than one year, EPE shall be the average of EE until all contracts in the netting set mature. Effective EPE shall be calculated as a weighted average of Effective EE:

▼C3

$$Effective\ EPE = \frac{1}{min\{1\ year,\ maturity\}} \cdot \sum_{k=1}^{min\{1\ year,\ maturity\}} Effective\ EE_{t_k} \cdot \Delta t_k$$

▼C2

where the weights $\Delta t_k = t_k - t_{k-1}$ allow for the case when future exposure is calculated at dates that are not equally spaced over time.

7. Institutions shall calculate EE or peak exposure measures on the basis of a distribution of exposures that accounts for the possible non-normality of the distribution of exposures.

8. An institution may use a measure of the distribution calculated by the IMM that is more conservative than α multiplied by Effective EPE as calculated in accordance with the equation in paragraph 4 for every counterparty.

9. Notwithstanding paragraph 4, competent authorities may permit institutions to use their own estimates of alpha, where:

▼C2

(a) alpha shall equal the ratio of internal capital from a full simulation of CCR exposure across counterparties (numerator) and internal capital based on EPE (denominator);

(b) in the denominator, EPE shall be used as if it were a fixed outstanding amount.

When estimated in accordance with this paragraph, alpha shall be no lower than 1,2.

10. For the purposes of an estimate of alpha under paragraph 9, an institution shall ensure that the numerator and denominator are calculated in a manner consistent with the modelling methodology, parameter specifications and portfolio composition. The approach used to estimate α shall be based on the institution's internal capital approach, be well documented and be subject to independent validation. In addition, an institution shall review its estimates of alpha on at least a quarterly basis, and more frequently when the composition of the portfolio varies over time. An institution shall also assess the model risk.

11. An institution shall demonstrate to the satisfaction of the competent authorities that its internal estimates of alpha capture in the numerator material sources of dependency of distribution of market values of transactions or of portfolios of transactions across counterparties. Internal estimates of alpha shall take account of the granularity of portfolios.

12. In supervising the use of estimates under paragraph 9, competent authorities shall have regard to the significant variation in estimates of alpha that arises from the potential for mis-specification in the models used for the numerator, especially where convexity is present.

13. Where appropriate, volatilities and correlations of market risk factors used in the joint modelling of market and credit risk shall be conditioned on the credit risk factor to reflect potential increases in volatility or correlation in an economic downturn.

Article 285

Exposure value for netting sets subject to a margin agreement

1. If the netting set is subject to a margin agreement and daily mark-to-market valuation, the institution shall calculate Effective EPE as set out in this paragraph. If the model captures the effects of margining when estimating EE, the institution may, subject to the permission of the competent authority, use the model's EE measure directly in the equation in Article 284(5). Competent authorities shall grant such permission only if they verify that the model properly captures the effects of margining when estimating EE. An institution that has not received such permission shall use one of the following Effective EPE measures:

(a) Effective EPE, calculated without taking into account any collateral held or posted by way of margin plus any collateral that has been posted to the counterparty independent of the daily valuation and margining process or current exposure;

▼C2

(b) Effective EPE, calculated as the potential increase in exposure over the margin period of risk, plus the larger of:

(i) the current exposure including all collateral currently held or posted, other than collateral called or in dispute;

(ii) the largest net exposure, including collateral under the margin agreement, that would not trigger a collateral call. This amount shall reflect all applicable thresholds, minimum transfer amounts, independent amounts and initial margins under the margin agreement.

For the purposes of point (b), institutions shall calculate the add-on as the expected positive change of the mark-to-market value of the transactions during the margin period of risk. Changes in the value of collateral shall be reflected using the Supervisory Volatility Adjustments Approach in accordance with Section 4 of Chapter 4 or the own estimates of volatility adjustments of the Financial Collateral Comprehensive Method, but no collateral payments shall be assumed during the margin period of risk. The margin period of risk is subject to the minimum periods set out in paragraphs 2 to 5.

2. For transactions subject to daily re-margining and mark-to-market valuation, the margin period of risk used for the purpose of modelling the exposure value with margin agreements shall not be less than:

(a) 5 business days for netting sets consisting only of repurchase transactions, securities or commodities lending or borrowing transactions and margin lending transactions;

(b) 10 business days for all other netting sets.

3. Points (a) and (b) of paragraph 2 shall be subject to the following exceptions:

(a) for all netting sets where the number of trades exceeds 5 000 at any point during a quarter, the margin period of risk for the following quarter shall not be less than 20 business days. This exception shall not apply to institutions' trade exposures;

(b) for netting sets containing one or more trades involving either illiquid collateral, or an OTC derivative that cannot be easily replaced, the margin period of risk shall not be less than 20 business days.

▼C2

An institution shall determine whether collateral is illiquid or whether OTC derivatives cannot be easily replaced in the context of stressed market conditions, characterised by the absence of continuously active markets where a counterparty would, within two days or fewer, obtain multiple price quotations that would not move the market or represent a price reflecting a market discount (in the case of collateral) or premium (in the case of an OTC derivative).

An institution shall consider whether trades or securities it holds as collateral are concentrated in a particular counterparty and if that counterparty exited the market precipitously whether the institution would be able to replace those trades or securities.

4. If an institution has been involved in more than two margin call disputes on a particular netting set over the immediately preceding two quarters that have lasted longer than the applicable margin period of risk under paragraphs 2 and 3, the institution shall use a margin period of risk that is at least double the period specified in paragraphs 2 and 3 for that netting set for the subsequent two quarters.

5. For re-margining with a periodicity of N days, the margin period of risk shall be at least equal to the period specified in paragraphs 2 and 3, F, plus N days minus one day. That is:

$$Margin\ Period\ of\ Risk = F + N - 1$$

6. If the internal model includes the effect of margining on changes in the market value of the netting set, an institution shall model collateral, other than cash of the same currency as the exposure itself, jointly with the exposure in its exposure value calculations for OTC derivatives and securities-financing transactions.

7. If an institution is not able to model collateral jointly with the exposure, it shall not recognise in its exposure value calculations for OTC derivatives and securities-financing transactions the effect of collateral other than cash of the same currency as the exposure itself, unless it uses either volatility adjustments that meet the standards of the financial collateral comprehensive Method with own volatility adjustments estimates or the standard Supervisory Volatility Adjustments Approach in accordance with Chapter 4.

8. An institution using the IMM shall ignore in its models the effect of a reduction of the exposure value due to any clause in a collateral agreement that requires receipt of collateral when counterparty credit quality deteriorates.

Article 286

Management of CCR — Policies, processes and systems

1. An institution shall establish and maintain a CCR management framework, consisting of:

▼C2

(a) policies, processes and systems to ensure the identification, measurement, management, approval and internal reporting of CCR;

(b) procedures for ensuring that those policies, processes and systems are complied with.

Those policies, processes and systems shall be conceptually sound, implemented with integrity and documented. The documentation shall include an explanation of the empirical techniques used to measure CCR.

2. The CCR management framework required by paragraph 1 shall take account of market, liquidity, and legal and operational risks that are associated with CCR. In particular, the framework shall ensure that the institution complies with the following principles:

(a) it does not undertake business with a counterparty without assessing its creditworthiness;

(b) it takes due account of settlement and pre-settlement credit risk;

(c) it manages such risks as comprehensively as practicable at the counterparty level by aggregating CCR exposures with other credit exposures and at the firm-wide level.

3. An institution using the IMM shall ensure that its CCR management framework accounts to the satisfaction of the competent authority for the liquidity risks of all of the following:

(a) potential incoming margin calls in the context of exchanges of variation margin or other margin types, such as initial or independent margin, under adverse market shocks;

(b) potential incoming calls for the return of excess collateral posted by counterparties;

(c) calls resulting from a potential downgrade of its own external credit quality assessment.

An institution shall ensure that the nature and horizon of collateral re-use is consistent with its liquidity needs and does not jeopardise its ability to post or return collateral in a timely manner.

4. An institution's management body and senior management shall be actively involved in, and ensure that adequate resources are allocated to, the management of CCR. Senior management shall be aware of the limitations and assumptions of the model used and the impact those limitations and assumptions can have on the reliability of the output through a formal process. Senior management shall be also aware of the uncertainties of the market environment and operational issues and of how these are reflected in the model.

▼C2

5. The daily reports prepared on an institution's exposures to CCR in accordance with Article 287(2)(b) shall be reviewed by a level of management with sufficient seniority and authority to enforce both reductions of positions taken by individual credit managers or traders and reductions in the institution's overall CCR exposure.

6. An institution's CCR management framework established in accordance with paragraph 1 shall be used in conjunction with internal credit and trading limits. Credit and trading limits shall be related to the institution's risk measurement model in a manner that is consistent over time and that is well understood by credit managers, traders and senior management. An institution shall have a formal process to report breaches of risk limits to the appropriate level of management.

7. An institution's measurement of CCR shall include measuring daily and intra-day use of credit lines. The institution shall measure current exposure gross and net of collateral. At portfolio and counterparty level, the institution shall calculate and monitor peak exposure or potential future exposure at the confidence interval chosen by the institution. The institution shall take account of large or concentrated positions, including by groups of related counterparties, by industry and by market.

8. An institution shall establish and maintain a routine and rigorous program of stress testing. The results of that stress testing shall be reviewed regularly and at least quarterly by senior management and shall be reflected in the CCR policies and limits set by the management body or senior management. Where stress tests reveal particular vulnerability to a given set of circumstances, the institution shall take prompt steps to manage those risks.

Article 287

Organisation structures for CCR management

1. An institution using the IMM shall establish and maintain:

(a) a risk control unit that complies with paragraph 2;

(b) a collateral management unit that complies with paragraph 3.

2. The risk control unit shall be responsible for the design and implementation of its CCR management, including the initial and on-going validation of the model, and shall carry out the following functions and meet the following requirements:

(a) it shall be responsible for the design and implementation of the CCR management system of the institution;

(b) it shall produce daily reports on and analyse the output of the institution's risk measurement model. That analysis shall include an evaluation of the relationship between measures of CCR exposure values and trading limits;

▼C2

(c) it shall control input data integrity and produce and analyse reports on the output of the institution's risk measurement model, including an evaluation of the relationship between measures of risk exposure and credit and trading limits;

(d) it shall be independent from units responsible for originating, renewing or trading exposures and free from undue influence;

(e) it shall be adequately staffed;

(f) it shall report directly to the senior management of the institution;

(g) its work shall be closely integrated into the day-to-day credit risk management process of the institution;

(h) its output shall be an integral part of the process of planning, monitoring and controlling the institution's credit and overall risk profile.

3. The collateral management unit shall carry out the following tasks and functions:

(a) calculating and making margin calls, managing margin call disputes and reporting levels of independent amounts, initial margins and variation margins accurately on a daily basis;

(b) controlling the integrity of the data used to make margin calls, and ensuring that it is consistent and reconciled regularly with all relevant sources of data within the institution;

(c) tracking the extent of re-use of collateral and any amendment of the rights of the institution to or in connection with the collateral that it posts;

(d) reporting to the appropriate level of management the types of collateral assets that are reused, and the terms of such reuse including instrument, credit quality and maturity;

(e) tracking concentration to individual types of collateral assets accepted by the institution;

(f) reporting collateral management information on a regular basis, but at least quarterly, to senior management, including information on the type of collateral received and posted, the size, aging and cause for margin call disputes. That internal reporting shall also reflect trends in these figures.

▼C2

4. Senior management shall allocate sufficient resources to the collateral management unit required under paragraph 1(b) to ensure that its systems achieve an appropriate level of operational performance, as measured by the timeliness and accuracy of margin calls by the institution and the timeliness of the response of the institution to margin calls by its counterparties. Senior management shall ensure that the unit is adequately staffed to process calls and disputes in a timely manner even under severe market crisis, and to enable the institution to limit its number of large disputes caused by trade volumes.

Article 288

Review of CCR management system

An institution shall regularly conduct an independent review of its CCR management system through its internal auditing process. That review shall include both the activities of the control and collateral management units required by Article 287 and shall specifically address, as a minimum:

(a) the adequacy of the documentation of the CCR management system and process required by Article 286;

(b) the organisation of the CCR control unit required by Article 287(1)(a);

(c) the organisation of the collateral management unit required by Article 287(1)(b);

(d) the integration of CCR measures into daily risk management;

(e) the approval process for risk pricing models and valuation systems used by front and back-office personnel;

(f) the validation of any significant change in the CCR measurement process;

(g) the scope of CCR captured by the risk measurement model;

(h) the integrity of the management information system;

(i) the accuracy and completeness of CCR data;

(j) the accurate reflection of legal terms in collateral and netting agreements into exposure value measurements;

(k) the verification of the consistency, timeliness and reliability of data sources used to run models, including the independence of such data sources;

(l) the accuracy and appropriateness of volatility and correlation assumptions;

▼C2

(m) the accuracy of valuation and risk transformation calculations;

(n) the verification of the model's accuracy through frequent back-testing as set out in points (b) to (e) of Article 293(1);

(o) the compliance of the CCR control unit and collateral management unit with the relevant regulatory requirements.

Article 289

Use test

1. Institutions shall ensure that the distribution of exposures generated by the model used to calculate Effective EPE is closely integrated into the day-to-day CCR management process of the institution, and that the output of the model is taken into account in the process of credit approval, CCR management, internal capital allocation and corporate governance.

2. The institution shall demonstrate to the satisfaction of the competent authorities that it has been using a model to calculate the distribution of exposures upon which the EPE calculation is based that meets, broadly, the requirements set out in this Section for at least one year prior to permission to use the IMM by the competent authorities in accordance with Article 283.

3. The model used to generate a distribution of exposures to CCR shall be part of the CCR management framework required by Article 286. This framework shall include the measurement of usage of credit lines, aggregating CCR exposures with other credit exposures and internal capital allocation.

4. In addition to EPE, an institution shall measure and manage current exposures. Where appropriate, the institution shall measure current exposure gross and net of collateral. The use test is satisfied if an institution uses other CCR measures, such as peak exposure, based on the distribution of exposures generated by the same model to compute EPE.

5. An institution shall have the systems capability to estimate EE daily if necessary, unless it demonstrates to the satisfaction of its competent authorities that its exposures to CCR warrant less frequent calculation. The institution shall estimate EE along a time profile of forecasting horizons that adequately reflects the time structure of future cash flows and maturity of the contracts and in a manner that is consistent with the materiality and composition of the exposures.

6. Exposure shall be measured, monitored and controlled over the life of all contracts in the netting set and not only to the one-year horizon. The institution shall have procedures in place to identify and control the risks for counterparties where the exposure rises beyond the one-year horizon. The forecast increase in exposure shall be an input into the institution's internal capital model.

▼C2

Article 290

Stress testing

1. An institution shall have a comprehensive stress testing programme for CCR, including for use in assessment of own funds requirements for CCR, which complies with the requirements laid down in paragraphs 2 to 10.

2. It shall identify possible events or future changes in economic conditions that could have unfavourable effects on an institution's credit exposures and assess the institution's ability to withstand such changes.

3. The stress measures under the programme shall be compared against risk limits and considered by the institution as part of the process set out in Article 81 of Directive 2013/36/EU.

4. The programme shall comprehensively capture trades and aggregate exposures across all forms of counterparty credit risk at the level of specific counterparties in a sufficient time frame to conduct regular stress testing.

5. It shall provide for at least monthly exposure stress testing of principal market risk factors such as interest rates, FX, equities, credit spreads, and commodity prices for all counterparties of the institution, in order to identify, and enable the institution when necessary to reduce outsized concentrations in specific directional risks. Exposure stress testing -including single factor, multifactor and material non-directional risks- and joint stressing of exposure and creditworthiness shall be performed at the counterparty-specific, counterparty group and aggregate institution-wide CCR levels.

6. It shall apply at least quarterly multifactor stress testing scenarios and assess material non-directional risks including yield curve exposure and basis risks. Multiple-factor stress tests shall, at a minimum, address the following scenarios in which the following occurs:

(a) severe economic or market events have occurred;

(b) broad market liquidity has decreased significantly;

(c) a large financial intermediary is liquidating positions.

7. The severity of the shocks of the underlying risk factors shall be consistent with the purpose of the stress test. When evaluating solvency under stress, the shocks of the underlying risk factors shall be sufficiently severe to capture historical extreme market environments and extreme but plausible stressed market conditions. The stress tests shall evaluate the impact of such shocks on own funds, own funds requirements and earnings. For the purpose of day-to-day portfolio monitoring, hedging, and management of concentrations the testing programme shall also consider scenarios of lesser severity and higher probability.

▼C2

8. The programme shall include provision, where appropriate, for reverse stress tests to identify extreme, but plausible, scenarios that could result in significant adverse outcomes. Reverse stress testing shall account for the impact of material non-linearity in the portfolio.

9. The results of the stress testing under the programme shall be reported regularly, at least on a quarterly basis, to senior management. The reports and analysis of the results shall cover the largest counterparty-level impacts across the portfolio, material concentrations within segments of the portfolio (within the same industry or region), and relevant portfolio and counterparty specific trends.

10. Senior management shall take a lead role in the integration of stress testing into the risk management framework and risk culture of the institution and ensure that the results are meaningful and used to manage CCR. The results of stress testing for significant exposures shall be assessed against guidelines that indicate the institution's risk appetite, and referred to senior management for discussion and action when excessive or concentrated risks are identified.

Article 291

Wrong-Way Risk

1. For the purposes of this Article:

(a) ‘General Wrong-Way risk’ arises when the likelihood of default by counterparties is positively correlated with general market risk factors;

(b) ‘Specific Wrong-Way risk’ arises when future exposure to a specific counterparty is positively correlated with the counterparty's PD due to the nature of the transactions with the counterparty. An institution shall be considered to be exposed to Specific Wrong-Way risk if the future exposure to a specific counterparty is expected to be high when the counterparty's probability of a default is also high.

2. An institution shall give due consideration to exposures that give rise to a significant degree of Specific and General Wrong-Way risk.

3. In order to identify General Wrong-Way risk, an institution shall design stress testing and scenario analyses to stress risk factors that are adversely related to counterparty creditworthiness. Such testing shall address the possibility of severe shocks occurring when relationships between risk factors have changed. An institution shall monitor General Wrong Way risk by product, by region, by industry, or by other categories that are relevant to the business.

4. An institution shall maintain procedures to identify, monitor and control cases of Specific Wrong-Way risk for each legal entity, beginning at the inception of a transaction and continuing through the life of the transaction.

▼C2

5. Institutions shall calculate the own funds requirements for CCR in relation to transactions where Specific Wrong-Way risk has been identified and where there exists a legal connection between the counterparty and the issuer of the underlying of the OTC derivative or the underlying of the transactions referred to in points (b), (c) and (d) of Article 273(2)), in accordance with the following principles:

(a) the instruments where Specific Wrong-Way risk exists shall not be included in the same netting set as other transactions with the counterparty, and shall each be treated as a separate netting set;

(b) within any such separate netting set, for single-name credit default swaps the exposure value equals the full expected loss in the value of the remaining fair value of the underlying instruments based on the assumption that the underlying issuer is in liquidation;

(c) LGD for an institution using the approach set out in Chapter 3 shall be 100 % for such swap transactions;

(d) for an institution using the approach set out in Chapter 2, the applicable risk weight shall be that of an unsecured transaction;

(e) for all other transactions referencing a single name in any such separate netting set, the calculation of the exposure value shall be consistent with the assumption of a jump-to-default of those underlying obligations where the issuer is legally connected with the counterparty. For transactions referencing a basket of names or index, the jump-to-default of the respective underlying obligations where the issuer is legally connected with the counterparty, shall be applied, if material;

(f) to the extent that this uses existing market risk calculations for own funds requirements for incremental default and migration risk as set out in Title IV, Chapter 5, Section 4 that already contain an LGD assumption, the LGD in the formula used shall be 100 %.

6. Institutions shall provide senior management and the appropriate committee of the management body with regular reports on both Specific and General Wrong-Way risks and the steps being taken to manage those risks.

Article 292

Integrity of the modelling process

1. An institution shall ensure the integrity of modelling process as set out in Article 284 by adopting at least the following measures:

(a) the model shall reflect transaction terms and specifications in a timely, complete, and conservative fashion;

(b) those terms shall include at least contract notional amounts, maturity, reference assets, margining arrangements and netting arrangements;

▼C2

(c) those terms and specifications shall be maintained in a database that is subject to formal and periodic audit;

(d) a process for recognising netting arrangements that requires legal staff to verify that netting under those arrangements is legally enforceable;

(e) the verification required under point (d) shall be entered into the database mentioned in point (c) by an independent unit;

(f) the transmission of transaction terms and specification data to the EPE model shall be subject to internal audit;

(g) there shall be processes for formal reconciliation between the model and source data systems to verify on an ongoing basis that transaction terms and specifications are being reflected in EPE correctly or at least conservatively.

2. Current market data shall be used to determine current exposures. An institution may calibrate its EPE model using either historic market data or market implied data to establish parameters of the underlying stochastic processes, such as drift, volatility and correlation. If an institution uses historical data, it shall use at least three years of such data. The data shall be updated at least quarterly, and more frequently if necessary to reflect market conditions.

To calculate the Effective EPE using a stress calibration, an institution shall calibrate Effective EPE using either three years of data that includes a period of stress to the credit default spreads of its counterparties or market implied data from such a period of stress.

The requirements in paragraphs 3, 4 and 5 shall be applied by the institution for that purpose.

3. An institution shall demonstrate to the satisfaction of the competent authority, at least quarterly, that the stress period used for the calculation under this paragraph coincides with a period of increased credit default swap or other credit (such as loan or corporate bond) spreads for a representative selection of its counterparties with traded credit spreads. In situations where the institution does not have adequate credit spread data for a counterparty, it shall map that counterparty to specific credit spread data based on region, internal rating and business types.

4. The EPE model for all counterparties shall use data, either historic or implied, that include the data from the stressed credit period and shall use such data in a manner consistent with the method used for the calibration of the EPE model to current data.

▼C2

5. To evaluate the effectiveness of its stress calibration for EEPE, an institution shall create several benchmark portfolios that are vulnerable to the main risk factors to which the institution is exposed. The exposure to these benchmark portfolios shall be calculated using (a) a stress methodology, based on current market values and model parameters calibrated to stressed market conditions, and (b) the exposure generated during the stress period, but applying the method set out in this Section (end of stress period market value, volatilities, and correlations from the 3-year stress period).

The competent authorities shall require an institution to adjust the stress calibration if the exposures of those benchmark portfolios deviate substantially from each other.

6. An institution shall subject the model to a validation process that is clearly articulated in the institutions' policies and procedures. That validation process shall:

(a) specify the kind of testing needed to ensure model integrity and identify conditions under which the assumptions underlying the model are inappropriate and may therefore result in an understatement of EPE;

(b) include a review of the comprehensiveness of the model.

7. An institution shall monitor the relevant risks and have processes in place to adjust its estimation of Effective EPE when those risks become significant. In complying with this paragraph, the institution shall:

(a) identify and manage its exposures to Specific Wrong-Way risk arising as specified in Article 291(1)(b) and exposures to General Wrong-Way risk arising as specified in Article 291(1)(a);

(b) for exposures with a rising risk profile after one year, compare on a regular basis the estimate of a relevant measure of exposure over one year with the same exposure measure over the life of the exposure;

(c) for exposures with a residual maturity below one year, compare on a regular basis the replacement cost (current exposure) and the realised exposure profile, and store data that would allow such a comparison.

8. An institution shall have internal procedures to verify that, prior to including a transaction in a netting set, the transaction is covered by a legally enforceable netting contract that meets the requirements set out in Section 7.

9. An institution that uses collateral to mitigate its CCR shall have internal procedures to verify that, prior to recognising the effect of collateral in its calculations, the collateral meets the legal certainty standards set out in Chapter 4.

▼C2

10. EBA shall monitor the range of practices in this area and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on the application of this Article.

Article 293

Requirements for the risk management system

1. An institution shall comply with the following requirements:

(a) it shall meet the qualitative requirements set out in Part Three, Title IV, Chapter 5;

(b) it shall conduct a regular programme of back-testing, comparing the risk measures generated by the model with realised risk measures, and hypothetical changes based on static positions with realised measures;

(c) it shall carry out an initial validation and an on-going periodic review of its CCR exposure model and the risk measures generated by it. The validation and review shall be independent of the model development;

(d) the management body and senior management shall be involved in the risk control process and shall ensure that adequate resources are devoted to credit and counterparty credit risk control. In this regard, the daily reports prepared by the independent risk control unit established in accordance Article 287(1)(a) shall be reviewed by a level of management with sufficient seniority and authority to enforce both reductions of positions taken by individual traders and reductions in the overall risk exposure of the institution;

(e) the internal risk measurement exposure model shall be integrated into the day-to-day risk management process of the institution;

(f) the risk measurement system shall be used in conjunction with internal trading and exposure limits. In this regard, exposure limits shall be related to the institution's risk measurement model in a manner that is consistent over time and that is well understood by traders, the credit function and senior management;

(g) an institution shall ensure that its risk management system is well documented. In particular, it shall maintain a documented set of internal policies, controls and procedures concerning the operation of the risk measurement system, and arrangements to ensure that those policies are complied with;

(h) an independent review of the risk measurement system shall be carried out regularly in the institution's own internal auditing process. This review shall include both the activities of the business trading units and of the independent risk control unit. A review of the overall risk management process shall take place at regular intervals (and no less than once a year) and shall specifically address, as a minimum, all items referred to in Article 288;

▼C2

(i) the on-going validation of counterparty credit risk models, including back-testing, shall be reviewed periodically by a level of management with sufficient authority to decide the action that will be taken to address weaknesses in the models.

2. Competent authorities shall take into account the extent to which an institution meets the requirements of paragraph 1 when setting the level of alpha, as set out in Article 284(4). Only those institutions that comply fully with those requirements shall be eligible for application of the minimum multiplication factor.

3. An institution shall document the process for initial and on-going validation of its CCR exposure model and the calculation of the risk measures generated by the models to a level of detail that would enable a third party to recreate, respectively, the analysis and the risk measures. That documentation shall set out the frequency with which back testing analysis and any other on-going validation will be conducted, how the validation is conducted with respect to data flows and portfolios and the analyses that are used.

4. An institution shall define criteria with which to assess its CCR exposure models and the models that input into the calculation of exposure and maintain a written policy that describes the process by which unacceptable performance will be identified and remedied.

5. An institution shall define how representative counterparty portfolios are constructed for the purposes of validating an CCR exposure model and its risk measures.

6. The validation of CCR exposure models and their risk measures that produce forecast distributions shall consider more than a single statistic of the forecast distribution.

Article 294

Validation requirements

1. As part of the initial and on-going validation of its CCR exposure model and its risk measures, an institution shall ensure that the following requirements are met:

(a) the institution shall carry out back-testing using historical data on movements in market risk factors prior to the permission by the competent authorities in accordance with Article 283(1). That back-testing shall consider a number of distinct prediction time horizons out to at least one year, over a range of various initialisation dates and covering a wide range of market conditions;

(b) the institution using the approach set out in Article 285(1)(b) shall regularly validate its model to test whether realised current exposures are consistent with prediction over all margin periods within one year. If some of the trades in the netting set have a maturity of less than one year, and the netting set has higher risk factor sensitivities without these trades, the validation shall take this into account;

▼C2

(c) it shall back-test the performance of its CCR exposure model and the model's relevant risk measures as well as the market risk factor predictions. For collateralised trades, the prediction time horizons considered shall include those reflecting typical margin periods of risk applied in collateralised or margined trading;

(d) if the model validation indicates that Effective EPE is underestimated, the institution shall take the action necessary to address the inaccuracy of the model;

(e) it shall test the pricing models used to calculate CCR exposure for a given scenario of future shocks to market risk factors as part of the initial and on-going model validation process. Pricing models for options shall account for the nonlinearity of option value with respect to market risk factors;

(f) the CCR exposure model shall capture the transaction-specific information necessary to be able to aggregate exposures at the level of the netting set. An institution shall verify that transactions are assigned to the appropriate netting set within the model;

(g) the CCR exposure model shall include transaction-specific information to capture the effects of margining. It shall take into account both the current amount of margin and margin that would be passed between counterparties in the future. Such a model shall account for the nature of margin agreements that are unilateral or bilateral, the frequency of margin calls, the margin period of risk, the minimum threshold of un-margined exposure the institution is willing to accept, and the minimum transfer amount. Such a model shall either estimate the mark-to-market change in the value of collateral posted or apply the rules set out in Chapter 4;

(h) the model validation process shall include static, historical back-testing on representative counterparty portfolios. An institution shall conduct such back-testing on a number of representative counterparty portfolios that are actual or hypothetical at regular intervals. Those representative portfolios shall be chosen on the basis of their sensitivity to the material risk factors and combinations of risk factors to which the institution is exposed;

(i) an institution shall conduct back-testing that is designed to test the key assumptions of the CCR exposure model and the relevant risk measures, including the modelled relationship between tenors of the same risk factor, and the modelled relationships between risk factors;

(j) the performance of CCR exposure models and its risk measures shall be subject to appropriate back-testing practice. The back testing programme shall be capable of identifying poor performance in an EPE model's risk measures;

▼C2

(k) an institution shall validate its CCR exposure models and all risk measures out to time horizons commensurate with the maturity of trades for which exposure is calculated using IMM in accordance to the Article 283;

(l) an institution shall regularly test the pricing models used to calculate counterparty exposure against appropriate independent benchmarks as part of the on-going model validation process;

(m) the on-going validation of an institution's CCR exposure model and the relevant risk measures shall include an assessment of the adequacy of the recent performance;

(n) the frequency with which the parameters of an CCR exposure model are updated shall be assessed by an institution as part of the initial and on-going validation process;

(o) the initial and on-going validation of CCR exposure models shall assess whether or not the counterparty level and netting set exposure calculations of exposure are appropriate.

2. A measure that is more conservative than the metric used to calculate regulatory exposure value for every counterparty may be used in place of alpha multiplied by Effective EPE with the prior permission of the competent authorities. The degree of relative conservatism will be assessed upon initial approval by the competent authorities and at the regular supervisory reviews of the EPE models. An institution shall validate the conservatism regularly. The on-going assessment of model performance shall cover all counterparties for which the models are used.

3. If back-testing indicates that a model is not sufficiently accurate, the competent authorities shall revoke its permission for the model, or impose appropriate measures to ensure that the model is improved promptly.

Section 7

Contractual netting

Article 295

Recognition of contractual netting as risk-reducing

Institutions may treat as risk reducing in accordance with Article 298 only the following types of contractual netting agreements where the netting agreement has been recognised by competent authorities in accordance with Article 296 and where the institution meets the requirements set out in Article 297:

▼C2

(a) bilateral contracts for novation between an institution and its counterparty under which mutual claims and obligations are automatically amalgamated in such a way that the novation fixes one single net amount each time it applies so as to create a single new contract that replaces all former contracts and all obligations between parties pursuant to those contracts and is binding on the parties;

(b) other bilateral agreements between an institution and its counterparty;

(c) contractual cross-product netting agreements for institutions that have received the approval to use the method set out in Section 6 for transactions falling under the scope of that method. Competent authorities shall report to EBA a list of the contractual cross-product netting agreements approved.

Netting across transactions entered into by different legal entities of a group shall not be recognised for the purposes of calculating the own funds requirements.

Article 296

Recognition of contractual netting agreements

1. Competent authorities shall recognise a contractual netting agreement only where the conditions in paragraph 2 and, where relevant, 3 are fulfilled.

2. The following conditions shall be fulfilled by all contractual netting agreements used by an institution for the purposes of determining exposure value in this Part:

(a) the institution has concluded a contractual netting agreement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of default by the counterparty it would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of included individual transactions;

(b) the institution has made available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge of the netting agreement, the institution's claims and obligations would not exceed those referred to in point (a). The legal opinion shall refer to the applicable law:

(i) the jurisdiction in which the counterparty is incorporated;

(ii) if a branch of an undertaking is involved, which is located in a country other than that where the undertaking is incorporated, the jurisdiction in which the branch is located;

(iii) the jurisdiction whose law governs the individual transactions included in the netting agreement;

▼C2

(iv) the jurisdiction whose law governs any contract or agreement necessary to effect the contractual netting;

(c) credit risk to each counterparty is aggregated to arrive at a single legal exposure across transactions with each counterparty. This aggregation shall be factored into credit limit purposes and internal capital purposes;

(d) the contract shall not contain any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor (i.e. walk-away clause).

If any of the competent authorities are not satisfied that the contractual netting is legally valid and enforceable under the law of each of the jurisdictions referred to in point (b) the contractual netting agreement shall not be recognised as risk-reducing for either of the counterparties. Competent authorities shall inform each other accordingly.

3. The legal opinions referred to in point (b) may be drawn up by reference to types of contractual netting. The following additional conditions shall be fulfilled by contractual cross-product netting agreements:

(a) the net sum referred to in point (a) of paragraph 2 is the net sum of the positive and negative close out values of any included individual bilateral master agreement and of the positive and negative mark-to-market value of the individual transactions (the ‘cross-product net amount’);

(b) the legal opinions referred to in point (b) of paragraph 2 shall address the validity and enforceability of the entire contractual cross-product netting agreement under its terms and the impact of the netting arrangement on the material provisions of any included individual bilateral master agreement.

Article 297

Obligations of institutions

1. An institution shall establish and maintain procedures to ensure that the legal validity and enforceability of its contractual netting is reviewed in the light of changes in the law of relevant jurisdictions referred to in Article 296(2)(b).

2. The institution shall maintain all required documentation relating to its contractual netting in its files.

3. The institution shall factor the effects of netting into its measurement of each counterparty's aggregate credit risk exposure and the institution shall manage its CCR on the basis of those effects of that measurement.

▼C2

4. In the case of contractual cross-product netting agreements referred to in Article 295, the institution shall maintain procedures under Article 296(2)(c) to verify that any transaction which is to be included in a netting set is covered by a legal opinion referred to in Article 296(2)(b).

Taking into account the contractual cross-product netting agreement, the institution shall continue to comply with the requirements for the recognition of bilateral netting and the requirements of Chapter 4 for the recognition of credit risk mitigation, as applicable, with respect to each included individual bilateral master agreement and transaction.

▼M8

Article 298

Effects of recognition of netting as risk-reducing

Netting for the purposes of Sections 3 to 6 shall be recognised as set out in those Sections.

▼C2

Section 8

Items in the trading book

Article 299

Items in the trading book

1. For the purposes of the application of this Article, Annex II shall include a reference to derivative instruments for the transfer of credit risk as mentioned in point (8) of Section C of Annex I to Directive 2004/39/EC.

2. When calculating risk-weighted exposure amounts for counterparty risk of items in the trading book, institutions shall comply with the following principles:

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▼C2

(b) institutions shall not use the Financial Collateral Simple Method set out in Article 222 for the recognition of the effects of financial collateral;

(c) in the case of repurchase transactions and securities or commodities lending or borrowing transactions booked in the trading book, institutions may recognise as eligible collateral all financial instruments and commodities that are eligible to be included in the trading book;

▼C2

(d) for exposures arising from OTC derivative instruments booked in the trading book, institutions may recognise commodities that are eligible to be included in the trading book as eligible collateral;

(e) for the purposes of calculating volatility adjustments where such financial instruments or commodities which are not eligible under Chapter 4 are lent, sold or provided, or borrowed, purchased or received by way of collateral or otherwise under such a transaction, and an institution is using the Supervisory Volatility Adjustments Approach under Section 3 of Chapter 4, institutions shall treat such instruments and commodities in the same way as non-main index equities listed on a recognised exchange;

(f) where an institution is using the Own Estimates of Volatility adjustments Approach under Section 3 of Chapter 4 in respect of financial instruments or commodities which are not eligible under Chapter 4, it shall calculate volatility adjustments for each individual item. Where an institution has obtained the approval to use the internal models approach defined in Chapter 4, it may also apply that approach in the trading book;

(g) in relation to the recognition of master netting agreements covering repurchase transactions, securities or commodities lending or borrowing transactions, or other capital market-driven transactions, institutions shall only recognise netting across positions in the trading book and the non-trading book when the netted transactions fulfil the following conditions:

(i) all transactions are marked to market daily;

(ii) any items borrowed, purchased or received under the transactions may be recognised as eligible financial collateral under Chapter 4 without the application of points (c) to (f) of this paragraph;

(h) where a credit derivative included in the trading book forms part of an internal hedge and the credit protection is recognised under this Regulation in accordance with Article 204, institutions shall apply one of the following approaches:

(i) treat it as if there were no counterparty risk arising from the position in that credit derivative;

(ii) consistently include for the purpose of calculating the own funds requirements for counterparty credit risk all credit derivatives in the trading book forming part of internal hedges or purchased as protection against a CCR exposure where the credit protection is recognised as eligible under Chapter 4.

▼C2

Section 9

Own funds requirements for exposures to a central counterparty

Article 300

Definitions

▼M8

For the purposes of this Section and of Part Seven, the following definitions apply:

▼C2

(1) ‘bankruptcy remote’, in relation to client assets, means that effective arrangements exist which ensure that those assets will not be available to the creditors of a CCP or of a clearing member in the event of the insolvency of that CCP or clearing member respectively, or that the assets will not be available to the clearing member to cover losses it incurred following the default of a client or clients other than those that provided those assets;

(2) ‘CCP-related transaction’ means a contract or a transaction listed in Article 301(1) between a client and a clearing member that is directly related to a contract or a transaction listed in that paragraph between that clearing member and a CCP;

(3) ‘clearing member’ means a clearing member as defined in point (14) of Article 2 of Regulation (EU) No 648/2012;

(4) ‘client’ means a client as defined in point (15) of Article 2 of Regulation (EU) No 648/2012 or an undertaking that has established indirect clearing arrangements with a clearing member in accordance with Article 4(3) of that Regulation;

▼M8

(5) ‘cash transaction’ means a transaction in cash, debt instruments or equities, a spot foreign exchange transaction or a spot commodities transaction; however, repurchase transactions, securities or commodities lending transactions, and securities or commodities borrowing transactions, are not cash transactions;

(6) ‘indirect clearing arrangement’ means an arrangement that meets the conditions set out in the second subparagraph of Article 4(3) of Regulation (EU) No 648/2012;

(7) ‘higher-level client’ means an entity providing clearing services to a lower-level client;

(8) ‘lower-level client’ means an entity accessing the services of a CCP through a higher-level client;

(9) ‘multi-level client structure’ means an indirect clearing arrangement under which clearing services are provided to an institution by an entity which is not a clearing member, but is itself a client of a clearing member or of a higher-level client;

(10) ‘unfunded contribution to a default fund’ means a contribution that an institution that acts as a clearing member has contractually committed to provide to a CCP after the CCP has depleted its default fund to cover the losses it incurred following the default of one or more of its clearing members;

▼M8

(11) ‘fully guaranteed deposit lending or borrowing transaction’ means a fully collateralised money market transaction in which two counterparties exchange deposits and a CCP interposes itself between them to ensure the performance of those counterparties' payment obligations.

Article 301

Material scope

1. This Section applies to the following contracts and transactions, for as long as they are outstanding with a CCP:

(a) the derivative contracts listed in Annex II and credit derivatives;

(b) securities financing transactions and fully guaranteed deposit lending or borrowing transactions; and

(c) long settlement transactions.

This Section does not apply to exposures arising from the settlement of cash transactions. Institutions shall apply the treatment laid down in Title V to trade exposures arising from those transactions and a 0 % risk weight to default fund contributions covering only those transactions. Institutions shall apply the treatment set out in Article 307 to default fund contributions that cover any of the contracts listed in the first subparagraph of this paragraph in addition to cash transactions.

2. For the purposes of this Section, the following requirements shall apply:

(a) the initial margin shall not include contributions to a CCP for mutualised loss sharing arrangements;

(b) the initial margin shall include collateral deposited by an institution acting as a clearing member or by a client in excess of the minimum amount required respectively by the CCP or by the institution acting as a clearing member, provided the CCP or the institution acting as a clearing member may, in appropriate cases, prevent the institution acting as a clearing member or the client from withdrawing such excess collateral;

(c) where a CCP uses the initial margin to mutualise losses among its clearing members, institutions that act as clearing members shall treat that initial margin as a default fund contribution.

▼C2

Article 302

Monitoring of exposures to CCPs

1. Institutions shall monitor all their exposures to CCPs and shall lay down procedures for the regular reporting of information on those exposures to senior management and appropriate committee or committees of the management body.

▼M8

2. Institutions shall assess, through appropriate scenario analysis and stress testing, whether the level of own funds held against exposures to a CCP, including potential future or contingent credit exposures, exposures from default fund contributions and, where the institution is acting as a clearing member, exposures resulting from contractual arrangements as laid down in Article 304, adequately relates to the inherent risks of those exposures.

Article 303

Treatment of clearing members' exposures to CCPs

1. An institution that acts as a clearing member, either for its own purposes or as a financial intermediary between a client and a CCP, shall calculate the own funds requirements for its exposures to a CCP as follows:

(a) it shall apply the treatment set out in Article 306 to its trade exposures with the CCP;

(b) it shall apply the treatment set out in Article 307 to its default fund contributions to the CCP.

2. For the purposes of paragraph 1, the sum of an institution's own funds requirements for its exposures to a QCCP due to trade exposures and default fund contributions shall be subject to a cap equal to the sum of own funds requirements that would be applied to those same exposures if the CCP were a non-qualifying CCP.

▼C2

Article 304

Treatment of clearing members' exposures to clients

▼M8

1. An institution that acts as a clearing member and, in that capacity, acts as a financial intermediary between a client and a CCP shall calculate the own funds requirements for its CCP-related transactions with that client in accordance with Sections 1 to 8 of this Chapter, with Section 4 of Chapter 4 of this Title and with Title VI, as applicable.

▼C2

2. Where an institution acting as a clearing member enters into a contractual arrangement with a client of another clearing member that facilitates, in accordance with Article 48(5) and (6), of Regulation (EU) No 648/2012, the transfer of positions and collateral referred to in Article 305(2)(b) of this Regulation for that client, and that contractual agreement gives rise to a contingent obligation for that institution, that institution may attribute an exposure value of zero to that contingent obligation.

▼M8

3. Where an institution that acts as a clearing member uses the methods set out in Section 3 or 6 of this Chapter to calculate the own funds requirement for its exposures, the following provisions shall apply:

▼M8

(a) by way of derogation from Article 285(2), the institution may use a margin period of risk of at least five business days for its exposures to a client;

(b) the institution shall apply a margin period of risk of at least 10 business days for its exposures to a CCP;

(c) by way of derogation from Article 285(3), where a netting set included in the calculation meets the condition set out in point (a) of that paragraph, the institution may disregard the limit set out in that point, provided that the netting set does not meet the condition set out in point (b) of that paragraph and does not contain disputed trades or exotic options;

(d) where a CCP retains variation margin against a transaction, and the institution's collateral is not protected against the insolvency of the CCP, the institution shall apply a margin period of risk that is the lower of one year and the remaining maturity of the transaction, with a floor of 10 business days.

4. By way of derogation from point (i) of Article 281(2), where an institution that acts as a clearing member uses the method set out in Section 4 to calculate the own funds requirement for its exposures to a client, the institution may use a maturity factor of 0,21 for its calculation.

5. By way of derogation from point (d) of Article 282(4), where an institution that acts as a clearing member uses the method set out in Section 5 to calculate the own funds requirement for its exposures to a client, that institution may use a maturity factor of 0,21 in that calculation.

6. An institution that acts as a clearing member may use the reduced exposure at default resulting from the calculations set out in paragraphs 3, 4 and 5 for the purposes of calculating its own funds requirements for CVA risk in accordance with Title VI.

7. An institution that acts as a clearing member that collects collateral from a client for a CCP-related transaction and passes the collateral on to the CCP may recognise that collateral to reduce its exposure to the client for that CCP-related transaction.

In the case of a multi-level client structure, the treatment set out in the first subparagraph may be applied at each level of that structure.

▼C2

Article 305

Treatment of clients' exposures

▼M8

1. An institution that is a client shall calculate the own funds requirements for its CCP-related transactions with its clearing member in accordance with Sections 1 to 8 of this Chapter, with Section 4 of Chapter 4 of this Title and with Title VI, as applicable.

▼C2

2. Without prejudice to the approach specified in paragraph 1, where an institution is a client, it may calculate the own funds requirements for its trade exposures for CCP-related transactions with its clearing member in accordance with Article 306 provided that all the following conditions are met:

(a) the positions and assets of that institution related to those transactions are distinguished and segregated, at the level of both the clearing member and the CCP, from the positions and assets of both the clearing member and the other clients of that clearing member and as a result of that distinction and segregation those positions and assets are bankruptcy remote in the event of the default or insolvency of the clearing member or one or more of its other clients;

(b) laws, regulations, rules and contractual arrangements applicable to or binding that institution or the CCP facilitate the transfer of the client's positions relating to those contracts and transactions and of the corresponding collateral to another clearing member within the applicable margin period of risk in the event of default or insolvency of the original clearing member. In such circumstance, the client's positions and the collateral shall be transferred at market value unless the client requests to close out the position at market value;

▼M8

(c) the client has conducted a sufficiently thorough legal review, which it has kept up to date, that substantiates that the arrangements that ensure that the condition set out in point (b) is met are legal, valid, binding and enforceable under the relevant laws of the relevant jurisdiction or jurisdictions;

▼C2

(d) the CCP is a QCCP.

▼M8

When assessing its compliance with the condition set out in point (b) of the first subparagraph, an institution may take into account any clear precedents of transfers of client positions and of corresponding collateral at a CCP, and any industry intent to continue with that practice.

3. By way of derogation from paragraph 2 of this Article, where an institution that is a client fails to meet the condition set out in point (a) of that paragraph because that institution is not protected from losses in case the clearing member and another client of the clearing member jointly default, provided that all the other conditions set out in points (a) to (d) of that paragraph are met, the institution may calculate the own funds requirements for its trade exposures for CCP-related transactions with its clearing member in accordance with Article 306, subject to replacing the 2 % risk weight set out in point (a) of Article 306(1) with a 4 % risk weight.

▼M8

4. In the case of a multi-level client structure, an institution that is a lower-level client accessing the services of a CCP through a higher-level client may apply the treatment set out in paragraph 2 or 3 only where the conditions set out therein are met at every level of that structure.

▼C2

Article 306

Own funds requirements for trade exposures

1. An institution shall apply the following treatment to its trade exposures with CCPs:

(a) it shall apply a risk weight of 2 % to the exposure values of all its trade exposures with QCCPs;

(b) it shall apply the risk weight used for the Standardised Approach to credit risk as set out in Article 107(2)(b) to all its trade exposures with non-qualifying CCPs;

▼M8

(c) where an institution acts as a financial intermediary between a client and a CCP, and the terms of the CCP-related transaction stipulate that the institution is not required to reimburse the client for any losses suffered due to changes in the value of that transaction in the event that the CCP defaults, that institution may set the exposure value of the trade exposure with the CCP that corresponds to that CCP-related transaction to zero;

(d) where an institution acts as a financial intermediary between a client and a CCP, and the terms of the CCP-related transaction stipulate that the institution is required to reimburse the client for any losses suffered due to changes in the value of that transaction in the event that the CCP defaults, that institution shall apply the treatment in point (a) or (b), as applicable, to the trade exposure with the CCP that corresponds to that CCP-related transaction.

2. By way of derogation from paragraph 1, where assets posted as collateral to a CCP or a clearing member are bankruptcy remote in the event that the CCP, the clearing member or one or more of the other clients of the clearing member become insolvent, an institution may attribute an exposure value of zero to the counterparty credit risk exposures for those assets.

▼M8

3. An institution shall calculate exposure values of its trade exposures with a CCP in accordance with Sections 1 to 8 of this Chapter and with Section 4 of Chapter 4, as applicable.

▼C2

4. An institution shall calculate the risk-weighted exposure amounts for its trade exposures with CCPs for the purposes of Article 92(3) as the sum of the exposure values of its trade exposures with CCPs, calculated in accordance with paragraphs 2 and 3 of this Article, multiplied by the risk weight determined in accordance with paragraph 1 of this Article.

▼M8

Article 307

Own funds requirements for contributions to the default fund of a CCP

An institution that acts as a clearing member shall apply the following treatment to its exposures arising from its contributions to the default fund of a CCP:

(a) it shall calculate the own funds requirement for its pre-funded contributions to the default fund of a QCCP in accordance with the approach set out in Article 308;

(b) it shall calculate the own funds requirement for its pre-funded and unfunded contributions to the default fund of a non-qualifying CCP in accordance with the approach set out in Article 309;

(c) it shall calculate the own funds requirement for its unfunded contributions to the default fund of a QCCP in accordance with the treatment set out in Article 310.

▼C2

Article 308

Own funds requirements for pre-funded contributions to the default fund of a QCCP

1. The exposure value for an institution's pre-funded contribution to the default fund of a QCCP (DFi) shall be the amount paid in or the market value of the assets delivered by that institution reduced by any amount of that contribution that the QCCP has already used to absorb its losses following the default of one or more of its clearing members.

▼M8

2. An institution shall calculate the own funds requirement to cover the exposure arising from its pre-funded contribution as follows:

$$K_i = \max\left\{K_{CCP} \cdot \frac{DF_i}{DF_{CCP} + DF_{CM}},\ 8\% \cdot 2\% \cdot DF_i\right\}$$

where:

K_i = the own funds requirement;

▼**M8**

i = the index denoting the clearing member;

K_{CCP} = the hypothetical capital of the QCCP communicated to the institution by the QCCP in accordance with Article 50c of Regulation (EU) No 648/2012;

DF_i = the pre-funded contribution;

DF_{CCP} = the pre-funded financial resources of the CCP communicated to the institution by the CCP in accordance with Article 50c of Regulation (EU) No 648/2012; and

DF_{CM} = the sum of pre-funded contributions of all clearing members of the QCCP communicated to the institution by the QCCP in accordance with Article 50c of Regulation (EU) No 648/2012.

3. An institution shall calculate the risk-weighted exposure amounts for exposures arising from that institution's pre-funded contribution to the default fund of a QCCP for the purposes of Article 92(3) as the own funds requirement, calculated in accordance with paragraph 2 of this Article, multiplied by 12,5.

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Article 309

Own funds requirements for pre-funded contributions to the default fund of a non-qualifying CCP and for unfunded contributions to a non-qualifying CCP

1. An institution shall apply the following formula to calculate the own funds requirement for the exposures arising from its pre-funded contributions to the default fund of a non-qualifying CCP and from unfunded contributions to such CCP:

$$K = DF + UC$$

where:

K = the own funds requirement;

DF = the pre-funded contributions to the default fund of a non-qualifying CCP; and

UC = the unfunded contributions to the default fund of a non-qualifying CCP.

2. An institution shall calculate the risk-weighted exposure amounts for exposures arising from that institution's contribution to the default fund of a non-qualifying CCP for the purposes of Article 92(3) as the own funds requirement, calculated in accordance with paragraph 1 of this Article, multiplied by 12,5.”;

▼M8

Article 310

Own funds requirements for unfunded contributions to the default fund of a QCCP

An institution shall apply a 0 % risk weight to its unfunded contributions to the default fund of a QCCP.

Article 311

Own funds requirements for exposures to CCPs that cease to meet certain conditions

1. Institutions shall apply the treatment set out in this Article where it has become known to them, following a public announcement or notification from the competent authority of a CCP used by those institutions or from that CCP itself, that the CCP will no longer comply with the conditions for authorisation or recognition, as applicable.

2. Where the condition set out in paragraph 1 is met, institutions shall, within three months of becoming aware of the circumstance referred to therein, or at an earlier time if the competent authorities of those institutions so require, do the following with respect to their exposures to that CCP:

(a) apply the treatment set out in point (b) of Article 306(1) to their trade exposures to that CCP;

(b) apply the treatment set out in Article 309 to their pre-funded contributions to the default fund of that CCP and to its unfunded contributions to that CCP;

(c) treat their exposures to that CCP, other than the exposures listed in points (a) and (b) of this paragraph, as exposures to a corporate in accordance with the Standardised Approach for credit risk set out in Chapter 2.

▼C2

TITLE III

OWN FUNDS REQUIREMENTS FOR OPERATIONAL RISK

CHAPTER 1

General principles governing the use of the different approaches

Article 312

Permission and notification

1. To qualify for use of the Standardised Approach, institutions shall meet the criteria set out in Article 320, in addition to meeting the general risk management standards set out in Articles 74 and 85 of Directive 2013/36/EU. Institutions shall notify the competent authorities prior to using the Standardised Approach.

▼C2

Competent authorities shall permit institutions to use an alternative relevant indicator for the business lines of retail banking and commercial banking where the conditions set out in Articles 319(2) and 320 are met.

2. Competent authorities shall permit institutions to use Advanced Measurement Approaches based on their own operational risk measurement systems, where all the qualitative and quantitative standards set out in Articles 321 and 322 respectively are met and where institutions meet the general risk management standards set out in Articles 74 and 85 of Directive 2013/36/EU and Section II, Chapter 3, Title VII of that Directive.

Institutions shall also apply for permission from their competent authorities where they want to implement material extensions and changes to those Advanced Measurement Approaches. Competent authorities shall grant the permission only where institutions would continue to meet the standards specified in the first subparagraph following those material extensions and changes.

3. Institutions shall notify the competent authorities of all changes to their Advanced Measurement Approaches models.

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

(a) the assessment methodology under which the competent authorities permit institutions to use Advanced Measurement Approaches;

(b) the conditions for assessing the materiality of extensions and changes to the Advanced Measurement Approaches;

(c) the modalities of the notification required in paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 313

Reverting to the use of less sophisticated approaches

1. Institutions that use the Standardised Approach shall not revert to the use of the Basic Indicator Approach unless the conditions in paragraph 3 are met.

▼C2

2. Institutions that use the Advanced Measurement Approaches shall not revert to the use of the Standardised Approach or the Basic Indicator Approach unless the conditions in paragraph 3 are met.

3. An institution may only revert to the use of a less sophisticated approach for operational risk where both the following conditions are met:

(a) the institution has demonstrated to the satisfaction of the competent authority that the use of a less sophisticated approach is not proposed in order to reduce the operational risk related own funds requirements of the institution, is necessary on the basis of nature and complexity of the institution and would not have a material adverse impact on the solvency of the institution or its ability to manage operational risk effectively;

(b) the institution has received the prior permission of the competent authority.

Article 314

Combined use of different approaches

1. Institutions may use a combination of approaches provided that they obtain permission from the competent authorities. Competent authorities shall grant such permission where the requirements set out in paragraphs 2 to 4, as applicable, are met.

2. An institution may use an Advanced Measurement Approach in combination with either the Basic Indicator Approach or the Standardised Approach, where both of the following conditions are met:

(a) the combination of Approaches used by the institution captures all its operational risks and competent authorities are satisfied with the methodology used by the institution to cover different activities, geographical locations, legal structures or other relevant divisions determined on an internal basis;

(b) the criteria set out in Article 320 and the standards set out in Articles 321 and 322 are fulfilled for the part of activities covered by the Standardised Approach and the Advanced Measurement Approaches respectively.

3. For institutions that want to use an Advanced Measurement Approach in combination with either the Basic Indicator Approach or the Standardised Approach competent authorities shall impose the following additional conditions for granting permission:

(a) on the date of implementation of an Advanced Measurement Approach, a significant part of the institution's operational risks are captured by that Approach;

▼C2

(b) the institution takes a commitment to apply the Advanced Measurement Approach across a material part of its operations within a time schedule that was submitted to and approved by its competent authorities.

4. An institution may request permission from a competent authority to use a combination of the Basic Indicator Approach and the Standardised Approach only in exceptional circumstances such as the recent acquisition of new business which may require a transitional period for the application of the Standardised Approach.

A competent authority shall grant such permission only where the institution has committed to apply the Standardised Approach within a time schedule that was submitted to and approved by the competent authority.

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

(a) the conditions that competent authorities shall use when assessing the methodology referred to in point (a) of paragraph 2;

(b) the conditions that the competent authorities shall use when deciding whether to impose the additional conditions referred to in paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2016.

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

CHAPTER 2

Basic Indicator Approach

Article 315

Own funds requirement

1. Under the Basic Indicator Approach, the own funds requirement for operational risk is equal to 15 % of the average over three years of the relevant indicator as set out in Article 316.

Institutions shall calculate the average over three years of the relevant indicator on the basis of the last three twelve-monthly observations at the end of the financial year. When audited figures are not available, institutions may use business estimates.

▼C2

2. Where an institution has been in operation for less than three years it may use forward-looking business estimates in calculating the relevant indicator, provided that it starts using historical data as soon as it is available.

3. Where an institution can prove to its competent authority that, due to a merger, an acquisition or a disposal of entities or activities, using a three year average to calculate the relevant indicator would lead to a biased estimation for the own funds requirement for operational risk, the competent authority may permit the institution to amend the calculation in a way that would take into account such events and shall duly inform EBA thereof. In such circumstances, the competent authority may, on its own initiative, also require an institution to amend the calculation.

4. Where for any given observation, the relevant indicator is negative or equal to zero, institutions shall not take into account this figure in the calculation of the average over three years. Institutions shall calculate the average over three years as the sum of positive figures divided by the number of positive figures.

Article 316

Relevant indicator

1. For institutions applying accounting standards established by Directive 86/635/EEC, based on the accounting categories for the profit and loss account of institutions under Article 27 of that Directive, the relevant indicator is the sum of the elements listed in Table 1 of this paragraph. Institutions shall include each element in the sum with its positive or negative sign.

Table 1

1 Interest receivable and similar income

2 Interest payable and similar charges

3 Income from shares and other variable/fixed-yield securities

4 Commissions/fees receivable

5 Commissions/fees payable

6 Net profit or net loss on financial operations

7 Other operating income

Institutions shall adjust these elements to reflect the following qualifications:

(a) institutions shall calculate the relevant indicator before the deduction of any provisions and operating expenses. Institutions shall include in operating expenses fees paid for outsourcing services rendered by third parties which are not a parent or subsidiary of the institution or a subsidiary of a parent which is also the parent of the institution. Institutions may use expenditure on the outsourcing of services rendered by third parties to reduce the relevant indicator where the expenditure is incurred from an undertaking subject to rules under, or equivalent to, this Regulation;

▼C2

(b) institutions shall not use the following elements in the calculation of the relevant indicator:

(i) realised profits/losses from the sale of non-trading book items;

(ii) income from extraordinary or irregular items;

(iii) income derived from insurance.

(c) when revaluation of trading items is part of the profit and loss statement, institutions may include revaluation. When institutions apply Article 36(2) of Directive 86/635/EEC, they shall include revaluation booked in the profit and loss account.

▼M8

By way of derogation from the first subparagraph of this paragraph, institutions may choose not to apply the accounting categories for the profit and loss account under Article 27 of Directive 86/635/EEC to financial and operating leases for the purpose of calculating the relevant indicator, and may instead:

(a) include interest income from financial and operating leases and profits from leased assets in the category referred to in point 1 of Table 1;

(b) include interest expense from financial and operating leases, losses, depreciation and impairment of operating leased assets in the category referred to in point 2 of Table 1.

▼C2

2. When institutions apply accounting standards different from those established by Directive 86/635/EEC, they shall calculate the relevant indicator on the basis of data that best reflect the definition set out in this Article.

3. EBA shall develop draft regulatory technical standards to determine the methodology to calculate the relevant indicator referred to in paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2017.

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

CHAPTER 3

Standardised Approach

Article 317

Own funds requirement

1. Under the Standardised Approach, institutions shall divide their activities into the business lines set out in Table 2 of paragraph 4 and in accordance with the principles set out in Article 318.

2. Institutions shall calculate the own funds requirement for operational risk as the average over three years of the sum of the annual own funds requirements across all business lines referred to in Table 2 of paragraph 4. The annual own funds requirement of each business line is equal to the product of the corresponding beta factor referred to in that Table and the part of the relevant indicator mapped to the respective business line.

▼C2

3. In any given year, institutions may offset negative own funds requirements resulting from a negative part of the relevant indicator in any business line with positive own funds requirements in other business lines without limit. However, where the aggregate own funds requirement across all business lines within a given year is negative, institutions shall use the value zero as the input to the numerator for that year.

4. Institutions shall calculate the average over three years of the sum referred to in paragraph 2 on the basis of the last three twelve-monthly observations at the end of the financial year. When audited figures are not available, institutions may use business estimates.

Where an institution can prove to its competent authority that, due to a merger, an acquisition or a disposal of entities or activities, using a three year average to calculate the relevant indicator would lead to a biased estimation for the own funds requirement for operational risk, the competent authority may permit institutions to amend the calculation in a way that would take into account such events and shall duly inform EBA thereof. In such circumstances, the competent authority may, on its own initiative, also require an institution to amend the calculation.

Where an institution has been in operation for less than three years it may use forward-looking business estimates in calculating the relevant indicator, provided that it starts using historical data as soon as it is available.

Table 2

Business line	List of activities	Percentage (beta factor)
Corporate finance	Underwriting of financial instruments or placing of financial instruments on a firm commitment basis Services related to underwriting Investment advice Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to the mergers and the purchase of undertakings Investment research and financial analysis and other forms of general recommendation relating to transactions in financial instruments	18 %
Trading and sales	Dealing on own account Money broking Reception and transmission of orders in relation to one or more financial instruments Execution of orders on behalf of clients Placing of financial instruments without a firm commitment basis Operation of Multilateral Trading Facilities	18 %

▼C2

Business line	List of activities	Percentage (beta factor)
Retail brokerage (Activities with natural persons or with SMEs meeting the criteria set out in Article 123 for the retail exposure class)	Reception and transmission of orders in relation to one or more financial instruments Execution of orders on behalf of clients Placing of financial instruments without a firm commitment basis	12 %
Commercial banking	Acceptance of deposits and other repayable funds Lending Financial leasing Guarantees and commitments	15 %
Retail banking (Activities with natural persons or with SMEs meeting the criteria set out in Article 123 for the retail exposure class)	Acceptance of deposits and other repayable funds Lending Financial leasing Guarantees and commitments	12 %
Payment and settlement	Money transmission services, Issuing and administering means of payment	18 %
Agency services	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	15 %
Asset management	Portfolio management Managing of UCITS Other forms of asset management	12 %

Article 318

Principles for business line mapping

1. Institutions shall develop and document specific policies and criteria for mapping the relevant indicator for current business lines and activities into the standardised framework set out in Article 317. They shall review and adjust those policies and criteria as appropriate for new or changing business activities and risks.

2. Institutions shall apply the following principles for business line mapping:

(a) institutions shall map all activities into the business lines in a mutually exclusive and jointly exhaustive manner;

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(b) institutions shall allocate any activity which cannot be readily mapped into the business line framework, but which represents an ancillary activity to an activity included in the framework, to the business line it supports. Where more than one business line is supported through the ancillary activity, institutions shall use an objective-mapping criterion;

(c) where an activity cannot be mapped into a particular business line then institutions shall use the business line yielding the highest percentage. The same business line equally applies to any ancillary activity associated with that activity;

(d) institutions may use internal pricing methods to allocate the relevant indicator between business lines. Costs generated in one business line which are imputable to a different business line may be real-located to the business line to which they pertain;

(e) the mapping of activities into business lines for operational risk capital purposes shall be consistent with the categories institutions use for credit and market risks;

(f) senior management shall be responsible for the mapping policy under the control of the management body of the institution;

(g) institutions shall subject the mapping process to business lines to independent review.

3. EBA shall develop draft implementing technical standards to determine the conditions of application of the principles for business line mapping provided in this Article.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2017.

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

Article 319

Alternative Standardised Approach

1. Under the Alternative Standardised Approach, for the business lines ‘retail banking’ and ‘commercial banking’, institutions shall apply the following:

(a) the relevant indicator is a normalised income indicator equal to the nominal amount of loans and advances multiplied by 0,035;

(b) the loans and advances consist of the total drawn amounts in the corresponding credit portfolios. For the ‘commercial banking’ business line, institutions shall also include securities held in the non trading book in the nominal amount of loans and advances.

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2. To be permitted to use the Alternative Standardised Approach, an institution shall meet all the following conditions:

(a) its retail or commercial banking activities shall account for at least 90 % of its income;

(b) a significant proportion of its retail or commercial banking activities shall comprise loans associated with a high PD;

(c) the Alternative Standardised Approach provides an appropriate basis for calculating its own funds requirement for operational risk.

Article 320

Criteria for the Standardised Approach

The criteria referred to in the first subparagraph of Article 312(1) are the following:

(a) an institution shall have in place a well-documented assessment and management system for operational risk with clear responsibilities assigned for this system. It shall identify its exposures to operational risk and track relevant operational risk data, including material loss data. This system shall be subject to regular independent review carried out by an internal or external party possessing the necessary knowledge to carry out such review;

(b) an institution's operational risk assessment system shall be closely integrated into the risk management processes of the institution. Its output shall be an integral part of the process of monitoring and controlling the institution's operational risk profile;

(c) an institution shall implement a system of reporting to senior management that provides operational risk reports to relevant functions within the institution. An institution shall have in place procedures for taking appropriate action according to the information within the reports to management.

CHAPTER 4

Advanced measurement approaches

Article 321

Qualitative standards

The qualitative standards referred to in Article 312(2) are the following:

(a) an institution's internal operational risk measurement system shall be closely integrated into its day-to-day risk management processes;

(b) an institution shall have an independent risk management function for operational risk;

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(c) an institution shall have in place regular reporting of operational risk exposures and loss experience and shall have in place procedures for taking appropriate corrective action;

(d) an institution's risk management system shall be well documented. An institution shall have in place routines for ensuring compliance and policies for the treatment of non-compliance;

(e) an institution shall subject its operational risk management processes and measurement systems to regular reviews performed by internal or external auditors;

(f) an institution's internal validation processes shall operate in a sound and effective manner;

(g) data flows and processes associated with an institution's risk measurement system shall be transparent and accessible.

Article 322

Quantitative Standards

1. The quantitative standards referred to in Article 312(2) include the standards relating to process, to internal data, to external data, to scenario analysis, to business environment and to internal control factors laid down in paragraphs 2 to 6 respectively.

2. The standards relating to process are the following:

(a) an institution shall calculate its own funds requirement as comprising both expected loss and unexpected loss, unless expected loss is adequately captured in its internal business practices. The operational risk measure shall capture potentially severe tail events, achieving a soundness standard comparable to a 99,9 % confidence interval over a one year period;

(b) an institution's operational risk measurement system shall include the use of internal data, external data, scenario analysis and factors reflecting the business environment and internal control systems as set out in paragraphs 3 to 6. An institution shall have in place a well documented approach for weighting the use of these four elements in its overall operational risk measurement system;

(c) an institution's risk measurement system shall capture the major drivers of risk affecting the shape of the tail of the estimated distribution of losses;

(d) an institution may recognise correlations in operational risk losses across individual operational risk estimates only where its systems for measuring correlations are sound, implemented with integrity, and take into account the uncertainty surrounding any such correlation estimates, particularly in periods of stress. An institution shall validate its correlation assumptions using appropriate quantitative and qualitative techniques;

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(e) an institution's risk measurement system shall be internally consistent and shall avoid the multiple counting of qualitative assessments or risk mitigation techniques recognised in other areas of this Regulation.

3. The standards relating to internal data are the following:

(a) an institution shall base its internally generated operational risk measures on a minimum historical observation period of five years. When an institution first moves to an Advanced Measurement Approach, it may use a three-year historical observation period;

(b) an institution shall be able to map their historical internal loss data into the business lines defined in Article 317 and into the event types defined in Article 324, and to provide these data to competent authorities upon request. In exceptional circumstances, an institution may allocate loss events which affect the entire institution to an additional business line 'corporate items'. An institution shall have in place documented, objective criteria for allocating losses to the specified business lines and event types. An institution shall record the operational risk losses that are related to credit risk and that the institution has historically included in the internal credit risk databases in the operational risk databases and shall identify them separately. Such losses shall not be subject to the operational risk charge, provided that the institution is required to continue to treat them as credit risk for the purposes of calculating own funds requirements. An institution shall include operational risk losses that are related to market risks in the scope of the own funds requirement for operational risk;

(c) an institution's internal loss data shall be comprehensive in that it captures all material activities and exposures from all appropriate sub-systems and geographic locations. An institution shall be able to justify that any excluded activities or exposures, both individually and in combination, would not have a material impact on the overall risk estimates. An institution shall define appropriate minimum loss thresholds for internal loss data collection;

(d) aside from information on gross loss amounts, an institution shall collect information about the date of the loss event, any recoveries of gross loss amounts, as well as descriptive information about the drivers or causes of the loss event;

(e) an institution shall have in place specific criteria for assigning loss data arising from a loss event in a centralised function or an activity that spans more than one business line, as well as from related loss events over time;

(f) an institution shall have in place documented procedures for assessing the on-going relevance of historical loss data, including those situations in which judgement overrides, scaling, or other adjustments may be used, to what extent they may be used and who is authorised to make such decisions.

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4. The qualifying standards relating to external data are the following:

(a) an institution's operational risk measurement system shall use relevant external data, especially when there is reason to believe that the institution is exposed to infrequent, yet potentially severe, losses. An institution shall have a systematic process for determining the situations for which external data shall be used and the methodologies used to incorporate the data in its measurement system;

(b) an institution shall regularly review the conditions and practices for external data and shall document them and subject them to periodic independent review.

5. An institution shall use scenario analysis of expert opinion in conjunction with external data to evaluate its exposure to high severity events. Over time, the institution shall validate and reassess such assessments through comparison to actual loss experience to ensure their reasonableness.

6. The qualifying standards relating to business environment and internal control factors are the following:

(a) an institution's firm-wide risk assessment methodology shall capture key business environment and internal control factors that can change the institutions operational risk profile;

(b) an institution shall justify the choice of each factor as a meaningful driver of risk, based on experience and involving the expert judgment of the affected business areas;

(c) an institution shall be able to justify to competent authorities the sensitivity of risk estimates to changes in the factors and the relative weighting of the various factors. In addition to capturing changes in risk due to improvements in risk controls, an institution's risk measurement framework shall also capture potential increases in risk due to greater complexity of activities or increased business volume;

(d) an institution shall document its risk measurement framework and shall subject it to independent review within the institution and by competent authorities. Over time, an institution shall validate and reassess the process and the outcomes through comparison to actual internal loss experience and relevant external data.

Article 323

Impact of insurance and other risk transfer mechanisms

1. The competent authorities shall permit institutions to recognise the impact of insurance subject to the conditions set out in paragraphs 2 to 5 and other risk transfer mechanisms where the institution can demonstrate that a noticeable risk mitigating effect is achieved.

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2. The insurance provider shall be authorised to provide insurance or re-insurance and shall have a minimum claims paying ability rating by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions under Title II, Chapter 2.

3. The insurance and the institutions' insurance framework shall meet all the following conditions:

(a) the insurance policy has an initial term of no less than one year. For policies with a residual term of less than one year, an institution shall make appropriate haircuts reflecting the declining residual term of the policy, up to a full 100 % haircut for policies with a residual term of 90 days or less;

(b) the insurance policy has a minimum notice period for cancellation of the contract of 90 days;

(c) the insurance policy has no exclusions or limitations triggered by supervisory actions or, in the case of a failed institution, that preclude the institution's receiver or liquidator from recovering the damages suffered or expenses incurred by the institution, except in respect of events occurring after the initiation of receivership or liquidation proceedings in respect of the institution. However, the insurance policy may exclude any fine, penalty, or punitive damages resulting from actions by the competent authorities;

(d) the risk mitigation calculations shall reflect the insurance coverage in a manner that is transparent in its relationship to, and consistent with, the actual likelihood and impact of loss used in the overall determination of operational risk capital;

(e) the insurance is provided by a third party entity. In the case of insurance through captives and affiliates, the exposure has to be laid off to an independent third party entity that meets the eligibility criteria set out in paragraph 2;

(f) the framework for recognising insurance is well reasoned and documented.

4. The methodology for recognising insurance shall capture all the following elements through discounts or haircuts in the amount of insurance recognition:

(a) the residual term of the insurance policy, where less than one year;

(b) the policy's cancellation terms, where less than one year;

(c) the uncertainty of payment as well as mismatches in coverage of insurance policies.

5. The reduction in own funds requirements from the recognition of insurances and other risk transfer mechanisms shall not exceed 20 % of the own funds requirement for operational risk before the recognition of risk mitigation techniques.

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Article 324

Loss event type classification

The loss events types referred to in point (b) of Article 322(3) are the following:

Table 3

Event-Type Category	Definition
Internal fraud	Losses due to acts of a type intended to defraud, misappropriate property or circumvent regulations, the law or company policy, excluding diversity/discrimination events, which involves at least one internal party
External fraud	Losses due to acts of a type intended to defraud, misappropriate property or circumvent the law, by a third party
Employment Practices and Workplace Safety	Losses arising from acts inconsistent with employment, health or safety laws or agreements, from payment of personal injury claims, or from diversity/discrimination events
Clients, Products & Business Practices	Losses arising from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements), or from the nature or design of a product
Damage to Physical Assets	Losses arising from loss or damage to physical assets from natural disaster or other events
Business disruption and system failures	Losses arising from disruption of business or system failures
Execution, Delivery & Process Management	Losses from failed transaction processing or process management, from relations with trade counterparties and vendors

TITLE IV

OWN FUNDS REQUIREMENTS FOR MARKET RISK

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CHAPTER 1

General provisions

Article 325

Approaches for calculating the own funds requirements for market risk

1. An institution shall calculate the own funds requirements for market risk of all trading book positions and non-trading book positions that are subject to foreign exchange risk or commodity risk in accordance with the following approaches:

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(a) the standardised approach referred to in paragraph 2;

(b) the internal model approach set out in Chapter 5 of this Title for those risk categories for which the institution has been granted permission in accordance with Article 363 to use that approach.

2. The own funds requirements for market risk calculated in accordance with the standardised approach referred to in point (a) of paragraph 1 shall mean the sum of the following own funds requirements, as applicable:

(a) the own funds requirements for position risk referred to in Chapter 2;

(b) the own funds requirements for foreign exchange risk referred to in Chapter 3;

(c) the own funds requirements for commodity risk referred to in Chapter 4.

3. An institution that is not exempted from the reporting requirements set out in Article 430b in accordance with Article 325a shall report the calculation in accordance with Article 430b for all trading book positions and non-trading book positions that are subject to foreign exchange risk or commodity risk in accordance with the following approaches:

(a) the alternative standardised approach set out in Chapter 1a;

(b) the alternative internal model approach set out in Chapter 1b.

4. An institution may use in combination the approaches set out in points (a) and (b) of paragraph 1 of this Article on a permanent basis within a group in accordance with Article 363.

5. Institutions shall not use the approach set out in point (b) of paragraph 3 for instruments in their trading book that are securitisation positions or positions included in the alternative correlation trading portfolio (ACTP) as set out in paragraphs 6, 7 and 8.

6. Securitisation positions and nth-to-default credit derivatives that meet all the following criteria shall be included in the ACTP:

(a) the positions are neither re-securitisation positions, nor options on a securitisation tranche, nor any other derivatives of securitisation exposures that do not provide a pro-rata share in the proceeds of a securitisation tranche;

(b) all their underlying instruments are:

(i) single-name instruments, including single-name credit derivatives, for which a liquid two-way market exists;

(ii) commonly-traded indices based on the instruments referred to in point (i).

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A two-way market is considered to exist where there are independent bona fide offers to buy and sell, so that a price that is reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time conforming to trade custom.

7. Positions with any of the following underlying instruments shall not be included in the ACTP:

(a) underlying instruments that are assigned to the exposure classes referred to in point (h) or (i) of Article 112;

(b) a claim on a special purpose entity, collateralised, directly or indirectly, by a position that, in accordance with paragraph 6, would itself not be eligible for inclusion in the ACTP.

8. Institutions may include in the ACTP positions that are neither securitisation positions nor nth-to-default credit derivatives but that hedge other positions in that portfolio, provided that a liquid two-way market as described in the second subparagraph of paragraph 6 exists for the instrument or its underlying instruments.

9. EBA shall develop draft regulatory technical standards to specify how institutions are to calculate the own funds requirements for market risk for non-trading book positions that are subject to foreign exchange risk or commodity risk in accordance with the approaches set out in points (a) and (b) of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 28 September 2020.

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

Article 325a

Exemptions from specific reporting requirements for market risk

1. An institution shall be exempted from the reporting requirement set out in Article 430b, provided that the size of the institution's on- and off-balance-sheet business that is subject to market risk is equal to or less than each of the following thresholds, on the basis of an assessment carried out on a monthly basis using data as of the last day of the month:

(a) 10 % of the institution's total assets;

(b) EUR 500 million.

2. Institutions shall calculate the size of their on- and off-balance-sheet business that is subject to market risk using data as of the last day of each month in accordance with the following requirements:

(a) all the positions assigned to the trading book shall be included, except credit derivatives that are recognised as internal hedges

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against non-trading book credit risk exposures and the credit derivative transactions that perfectly offset the market risk of the internal hedges as referred to in Article 106(3);

(b) all non-trading book positions that are subject to foreign exchange risk or commodity risk shall be included;

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(c) all positions shall be valued at their market values on that date, except for positions referred to in point (b); where the market value of a trading book position is not available on a given date, institutions shall take a fair value for the trading book position on that date; where the fair value and market value of a trading book position are not available on a given date, institutions shall take the most recent market value or fair value for that position;

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(d) all non-trading book positions that are subject to foreign exchange risk shall be considered as an overall net foreign exchange position and valued in accordance with Article 352;

(e) all the non-trading book positions that are subject to commodity risk shall be valued in accordance with Articles 357 and 358;

(f) the absolute value of long positions shall be added to the absolute value of short positions.

3. Institutions shall notify the competent authorities when they calculate, or cease to calculate, their own funds requirements for market risk in accordance with this Article.

4. An institution that no longer meets one or more of the conditions set out in paragraph 1 shall immediately notify the competent authority thereof.

5. The exemption from the reporting requirements laid down in Article 430b shall cease to apply within three months of either of the following cases:

(a) the institution does not meet the condition set out in point (a) or (b) of paragraph 1 for three consecutive months; or

(b) the institution does not meet the condition set out in point (a) or (b) of paragraph 1 during more than 6 out of the last 12 months.

6. Where an institution has become subject to the reporting requirements laid down in Article 430b in accordance with paragraph 5 of this Article, the institution shall only be exempted from those reporting requirements where it demonstrates to the competent authority that all the conditions set out in paragraph 1 of this Article have been met for an uninterrupted full-year period.

7. Institutions shall not enter into, buy or sell a position only for the purpose of complying with any of the conditions set out in paragraph 1 during the monthly assessment.

8. An institution that is eligible for the treatment set out in Article 94 shall be exempted from the reporting requirement set out in Article 430b.

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Article 325b

Permission for consolidated requirements

1. Subject to paragraph 2, and only for the purpose of calculating net positions and own funds requirements in accordance with this Title on a consolidated basis, institutions may use positions in one institution or undertaking to offset positions in another institution or undertaking.

2. Institutions may apply paragraph 1 only with the permission of the competent authorities which shall be granted if all the following conditions are met:

(a) there is a satisfactory allocation of own funds within the group;

(b) the regulatory, legal or contractual framework in which the institutions operate guarantees mutual financial support within the group.

3. Where there are undertakings located in third countries, all the following conditions shall be met in addition to those set out in paragraph 2:

(a) such undertakings have been authorised in a third country and either satisfy the definition of a credit institution or are recognised third-country investment firms;

(b) on an individual basis, such undertakings comply with own funds requirements equivalent to those laid down in this Regulation;

(c) no regulations exist in the third countries in question which might significantly affect the transfer of funds within the group.

CHAPTER 1a

Alternative standardised approach

Section 1

General provisions

Article 325c

Scope and structure of the alternative standardised approach

1. The alternative standardised approach as set out in this Chapter shall be used only for the purposes of the reporting requirement laid down in Article 430b(1).

2. Institutions shall calculate the own funds requirements for market risk in accordance with the alternative standardised approach for a portfolio of trading book positions or non-trading book positions that are subject to foreign exchange or commodity risk as the sum of the following three components:

(a) the own funds requirement under the sensitivities-based method set out in Section 2;

(b) the own funds requirement for the default risk set out in Section 5 which is only applicable to the trading book positions referred to in that Section;

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(c) the own funds requirement for residual risks set out in Section 4 which is only applicable to the trading book positions referred to in that Section.

Section 2

Sensitivities-based method for calculating the own funds requirement

Article 325d

Definitions

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

(1) ‘risk class’ means one of the following seven categories:

(i) general interest rate risk;

(ii) credit spread risk (CSR) for non-securitisation;

(iii) credit spread risk for securitisation not included in the alternative correlation trading portfolio (non-ACTP CSR);

(iv) credit spread risk for securitisation included in the alternative correlation trading portfolio (ACTP CSR);

(v) equity risk;

(vi) commodity risk;

(vii) foreign exchange risk;

(2) ‘sensitivity’ means the relative change in the value of a position, as a result of a change in the value of one of the relevant risk factors of the position, calculated with the institution's pricing model in accordance with Subsection 2 of Section 3;

(3) ‘bucket’ means a sub-category of positions within one risk class with a similar risk profile to which a risk weight as defined in Subsection 1 of Section 3 is assigned.

Article 325e

Components of the sensitivities-based method

1. Institutions shall calculate the own funds requirement for market risk under the sensitivities-based method by aggregating the following three own funds requirements in accordance with Article 325h:

(a) own funds requirements for delta risk which capture the risk of changes in the value of an instrument due to movements in its non-volatility related risk factors;

(b) own funds requirements for vega risk which capture the risk of changes in the value of an instrument due to movements in its volatility-related risk factors;

(c) own funds requirements for curvature risk which capture the risk of changes in the value of an instrument due to movements in the main non-volatility related risk factors not captured by the own funds requirements for delta risk.

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2. For the purpose of the calculation referred to in paragraph 1,

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(a) all the positions of instruments with optionality shall be subject to the own funds requirements referred to in points (a), (b) and (c) of paragraph 1 for the risks other than exotic underlyings of the instruments as referred to in point (a) of Article 325u(2);

(b) all the positions of instruments without optionality shall be subject to the own funds requirements referred to in point (a) of paragraph 1 for the risks other than exotic underlyings of the instruments as referred to in point (a) of Article 325u(2).

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For the purposes of this Chapter, instruments with optionality include, among others: calls, puts, caps, floors, swap options, barrier options and exotic options. Embedded options, such as prepayment or behavioural options, shall be considered to be stand-alone positions in options for the purpose of calculating the own funds requirements for market risk.

For the purposes of this Chapter, instruments whose cash flows can be written as a linear function of the underlying's notional amount shall be considered to be instruments without optionality.

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3. By way of derogation from point (b) of paragraph 2, an institution may choose to subject all the positions of instruments without optionality to the own funds requirements referred to in points (a) and (c) of paragraph 1.

An institution that chooses to use the approach set out in the first subparagraph shall notify its competent authority thereof at least three months before the first use. After those three months have elapsed and provided that the competent authority has not objected, the institution may use that approach until the competent authority informs the institution that it is no longer permitted to do so.

An institution that wishes to stop using the approach set out in the first subparagraph shall notify its competent authority thereof at least three months before stopping that use. The institution may stop applying that approach, unless the competent authority has objected within that three-month period.

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Article 325f

Own funds requirements for delta and vega risks

1. Institutions shall apply the delta and vega risk factors described in Subsection 1 of Section 3 to calculate the own funds requirements for delta and vega risks.

2. Institutions shall apply the process set out in paragraphs 3 to 8 to calculate own funds requirements for delta and vega risks.

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3. For each risk class, the sensitivity of all instruments in scope of the own funds requirements for delta or vega risks to each of the applicable delta or vega risk factors included in that risk class shall be calculated by using the corresponding formulas in Subsection 2 of Section 3. If the value of an instrument depends on several risk factors, the sensitivity shall be determined separately for each risk factor.

4. Sensitivities shall be assigned to one of the buckets 'b' within each risk class.

5. Within each bucket 'b', the positive and negative sensitivities to the same risk factor shall be netted, giving rise to net sensitivities (s_k) to each risk factor k within a bucket.

6. The net sensitivities to each risk factor within each bucket shall be multiplied by the corresponding risk weights set out in Section 6, giving rise to weighted sensitivities to each risk factor within that bucket in accordance with the following formula:

$$WS_k = RW_k \cdot s_k$$

where:

WS_k = the weighted sensitivities;

RW_k = the risk weights; and

s_k = the risk factor.

7. The weighted sensitivities to the different risk factors within each bucket shall be aggregated in accordance with the formula below, where the quantity within the square root function is floored at zero, giving rise to the bucket-specific sensitivity. The corresponding correlations for weighted sensitivities within the same bucket (ρ_{kl}), set out in Section 6, shall be used.

$$K_b = \sqrt{\sum_k WS_k^2 + \sum_k \sum_{k \neq l} \rho_{kl} WS_k WS_l}$$

where:

K_b = the bucket-specific sensitivity; and

WS = the weighted sensitivities.

8. The bucket-specific sensitivity shall be calculated for each bucket within a risk class in accordance with paragraphs 5, 6 and 7. Once the bucket-specific sensitivity has been calculated for all buckets, weighted sensitivities to all risk factors across buckets shall be aggregated in accordance with the formula below, using the corresponding correlations γbc for weighted sensitivities in different buckets set out in Section 6, giving rise to the risk-class specific own funds requirement for delta or vega risk:

$$\text{Risk} - \text{class specific own funds requirement for delta or vega risk} = \sqrt{\sum_b K_b^2 + \sum_b \sum_{c \neq b} \gamma_{bc} S_b S_c}$$

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where:

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S_b = $\sum_k WS_k$ for all risk factors in bucket b and S_c = $\sum_k WS_k$ in bucket c; where those values for S_b and S_c produce a negative number for the overall sum of $\sum_b K_b^2 + \sum_b \sum_{c \neq b} \gamma_{bc} S_b S_c$, the institution shall calculate the risk-class specific own funds requirements for delta or vega risk using an alternative specification whereby

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S_b = max [min ($\Sigma_k WS_k$, K_b), – K_b] for all risk factors in bucket b and

S_c = max [min ($\Sigma_k WS_k$, K_c), – K_c] for all risk factors in bucket c.

The risk-class specific own funds requirements for delta or vega risk shall be calculated for each risk class in accordance with paragraphs 1 to 8.

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Article 325g

Own funds requirements for curvature risk

1. Institutions shall perform the calculations laid down in paragraph 2 for each risk factor of the instruments subject to the own funds requirement for curvature risk, except for the risk factors referred to in paragraph 3.

For a given risk factor, institutions shall perform those calculations on a net basis across all the positions of the instruments subject to the own funds requirement for curvature risk that contain that risk factor.

2. For a given risk factor k included in one or more instruments referred to in paragraph 1, institutions shall calculate the upward net curvature risk position of that risk factor (CVR_k^+) and the downward net curvature risk position of that risk factor (CVR_k^-) as follows:

$$CVR_k^+ = -\sum_i CVR_{ik}^+$$

$$CVR_k^- = -\sum_i CVR_{ik}^-$$

$$CVR_{ik}^+ = V_i\left(x_k^{RW(Curvature)^+}\right) - V_i(x_k) - RW_k^{Curvature} \times s_{ik}$$

$$CVR_{ik}^- = V_i\left(x_k^{RW(Curvature)^-}\right) - V_i(x_k) + RW_k^{Curvature} \times s_{ik}$$

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where:

i = the index that denotes all the positions of instruments referred to in paragraph 1 and including risk factor k;

x_k = the current value of risk factor k;

$V_i(x_k)$ = the value of instrument i as estimated by the pricing model of the institution based on the current value of risk factor k;

$V_i\left(x_k^{RW(Curvature)^+}\right)$ = the value of instrument i as estimated by the pricing model of the institution based on an upward shift of the value of risk factor k;

$V_i\left(x_k^{RW(Curvature)^-}\right)$ = the value of instrument i as estimated by the pricing model of the institution based on a downward shift of the value of risk factor k;

$RW_k^{Curvature}$ = the risk weight applicable to risk factor k determined in accordance with Section 6;

s_{ik} = the delta sensitivity of instrument i with respect to risk factor k, calculated in accordance with Article 325r.

3. By way of derogation from paragraph 2, for curves of risk factors that belong to the general interest rate risk (GIRR), credit spread risk (CSR) and commodity risk classes, institutions shall perform the calculations laid down in paragraph 6 at the level of the entire curve instead of at the level of each risk factor that belongs to the curve.

For the purposes of the calculation referred to in paragraph 2, where x_k is a curve of risk factors allocated to the GIRR, CSR and commodity risk classes, s_{ik} shall be the sum of the delta sensitivities to the risk factor of the curve across all tenors of the curve.

4. In order to determine a bucket-level own funds requirement for curvature risk, institutions shall aggregate, in accordance with the following formula the upward and downward net curvature risk positions, calculated in accordance with paragraph 2, of all the risk factors assigned to that bucket in accordance with Subsection 1 of Section 3:

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$$K_b = \begin{cases} max(K_b^+, K_b^-), \text{where } K_b^+ \neq K_b^- \\ K_b^+, \text{where } K_b^+ = K_b^- \text{ and } \sum_k CVR_k^+ > \sum_k CVR_k^- \\ K_b^-, \text{otherwise} \end{cases}$$

where:

b = the index that denotes a bucket of a given risk class;

K_b = own funds requirements for curvature risk for bucket b;

$$K_b^+ = \sqrt{max\left(0, \sum_k max(CVR_k^+, 0)^2 + \sum_{l \neq k} \sum_k \rho_{kl}\, CVR_k^+ CVR_l^+ \psi(CVR_k^+, CVR_l^+)\right)};$$

$$K_b^- = \sqrt{max\left(0, \sum_k max(CVR_k^-, 0)^2 + \sum_{l \neq k} \sum_k \rho_{kl}\, CVR_k^- CVR_l^- \psi(CVR_k^-, CVR_l^-)\right)};$$

$$\psi(x, y) = \begin{cases} 0, \text{where } x < 0 \text{ and } y < 0 \\ 1, \text{otherwise} \end{cases};$$

ρ_{kl} = the intra-bucket correlations between risk factors k and l as prescribed in Section 6;

k, l = the indices that denote all the risk factors of instruments referred to in paragraph 1 that are assigned to bucket b;

(CVR_k^+) = the upward net curvature risk position;

(CVR_k^-) = the downward net curvature risk position.

5. By way of derogation from paragraph 4, for the bucket-level own funds requirements for curvature risk of bucket 18 of Article 325ah, of bucket 18 of Article 325ak, of bucket 25 of Article 325am and of bucket 11 of Article 325ap the following formula shall be used:

$$K_b = max\left(\sum_k max(CVR_k^+, 0), \sum_k max(CVR_k^-, 0)\right)$$

6. Institutions shall calculate the risk-class own funds requirements for curvature risk (*RCCR)* by aggregating all the bucket-level own funds requirements for curvature risk within a given risk class as follows:

$$RCCR = \sqrt{max\left(0, \sum_b K_b^2 + \sum_{c \neq b} \sum_b \gamma_{bc}\, S_b S_c\, \psi(S_b, S_c)\right)}$$

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where:

b, c = the indices that denote all the buckets of a given risk class that corresponds to instruments referred to in paragraph 1;

K_b = own funds requirements for curvature risk for bucket b;

$$S_b = \begin{cases} \sum_k CVR_k^+, & \text{where } K_b = K_b^+ \text{ in accordance with paragraph 4} \\ \sum_k CVR_k^-, & \text{otherwise} \end{cases}$$

$$\psi(x,y) = \begin{cases} 0, & \text{where } x < 0 \text{ and } y < 0 \\ 1, & \text{otherwise} \end{cases}$$

γ_{bc} = the inter-bucket correlations between buckets b and c as set out in Section 6.

7. The own funds requirement for curvature risk shall be the sum of the risk class own funds requirements for curvature risk calculated in accordance with paragraph 6 across all risk classes to which at least one risk factor of the instruments referred to in paragraph 1 belongs.

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Article 325h

Aggregation of risk-class specific own funds requirements for delta, vega and curvature risks

1. Institutions shall aggregate risk-class specific own funds requirements for delta, vega and curvature risks in accordance with the process set out in paragraphs 2, 3 and 4.

2. The process to calculate the risk-class specific own funds requirements for delta, vega and curvature risks described in Articles 325f and 325g shall be performed three times per risk class, each time using a different set of correlation parameters ρ_{kl} (correlation between risk factors within a bucket) and γ_{bc} (correlation between buckets within a risk class). Each of those three sets shall correspond to a different scenario, as follows:

(a) the medium correlations scenario, whereby the correlation parameters ρ_{kl} and γ_{bc} remain unchanged from those specified in Section 6;

(b) the high correlations scenario, whereby the correlation parameters ρ_{kl} and γ_{bc} that are specified in Section 6 shall be uniformly multiplied by 1,25, with ρ_{kl} and γ_{bc} subject to a cap at 100 %;

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(c) the ‘low correlations’ scenario, whereby the correlation parameters ρ_{kl} and γ_{bc} that are specified in Section 6 shall be replaced by $\rho_{kl}^{low} = max(2 \cdot \rho_{kl} - 100\%;\ 75\% \cdot \rho_{kl})$ and $\gamma_{bc}^{low} = max(2 \cdot \gamma_{bc} - 100\%; 75\% \cdot \gamma_{bc})$, respectively.

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3. Institutions shall calculate the sum of the delta, vega and curvature risk-class specific own funds requirements for each scenario to determine three scenario-specific, own funds requirements.

4. The own funds requirement under the sensitivities-based method shall be the highest of the three scenario-specific own funds requirements referred to in paragraph 3.

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Article 325i

Treatment of index instruments and other multi-underlying instruments

1. Institutions shall use a look-through approach for index and other multi-underlying instruments in accordance with the following:

(a) for the purposes of calculating the own funds requirements for delta and curvature risk, institutions shall consider that they hold individual positions directly in the underlying constituents of the index or other multi-underlying instruments, except for a position in an index included in the ACTP for which they shall calculate a single sensitivity to the index;

(b) institutions are allowed to net the sensitivities to a risk factor of a given constituent of an index instrument or other multi-underlying instrument with the sensitivities to the same risk factor of the same constituent of single name instruments, except for positions included in the ACTP;

(c) for the purposes of calculating the own funds requirements for vega risk, institutions may either consider that they directly hold individual positions in the underlying constituents of the index or other multi-underlying instrument, or calculate a single sensitivity to the underlying of that instrument. In the latter case, institutions shall assign the single sensitivity to the relevant bucket as set out in Subsection 1 of Section 6 as follows:

(i) where, taking into account the weightings of that index, more than 75 % of constituents in that index would be mapped to the same bucket, institutions shall assign the sensitivity to that bucket and treat it as a single-name sensitivity in that bucket;

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(ii) in all other cases, institutions shall assign the sensitivity to the relevant index bucket.

2. By way of derogation from point (a) of paragraph 1, institutions may calculate a single sensitivity to a position in a listed equity or credit index for the purposes of calculating the own funds requirements for delta and curvature risks provided the listed equity or credit index meets the conditions set out in paragraph 3. In that case, institutions shall assign the single sensitivity to the relevant bucket as set out in Subsection 1 of Section 6 as follows:

(a) where, taking into account the weightings of that listed index, more than 75 % of constituents in that listed index would be mapped to the same bucket, that sensitivity shall be assigned to that bucket and treated as a single-name sensitivity in that bucket;

(b) in all other cases, institutions shall assign the sensitivity to the relevant listed index bucket.

3. Institutions may use the approach set out in paragraph 2 for instruments referencing a listed equity or credit index where all of the following conditions are met:

(a) the constituents of the listed index and their respective weightings in that index are known;

(b) the listed index contains at least 20 constituents;

(c) no single constituent contained within the listed index represents more than 25 % of the total market capitalisation of that index;

(d) no set comprising one tenth of the total number of constituents of the listed index, rounded up to the next integer, represents more than 60 % of the total market capitalisation of that index;

(e) the total market capitalisation of all the constituents of the listed index is no less than EUR 40 billion.

4. An institution shall use, consistently over time, only the approach set out in paragraph 1 or the approach set out in paragraph 2 for all the instruments that reference a listed equity or credit index that meets the conditions set out in paragraph 3. An institution shall require prior permission from the competent authority before switching from one approach to another.

5. For an index or other multi-underlying instrument, the sensitivity inputs for the calculation of delta and curvature risks shall be consistent, irrespective of the approaches used for that instrument.

6. Index or multi-underlying instruments which bear other residual risks as referred to in Article 325u(5) shall be subject to the residual risk add-on referred to in Section 4.

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Article 325j

Treatment of collective investment undertakings

1. An institution shall calculate the own funds requirements for market risk of a position in a CIU using one of the following approaches:

(a) where an institution is able to obtain sufficient information about the individual underlying exposures of the CIU, the institution shall calculate the own funds requirements for market risk of that CIU position by looking through to the underlying positions of the CIU as if those positions were directly held by the institution;

(b) where the institution is not able to obtain sufficient information about the individual underlying exposures of the CIU, but the institution has knowledge of the content the mandate of the CIU and daily price quotes for the CIU can be obtained, the institution shall calculate the own funds requirements for market risk of that CIU position by using one of the following approaches:

(i) the institution may consider the position in the CIU as a single equity position allocated to the bucket ‘other sector’ in Table 8 of Article 325ap(1);

(ii) upon permission from its competent authority, an institution may calculate the own funds requirements for market risk of the CIU in accordance with the limits set in the CIU’s mandate and relevant law;

(c) where the institution meets neither the conditions in point (a) nor (b), the institution shall allocate the CIU to the non-trading book.

An institution that uses one of the approaches set out in point (b) shall apply the own funds requirement for the default risk set out in Section 5 of this Chapter and the residual risk add-on set out in Section 4 of this Chapter where the mandate of the CIU implies that some exposures in the CIU shall be subject to those own funds requirements.

An institution that uses the approach set out in point (ii) of point (b) may calculate the own funds requirements for counterparty credit risk and own funds requirements for credit valuation adjustment risk of derivative positions of the CIU, using the simplified approach set out in paragraph 3 of Article 132a.

2. By way of derogation from paragraph 1, where an institution has a position in a CIU that tracks an index benchmark so that the annualised return difference between the CIU and the tracked index benchmark over the last 12 months is below 1 % in absolute terms, ignoring fees and commissions, the institution may treat that position as a position in the tracked index benchmark. An institution shall verify compliance with that condition when the institution enters into the position and, after that, at least annually.

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However, where data for the last 12 months are not fully available, an institution may, subject to permission from the institution's competent authority, use an annualised return difference from a period shorter than 12 months.

3. An institution may use a combination of the approaches referred to in points (a), (b) and (c) of paragraph 1 for its positions in CIUs. However, an institution shall use only one of those approaches for all the positions in the same CIU.

4. For the purposes of point (b) of paragraph 1, an institution shall carry out the calculations under the following provisions:

(a) for the purposes of calculating the own funds requirement under the sensitivities-based method set out in Section 2 of this Chapter, the CIU shall first take position to the maximum extent allowed under its mandate or relevant law in the exposures attracting the highest own funds requirements set out under that Section and shall then continue taking positions in descending order until the maximum total loss limit is reached;

(b) for the purposes of the own fund requirements for the default risk set out in Section 5 of this Chapter, the CIU shall first take position to the maximum extent allowed under its mandate or relevant law in the exposures attracting the highest own funds requirements set out under that Section and shall then continue taking positions in descending order until the maximum total loss limit is reached;

(c) the CIU shall apply leverage to the maximum extent allowed under its mandate or relevant law, where applicable.

The own funds requirements for all positions in the same CIU for which the calculations referred to in the first subparagraph are used shall be calculated on a stand-alone basis as a separate portfolio using the approach set out in this Chapter.

5. An institution may use the approaches referred to in point (a) or (b) of paragraph 1 only where the CIU meets all the conditions set out in Article 132(3) and point (a) of Article 132(4).

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Article 325k

Underwriting positions

1. Institutions may use the process set out in this Article for calculating the own funds requirements for market risk of underwriting positions of debt or equity instruments.

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2. Institutions shall apply one of the appropriate multiplying factors listed in Table 1 to the net sensitivities of all the underwriting positions in each individual issuer, excluding the underwriting positions which are subscribed or sub-underwritten by third parties on the basis of formal agreements, and calculate the own funds requirements for market risk in accordance with the approach set out in this Chapter on the basis of the adjusted net sensitivities.

Table 1

Business day 0	0 %
Business day 1	10 %
Business days 2 and 3	25 %
Business day 4	50 %
Business day 5	75 %
After business day 5	100 %

For the purposes of this Article, ‘business day 0’ means the business day on which the institution becomes unconditionally committed to accepting a known quantity of securities at an agreed price.

3. Institutions shall notify the competent authorities of the application of the process set out in this Article.

Section 3

Risk factor and sensitivity definitions

Subsection 1

Risk factor definitions

Article 325l

General interest rate risk factors

1. For all general interest rate risk factors, including inflation risk and cross-currency basis risk, there shall be one bucket per currency, each containing different types of risk factor.

The delta general interest rate risk factors applicable to interest rate-sensitive instruments shall be the relevant risk-free rates per currency and per each of the following maturities: 0,25 years, 0,5 years, 1 year, 2 years, 3 years, 5 years, 10 years, 15 years, 20 years, 30 years. Institutions shall assign risk factors to the specified vertices by linear interpolation or by using a method that is most consistent with the pricing functions used by the independent risk control function of the institution to report market risk or profits and losses to senior management.

2. Institutions shall obtain the risk-free rates per currency from money market instruments held in the trading book of the institution that have the lowest credit risk, such as overnight index swaps.

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3. Where institutions cannot apply the approach referred to in paragraph 2, the risk-free rates shall be based on one or more market-implied swap curves used by the institution to mark positions to market, such as the interbank offered rate swap curves.

Where the data on market-implied swap curves described in paragraph 2 and the first subparagraph of this paragraph are insufficient, the risk-free rates may be derived from the most appropriate sovereign bond curve for a given currency.

Where institutions use the general interest rate risk factors derived in accordance with the procedure set out in the second subparagraph of this paragraph for sovereign debt instruments, the sovereign debt instrument shall not be exempted from the own funds requirements for credit spread risk. In those cases, where it is not possible to disentangle the risk-free rate from the credit spread component, the sensitivity to the risk factor shall be allocated both to the general interest rate risk and to credit spread risk classes.

4. In the case of general interest rate risk factors, each currency shall constitute a separate bucket. Institutions shall assign risk factors within the same bucket, but with different maturities, a different risk weight, in accordance with Section 6.

Institutions shall apply additional risk factors for inflation risk to debt instruments whose cash flows are functionally dependent on inflation rates. Those additional risk factors shall consist of one vector of market-implied inflation rates of different maturities per currency. For each instrument, the vector shall contain as many components as there are inflation rates used as variables by the institution's pricing model for that instrument.

5. Institutions shall calculate the sensitivity of the instrument to the additional risk factor for inflation risk referred to in paragraph 4 as the change in the value of the instrument, according to its pricing model, as a result of a 1 basis point shift in each of the components of the vector. Each currency shall constitute a separate bucket. Within each bucket, institutions shall treat inflation as a single risk factor, regardless of the number of components of each vector. Institutions shall offset all sensitivities to inflation within a bucket, calculated as described in this paragraph, in order to give rise to a single net sensitivity per bucket.

6. Debt instruments that involve payments in different currencies shall also be subject to cross-currency basis risk between those currencies. For the purposes of the sensitivities-based method, the risk factors to be applied by institutions shall be the cross-currency basis risk of each currency over either US dollar or euro. Institutions shall compute cross currency bases that do not relate to either basis over US dollar or basis over euro either on ‘basis over US dollar’ or ‘basis over euro’.

Each cross-currency basis risk factor shall consist of one vector of cross-currency basis of different maturities per currency. For each

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debt instrument, the vector shall contain as many components as there are cross-currency bases used as variables by the institution's pricing model for that instrument. Each currency shall constitute a different bucket.

Institutions shall calculate the sensitivity of the instrument to the cross-currency basis risk factor as the change in the value of the instrument, according to its pricing model, as a result of a 1 basis point shift in each of the components of the vector. Each currency shall constitute a separate bucket. Within each bucket there shall be two possible distinct risk factors: basis over euro and basis over US dollar, regardless of the number of components there are in each cross-currency basis vector. The maximum number of net sensitivities per bucket shall be two.

7. The vega general interest rate risk factors applicable to options with underlyings that are sensitive to general interest rate shall be the implied volatilities of the relevant risk-free rates as described in paragraphs 2 and 3, which shall be assigned to buckets depending on the currency and mapped to the following maturities within each bucket: 0,5 years, 1 year, 3 years, 5 years, 10 years. There shall be one bucket per currency.

For netting purposes, institutions shall consider implied volatilities linked to the same risk-free rates and mapped to the same maturities to constitute the same risk factor.

Where institutions map implied volatilities to the maturities as referred to in this paragraph, the following requirements shall apply:

(a) where the maturity of the option is aligned with the maturity of the underlying, a single risk factor shall be considered, which shall be mapped to that maturity;

(b) where the maturity of the option is shorter than the maturity of the underlying, the following risk factors shall be considered as follows:

(i) the first risk factor shall be mapped to the maturity of the option;

(ii) the second risk factor shall be mapped to the residual maturity of the underlying of the option at the expiry date of the option.

8. The curvature general interest rate risk factors to be applied by institutions shall consist of one vector of risk-free rates, representing a specific risk-free yield curve, per currency. Each currency shall constitute a different bucket. For each instrument, the vector shall contain as many components as there are different maturities of risk-free rates used as variables by the institution's pricing model for that instrument.

9. Institutions shall calculate the sensitivity of the instrument to each risk factor used in the curvature risk formula in accordance with Article 325g. For the purposes of the curvature risk, institutions shall consider vectors corresponding to different yield curves and with a different number of components as the same risk factor, provided that those vectors correspond to the same currency. Institutions shall offset sensitivities to the same risk factor. There shall be only one net sensitivity per bucket.

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There shall be no curvature risk own funds requirements for inflation and cross currency basis risks.

Article 325m

Credit spread risk factors for non-securitisation

1. The delta credit spread risk factors to be applied by institutions to non-securitisation instruments that are sensitive to credit spread shall be the issuer credit spread rates of those instruments, inferred from the relevant debt instruments and credit default swaps, and mapped to each of the following maturities: 0,5 years, 1 year, 3 years, 5 years, 10 years. Institutions shall apply one risk factor per issuer and maturity, regardless of whether those issuer credit spread rates are inferred from debt instruments or credit default swaps. The buckets shall be sector buckets, as referred to in Section 6, and each bucket shall include all the risk factors allocated to the relevant sector.

2. The vega credit spread risk factors to be applied by institutions to options with non-securitisation underlyings that are sensitive to credit spread shall be the implied volatilities of the underlying's issuer credit spread rates inferred as laid down in paragraph 1, which shall be mapped to the following maturities in accordance with the maturity of the option subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years, 10 years. The same buckets shall be used as the buckets that were used for the delta credit spread risk for non-securitisation.

3. The curvature credit spread risk factors to be applied by institutions to non-securitisation instruments shall consist of one vector of credit spread rates, representing a credit spread curve specific to the issuer. For each instrument, the vector shall contain as many components as there are different maturities of credit spread rates used as variables in the institution's pricing model for that instrument. The same buckets shall be used as the buckets that were used for the delta credit spread risk for non-securitisation.

4. Institutions shall calculate the sensitivity of the instrument to each risk factor used in the curvature risk formula in accordance with Article 325g. For the purposes of the curvature risk, institutions shall consider vectors inferred from either relevant debt instruments or credit default swaps and with a different number of components as the same risk factor, provided that those vectors correspond to the same issuer.

Article 325n

Credit spread risk factors for securitisation

1. Institutions shall apply the credit spread risk factors referred to in paragraph 3 to securitisation positions that are included in the ACTP, as referred to in Article 325(6), (7) and (8),

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Institutions shall apply the credit spread risk factors referred to in paragraph 5 to securitisation positions that are not included in the ACTP, as referred to in Article 325(6), (7) and (8).

2. The buckets applicable to the credit spread risk for securitisations that are included in the ACTP shall be the same as the buckets applicable to the credit spread risk for non-securitisations, as referred to in Section 6.

The buckets applicable to the credit spread risk for securitisations that are not included in the ACTP shall be specific to that risk-class category, as referred to in Section 6.

3. The credit spread risk factors to be applied by institutions to securitisation positions that are included in the ACTP are the following:

(a) the delta risk factors shall be all the relevant credit spread rates of the issuers of the underlying exposures of the securitisation position, inferred from the relevant debt instruments and credit default swaps, and for each of the following maturities: 0,5 years, 1 year, 3 years, 5 years, 10 years.

(b) the vega risk factors applicable to options with securitisation positions that are included in the ACTP as underlyings shall be the implied volatilities of the credit spreads of the issuers of the underlying exposures of the securitisation position, inferred as described in point (a) of this paragraph, which shall be mapped to the following maturities in accordance with the maturity of the corresponding option subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years, 10 years.

(c) the curvature risk factors shall be the relevant credit spread yield curves of the issuers of the underlying exposures of the securitisation position expressed as a vector of credit spread rates for different maturities, inferred as indicated in point (a) of this paragraph; for each instrument, the vector shall contain as many components as there are different maturities of credit spread rates that are used as variables by the institution's pricing model for that instrument.

4. Institutions shall calculate the sensitivity of the securitisation position to each risk factor used in the curvature risk formula as specified in Article 325g. For the purposes of the curvature risk, institutions shall consider vectors inferred either from relevant debt instruments or credit default swaps and with a different number of components as the same risk factor, provided that those vectors correspond to the same issuer.

5. The credit spread risk factors to be applied by institutions to securitisation positions that are not included in the ACTP shall refer to the spread of the tranche rather than the spread of the underlying instruments and shall be the following:

(a) the delta risk factors shall be the relevant tranche credit spread rates, mapped to the following maturities, in accordance with the maturity of the tranche: 0,5 years, 1 year, 3 years, 5 years, 10 years;

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(b) the vega risk factors applicable to options with securitisation positions that are not included in the ACTP as underlyings shall be the implied volatilities of the credit spreads of the tranches, each of them mapped to the following maturities in accordance with the maturity of the option subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years, 10 years;

(c) the curvature risk factors shall be the same as those described in point (a) of this paragraph; to all those risk factors, a common risk weight shall be applied, as referred to in Section 6.

Article 325o

Equity risk factors

1. The buckets for all equity risk factors shall be the sector buckets referred to in Section 6.

2. The equity delta risk factors to be applied by institutions shall be all the equity spot prices and all equity repo rates.

For the purposes of equity risk, a specific equity repo curve shall constitute a single risk factor, which is expressed as a vector of repo rates for different maturities. For each instrument, the vector shall contain as many components as there are different maturities of repo rates that are used as variables by the institution's pricing model for that instrument.

Institutions shall calculate the sensitivity of an instrument to an equity risk factor as the change in the value of the instrument, according to its pricing model, as a result of a 1 basis point shift in each of the components of the vector. Institutions shall offset sensitivities to the repo rate risk factor of the same equity security, regardless of the number of components of each vector.

3. The equity vega risk factors to be applied by institutions to options with underlyings that are sensitive to equity shall be the implied volatilities of equity spot prices which shall be mapped to the following maturities in accordance with the maturities of the corresponding options subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years, 10 years. There shall be no own funds requirements for vega risk for equity repo rates.

4. The equity curvature risk factors to be applied by institutions to options with underlyings that are sensitive to equity are all the equity spot prices, regardless of the maturity of the corresponding options. There shall be no curvature risk own funds requirements for equity repo rates.

Article 325p

Commodity risk factors

1. The buckets for all commodity risk factors shall be the sector buckets referred to in Section 6.

2. The commodity delta risk factors to be applied by institutions to commodity sensitive instruments shall be all the commodity spot prices per commodity type and per each of the following maturities: 0,25 years, 0,5 years, 1 year, 2 years, 3 years, 5 years, 10 years, 15 years, 20 years, 30 years. Institutions shall only consider two commodity

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prices of the same type of commodity, and with the same maturity to constitute the same risk factor where the set of legal terms regarding the delivery location are identical.

3. The commodity vega risk factors to be applied by institutions to options with underlyings that are sensitive to commodity shall be the implied volatilities of commodity prices per commodity type, which shall be mapped to the following maturities in accordance with the maturities of the corresponding options subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years, 10 years. Institutions shall consider sensitivities to the same commodity type and allocated to the same maturity to be a single risk factor which institutions shall then offset.

4. The commodity curvature risk factors to be applied by institutions to options with underlyings that are sensitive to commodity shall be one set of commodity prices with different maturities per commodity type, expressed as a vector. For each instrument, the vector shall contain as many components as there are prices of that commodity that are used as variables by the institution's pricing model for that instrument. Institutions shall not differentiate between commodity prices by delivery location.

The sensitivity of the instrument to each risk factor used in the curvature risk formula shall be calculated as specified in Article 325g. For the purposes of curvature risk, institutions shall consider vectors having a different number of components to constitute the same risk factor, provided that those vectors correspond to the same commodity type.

Article 325q

Foreign exchange risk factors

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1. The foreign exchange delta risk factors to be applied by institutions to foreign exchange sensitive instruments shall be all the spot exchange rates between the currency in which an instrument is denominated and the institution’s reporting currency or the institution’s base currency where the institution is using a base currency in accordance with paragraph 7. There shall be one bucket per currency pair, containing a single risk factor and a single net sensitivity.

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2. The foreign exchange vega risk factors to be applied by institutions to options with underlyings that are sensitive to foreign exchange shall be the implied volatilities of exchange rates between the currency pairs referred to in paragraph 1. Those implied volatilities of exchange rates shall be mapped to the following maturities in accordance with the maturities of the corresponding options subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years, 10 years.

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3. The foreign exchange curvature risk factors to be applied by institutions to instruments with underlyings that are sensitive to foreign exchange shall be the foreign exchange delta risk factors referred to in paragraph 1.

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4. Institutions shall not be required to distinguish between onshore and offshore variants of a currency for all foreign exchange delta, vega and curvature risk factors.

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5. Where a foreign exchange rate that is the underlying of an instrument i that is subject to own funds requirements for curvature risks neither refers to the institution's reporting currency nor the institution's base currency, the institution may divide by 1,5 the corresponding components CVR_{ik}^{-} and CVR_{ik}^{+} set out in paragraph 2 of Article 325g for which x_k is the foreign exchange risk factor between one of the two currencies of the underlying and the institution's reporting currency or the institution's base currency, as applicable.

6. Subject to permission from its competent authority, an institution may divide by 1,5 the components CVR_{k}^{-} and CVR_{k}^{+} set out in Article 325g(2) consistently for all the foreign exchange risk factors of instruments concerning foreign exchange and subject to own funds requirement for curvature risk, provided that any foreign exchange risk factors based on the institution's reporting currency or the institution's base currency, as applicable, that are included in the calculation of those components are shifted simultaneously.

7. By way of derogation from paragraphs 1 and 3, an institution may replace, subject to permission from its competent authority, its reporting currency by another currency ("the base currency") in all the spot exchange rates to express the delta and curvature foreign exchange risk factors where all of the following conditions are met:

(a) the institution uses only one base currency;

(b) the institution applies the base currency consistently to all its trading book and non-trading book positions;

(c) the institution has demonstrated to the satisfaction of its competent authority that:

(i) using the chosen base currency provides an appropriate risk representation for the institution's positions subject to foreign exchange risks;

(ii) the choice of base currency is compatible with the manner in which the institution manages those foreign exchange risks internally;

(iii) the choice of base currency is not driven primarily by the desire to reduce the institution's own funds requirements;

(d) the institution takes into account the translation risk between the reporting currency and the base currency.

An institution that has been permitted to use a base currency as set out in the first subparagraph shall convert the resulting own funds requirements for foreign exchange risk into the reporting currency using the prevailing spot exchange rate between the base currency and the reporting currency.

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Subsection 2

Sensitivity definitions

Article 325r

Delta risk sensitivities

1. Institutions shall calculate delta general interest rate risk (GIRR) sensitivities as follows:

(a) the sensitivities to risk factors consisting of risk-free rates shall be calculated as follows:

$$S_{r_{kt}} = \frac{V_i(r_{kt} + 0{,}0001,\ x,\ y \ldots) - V_i(r_{kt},\ x,\ y \ldots)}{0{,}0001}$$

where:

$S_{r_{kt}}$ = the sensitivities to risk factors consisting of risk-free rates;

r_{kt} = the rate of a risk-free curve k with maturity t;

V_i (.) = the pricing function of instrument i; and

x,y = risk factors other than r_{kt} in the pricing function V_i;

(b) the sensitivities to risk factors consisting of inflation risk and cross-currency basis shall be calculated as follows:

$$S_{x_j} = \frac{V_i(\overline{x}_{ji} + 0{,}0001\overline{I_m},\ y,\ z \ldots) - V_i(\overline{x}_{ji},\ y,\ z \ldots)}{0{,}0001}$$

where:

S_{x_j} = the sensitivities to risk factors consisting of inflation risk and cross-currency basis;

$\overline{x}_{ji}$ = a vector of m components representing the implied inflation curve or the cross-currency basis curve for a given currency j with m being equal to the number of inflation or cross-currency related variables used in the pricing model of instrument i;

$\overline{I_m}$ = the unity matrix of dimension (1 × m);

V_i (.) = the pricing function of the instrument i; and

y, z = other variables in the pricing model.

2. Institutions shall calculate the delta credit spread risk sensitivities for all securitisation and non-securitisation positions as follows:

$$S_{CS_{kt}} = \frac{V_i(CS_{kt} + 0{,}0001,\ x,\ y \ldots) - V_i(CS_{kt},\ x,\ y \ldots)}{0{,}0001}$$

▼M8

where:

$S_{CS_{kt}}$ = the delta credit spread risk sensitivities for all securitisation and non-securitisation positions;

cs_{kt} = the value of the credit spread rate of an issuer j at maturity t;

V_i (.) = the pricing function of instrument i; and

x,y = risk factors other than cs_{kt} in the pricing function V_i.

3. Institutions shall calculate delta equity risk sensitivities as follows:

(a) the sensitivities to risk factors consisting of equity spot prices shall be calculated as follows:

$$S_k = \frac{V_i(1{,}01\ EQ_k,\ x,\ y,\ \ldots) - V_i(EQ_k,\ x,\ y,\ \ldots)}{0{,}01}$$

where:

s_k = the sensitivities to risk factors consisting of equity spot prices;

k = a specific equity security;

EQ_k = the value of the spot price of that equity security;

V_i (.) = the pricing function of instrument i; and

x,y = risk factors other than EQ_k in the pricing function V_i;

(b) the sensitivities to risk factors consisting of equity repo rates shall be calculated as follows:

$$S_{x_k} = \frac{V_i(\overline{x}_{ki} + 0{,}0001\overline{I_m},\ y,\ z\ \ldots) - V_i(\overline{x}_{ji},\ y,\ z\ \ldots)}{0{,}0001}$$

where:

S_{x_k} = the sensitivities to risk factors consisting of equity repo rates;

k = the index that denotes the equity;

$\overline{x}_{ki}$ = a vector of m components representing the repo term structure for a specific equity k with m being equal to the number of repo rates corresponding to different maturities used in the pricing model of instrument i;

$\overline{I_m}$ = the unity matrix of dimension $(1 \cdot m)$;

V_i (.) = the pricing function of the instrument i; and

y,z = risk factors other than $\overline{x}_{ki}$ in the pricing function V_i.

4. Institutions shall calculate the delta commodity risk sensitivities to each risk factor k as follows:

$$S_k = \frac{V_i(1{,}01\ CTY_k,\ \gamma,\ z\ \ldots) - V_i(CTY_k,\ \gamma,\ z\ \ldots)}{0{,}01}$$

where:

s_k = the delta commodity risk sensitivities;

▼M8

k = a given commodity risk factor;

CTY_k = the value of risk factor k;

▼C7

V_i (.) = the pricing function of instrument i; and

▼M8

y, z = risk factors other than CTY_k in the pricing model of instrument i.

5. Institutions shall calculate the delta foreign exchange risk sensitivities to each foreign exchange risk factor k as follows:

$$S_k = \frac{V_i(1{,}01\ FX_k,\ y,\ z\ \ldots) - V_i(FX_k,\ y,\ z\ \ldots)}{0{,}01}$$

where:

s_k = the delta foreign exchange risk sensitivities;

k = a given foreign exchange risk factor;

FX_k = the value of the risk factor;

▼C7

V_i (.) = the pricing function of instrument i; and

▼M8

y, z = risk factors other than FX_k in the pricing model of instrument i.

Article 325s

Vega risk sensitivities

1. Institutions shall calculate the vega risk sensitivity of an option to a given risk factor k as follows:

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$$S_k = \frac{V_i(0{,}01 + vol_k, x, y) - V_i(vol_k, x, y)}{0{,}01}$$

▼M8

where:

s_k = the vega risk sensitivity of an option;

k = a specific vega risk factor, consisting of an implied volatility;

vol_k = the value of that risk factor, which should be expressed as a percentage; and

x,y = risk factors other than vol_k in the pricing function V_i.

2. In the case of risk classes where vega risk factors have a maturity dimension, but where the rules to map the risk factors are not applicable because the options do not have a maturity, institutions shall map those risk factors to the longest prescribed maturity. Those options shall be subject to the residual risks add-on.

▼M8

3. In the case of options that do not have a strike or barrier and options that have multiple strikes or barriers, institutions shall apply the mapping to strikes and maturity used internally by the institution to price the option. Those options shall also be subject to the residual risks add-on.

4. Institutions shall not calculate the vega risk for securitisation tranches included in the ACTP, as referred to in Article 325(6), (7) and (8), that do not have an implied volatility. Own funds requirements for delta and curvature risk shall be computed for those securitisation tranches.

Article 325t

Requirements on sensitivity computations

1. Institutions shall derive sensitivities from the institution's pricing models that serve as a basis for reporting profit and loss to senior management, using the formulas set out in this Subsection.

By way of derogation from the first subparagraph, competent authorities may require an institution that has been granted permission to use the alternative internal model approach set out in Chapter 1b to use the pricing functions of the risk-measurement system of their internal model approach in the calculation of sensitivities under this Chapter for the calculation and reporting of the own funds requirements for market risk in accordance with Article 430b(3).

2. When calculating delta risk sensitivities of instruments with optionality as referred to in point (a) of Article 325e(2), institutions may assume that the implied volatility risk factors remain constant.

3. When calculating vega risk sensitivities of instruments with optionality as referred to in point (b) of Article 325e(2), the following requirements shall apply:

(a) for general interest rate risk and credit spread risk, institutions shall assume, for each currency, that the underlying of the volatility risk factors for which vega risk is calculated follows either a lognormal or normal distribution in the pricing models used for those instruments;

(b) for equity risk, commodity risk and foreign exchange risk, institutions shall assume that the underlying of the volatility risk factors for which vega risk is calculated follows a lognormal distribution in the pricing models used for those instruments.

4. Institutions shall calculate all sensitivities except for the sensitivities to credit valuation adjustments.

▼M8

5. By way of derogation from paragraph 1, subject to the permission of the competent authorities, an institution may use alternative definitions of delta risk sensitivities in the calculation of the own funds requirements of a trading book position under this Chapter, provided that the institution meets all the following conditions:

(a) those alternative definitions are used for internal risk management purposes and for the reporting of profits and losses to senior management by an independent risk control unit within the institution;

(b) the institution demonstrates that those alternative definitions are more appropriate for capturing the sensitivities for the position than are the formulas set out in this Subsection, and that the resulting sensitivities do not materially differ from those formulas.

6. By way of derogation from paragraph 1, subject to the permission of the competent authorities, an institution may calculate vega sensitivities on the basis of a linear transformation of alternative definitions of sensitivities in the calculation of the own funds requirements of a trading book position under this Chapter, provided that the institution meets both the following conditions:

(a) those alternative definitions are used for internal risk management purposes and for the reporting of profits and losses to senior management by an independent risk control unit within the institution;

(b) the institution demonstrates that those alternative definitions are more appropriate for capturing the sensitivities for the position than are the formulas set out in this Subsection, and that the linear transformation referred to in the first subparagraph reflects a vega risk sensitivity.

Section 4

The residual risk add-on

Article 325u

Own funds requirements for residual risks

1. In addition to the own funds requirements for market risk set out in Section 2, institutions shall apply additional own funds requirements to instruments exposed to residual risks in accordance with this Article.

2. Instruments are considered to be exposed to residual risks where they meet any of the following conditions:

(a) the instrument references an exotic underlying, which, for the purposes of this Chapter, means a trading book instrument referencing an underlying exposure that is not in the scope of the delta, vega or curvature risk treatments under the sensitivities-based method laid down in Section 2 or the own funds requirements for the default risk set out in Section 5;

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(b) the instrument is an instrument bearing other residual risks, which, for the purposes of this Chapter, means any of the following instruments:

(i) instruments that are subject to the own funds requirements for vega and curvature risk under the sensitivities-based method set out in Section 2 and that generate pay-offs that cannot be replicated as a finite linear combination of plain-vanilla options with a single underlying equity price, commodity price, exchange rate, bond price, credit default swap price or interest rate swap;

(ii) instruments that are positions that are included in the ACTP referred to in Article 325(6); hedges that are included in that ACTP, as referred to in Article 325(8), shall not be considered.

3. Institutions shall calculate the additional own funds requirements referred to in paragraph 1 as the sum of gross notional amounts of the instruments referred to in paragraph 2, multiplied by the following risk weights:

(a) 1,0 % in the case of instruments referred to in point (a) of paragraph 2;

(b) 0,1 % in the case of instruments referred to in point (b) of paragraph 2.

4. By way of derogation from paragraph 1, institution shall not apply the own funds requirement for residual risks to an instrument that meets any of the following conditions:

(a) the instrument is listed on a recognised exchange;

(b) the instrument is eligible for central clearing in accordance with Regulation (EU) No 648/2012;

(c) the instrument perfectly offsets the market risk of another position in the trading book, in which case the two perfectly matching trading book positions shall be exempted from the own funds requirement for residual risks.

5. EBA shall develop draft regulatory technical standards to specify what an exotic underlying is and which instruments are instruments bearing residual risks for the purposes of paragraph 2.

When developing those draft regulatory technical standards, EBA shall examine whether longevity risk, weather, natural disasters and future realised volatility should be considered as exotic underlyings.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2021.

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

▼M8

Section 5

Own funds requirements for the default risk

Article 325v

Definitions and general provisions

1. For the purposes of this Section, the following definitions apply:

(a) ‘short exposure’ means that the default of an issuer or group of issuers leads to a gain for the institution, regardless of the type of instrument or transaction creating the exposure;

(b) ‘long exposure’ means that the default of an issuer or group of issuers leads to a loss for the institution, regardless of the type of instrument or transaction creating the exposure;

(c) ‘gross jump-to-default (gross JTD) amount’ means the estimated size of the loss or gain that the default of the obligor would produce for a specific exposure;

(d) ‘net jump-to-default (net JTD) amount’ means the estimated size of the loss or gain that an institution would incur due to the default of an obligor, after offsetting between gross JTD amounts has taken place,

(e) ‘loss given default’ or ‘LGD’ means the loss given default of the obligor on an instrument issued by that obligor expressed as a share of the notional amount of the instrument;

(f) ‘default risk weight’ means the percentage representing the estimated probability of the default of each obligor, according to the creditworthiness of that obligor.

2. Own funds requirements for the default risk shall apply to debt and equity instruments, to derivative instruments having those instruments as underlyings and to derivatives, the pay-offs or fair values of which are affected by the default of an obligor other than the counterparty to the derivative instrument itself. Institutions shall calculate default risk requirements separately for each of the following types of instruments: non-securitisations, securitisations that are not included in the ACTP, and securitisations that are included in the ACTP. The final own funds requirements for the default risk to be applied by institutions shall be the sum of those three components.

Subsection 1

Own funds requirements for the default risk for non-securitisations

Article 325w

Gross jump-to-default amounts

1. Institutions shall calculate the gross JTD amounts for each long exposure to debt instruments as follows:

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$$JTD_{long} = \max \{LGD\ V_{notional} + P\&L_{long} + Adjustment_{long};\ 0\}$$

where:

JTD_{long} = the gross JTD amount for the long exposure;

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$V_{notional}$ = the notional amount of the instrument from which the exposure arises;

$P\&L_{long}$ = a term which adjusts for gains or losses already accounted for by the institution due to changes in the fair value of the instrument creating the long exposure; gains shall enter into the formula with a positive sign and losses shall enter into the formula with a negative sign; and

$Adjustment_{long}$ = where the instrument from which the exposure arises is a derivative instrument, the amount by which, due to the structure of the derivative instrument, the institution's loss in the event of default would be increased or reduced relative to the full loss on the underlying instrument; increases shall enter into the formula with a positive sign and decreases shall enter into the formula with a negative sign.

▼M8

2. Institutions shall calculate the gross JTD amounts for each short exposure to debt instruments as follows:

$$JTD_{short} = \min \{LGD\ V_{notional} + P\&L_{short} + Adjustment_{short};\ 0\}$$

where:

JTD_{short} = the gross JTD amount for the short exposure;

▼C7

$V_{notional}$ = the notional amount of the instrument from which the exposure arises that shall enter into the formula with a negative sign;

$P\&L_{short}$ = a term which adjusts for gains or losses already accounted for by the institution due to changes in the fair value of the instrument creating the short exposure; gains shall enter into the formula with a positive sign and losses shall enter into the formula with a negative sign; and

$Adjustment_{short}$ = where the instrument from which the exposure arises is a derivative instrument, the amount by which, due to the structure of the derivative instrument, the institution's gain in the event of default would be increased or reduced relative to the full loss on the underlying instrument; decreases shall enter into the formula with a positive sign and increases shall enter into the formula with a negative sign.

▼M8

3. For the purposes of the calculation set out in paragraphs 1 and 2, the LGD for debt instruments to be applied by institutions shall be the following:

(a) exposures to non-senior debt instruments shall be assigned an LGD of 100 %;

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(b) exposures to senior debt instruments shall be assigned an LGD of 75 %;

(c) exposures to covered bonds, as referred to in Article 129, shall be assigned an LGD of 25 %.

▼C7

4. For the purposes of the calculations set out in paragraphs 1 and 2, notional amounts shall be determined as follows:

(a) in the case of a bond, the notional amount is the face value of the bond;

(b) in the case of a sold put option on a bond, the notional amount is the notional amount of the option; in the case of a bought call option on a bond, the notional amount is 0.

5. For exposures to equity instruments, institutions shall calculate the gross JTD amounts as follows:

$$JTD_{long} = \max \{LGD \cdot V_{notional} + P\&L_{long} + Adjustment_{long}; 0\}$$

$$JTD_{short} = \min \{LGD \cdot V_{notional} + P\&L_{short} + Adjustment_{short}; 0\}$$

where:

JTD_{long} = the gross JTD amount for the long exposure;

$V_{notional}$ = the notional amount of the instrument from which the exposure arises; the notional amount is the fair value of the equity for cash equity instruments; for the JTD_{short} formula, the notional amount of the instrument shall enter into the formula with a negative sign;

$P\&L_{long}$ = a term which adjusts for gains or losses already accounted for by the institution due to changes in the fair value of the instrument creating the long exposure; gains shall enter into the formula with a positive sign and losses shall enter into the formula with a negative sign;

$Adjustment_{long}$ = the amount by which, due to the structure of the derivative instrument, the institution's loss in the event of default would be increased or reduced relative to the full loss on the underlying instrument; increases shall enter into the formula with a positive sign and decreases shall enter into the formula with a negative sign;

JTD_{short} = the gross JTD amount for the short exposure;

$P\&L_{short}$ = a term which adjusts for gains or losses already accounted for by the institution due to changes in the fair value of the instrument creating the short exposure; gains shall enter into the formula with a positive sign and losses shall enter into the formula with a negative sign; and

▼C7

$Adjustment_{short}$ = the amount by which, due to the structure of the derivative instrument, the institution's gain in the event of default would be increased or reduced relative to the full loss on the underlying instrument; decreases shall enter into the formula with a positive sign and increases shall enter into the formula with a negative sign.

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6. Institutions shall assign an LGD of 100 % to equity instruments for the purposes of the calculation set out in paragraph 5.

7. In the case of exposures to default risk arising from derivative instruments whose pay-offs in the event of default of the obligor are not related to the notional amount of a specific instrument issued by that obligor or to the LGD of the obligor or an instrument issued by that obligor, institutions shall use alternative methodologies to estimate the gross JTD amounts.

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

▼C7

(a) how institutions are to determine the components $P\&L_{long}$, $P\&L_{short}$, $Adjustment_{long}$ and $Adjustment_{short}$ when calculating the JTD amounts for different types of instruments in accordance with this Article;

▼M8

(b) which alternative methodologies institutions are to use for the purposes of the estimation of gross JTD amounts referred to in paragraph 7.

(c) the notional amounts of instruments other than the ones referred to in points (a) and (b) of paragraph 4.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2021.

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

Article 325x

Net jump-to-default amounts

1. Institutions shall calculate net JTD amounts by offsetting the gross JTD amounts of short exposures and long exposures. Offsetting shall only be possible between exposures to the same obligor where the short exposures have the same seniority as, or lower seniority than, the long exposures.

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2. Offsetting shall be either full or partial, depending on the maturities of the offsetting exposures:

(a) offsetting shall be full where all offsetting exposures have maturities of one year or more;

(b) offsetting shall be partial where at least one of the offsetting exposures has a maturity of less than one year, in which case the size of the JTD amount of each exposure with a maturity of less than one year shall be multiplied by the ratio of the exposure's maturity relative to one year.

3. Where no offsetting is possible gross JTD amounts shall equal net JTD amounts in the case of exposures with maturities of one year or more. Gross JTD amounts with maturities of less than one year shall be multiplied by the ratio of the exposure's maturity relative to one year, with a floor of three months, to calculate net JTD amounts.

4. For the purposes of paragraphs 2 and 3, the maturities of the derivative contracts shall be considered, rather than those of their underlyings. Cash equity exposures shall be assigned a maturity of either one year or three months, at the institution's discretion.

Article 325y

Calculation of the own funds requirements for the default risk

1. Net JTD amounts, irrespective of the type of counterparty, shall be multiplied by the default risk weights that correspond to their credit quality, as specified in Table 2:

Table 2

Credit quality category	Default risk weight
Credit quality step 1	0,5 %
Credit quality step 2	3 %
Credit quality step 3	6 %
Credit quality step 4	15 %
Credit quality step 5	30 %
Credit quality step 6	50 %
Unrated	15 %
Defaulted	100 %

2. Exposures which would receive a 0 % risk-weight under the Standardised Approach for credit risk in accordance with Chapter 2 of Title II shall receive a 0 % default risk weight for the own funds requirements for the default risk.

3. The weighted net JTD shall be allocated to the following buckets: corporates, sovereigns, and local governments/municipalities.

▼M8

4. Weighted net JTD amounts shall be aggregated within each bucket, in accordance with the following formula:

$$DRC_b = \max \{(\Sigma_{i \in long} RW_i \cdot \text{net JTD}_i) - WtS \cdot (\Sigma_{i \in short} RW_i \cdot |\text{net JTD}_i|); 0\}$$

where:

DRC_b = the own funds requirement for the default risk for bucket b;

i = the index that denotes an instrument belonging to bucket b;

RW_i = the risk weight; and

WtS = a ratio recognising a benefit for hedging relationships within a bucket, which shall be calculated as follows:

$$WtS = \frac{\sum \text{netJTD}_{long}}{\sum \text{netJTD}_{long} + \sum |\text{netJTD}_{short}|}$$

For the purposes of calculating the DRC_b and the WtS, the long positions and short positions shall be aggregated for all positions within a bucket, regardless of the credit quality step to which those positions are allocated, to produce the bucket-specific own funds requirements for the default risk.

5. The final own funds requirement for the default risk for non-securitisations shall be calculated as the simple sum of the bucket-level own funds requirements.

Subsection 2

Own funds requirements for the default risk for securitisations not included in the ACTP

Article 325z

Jump-to-default amounts

1. Gross jump-to-default amounts for securitisation exposures shall be their market value or, if their market value is not available, their fair value determined in accordance with the applicable accounting framework.

2. Net jump-to-default amounts shall be determined by offsetting long gross jump-to-default amounts and short gross jump-to-default amounts. Offsetting shall only be possible between securitisation exposures with the same underlying asset pool and belonging to the same tranche. No offsetting shall be permitted between securitisation exposures with different underlying asset pools, even where the attachment and detachment points are the same.

3. Where, by decomposing or combining existing securitisation exposures, other existing securitisation exposures can be perfectly replicated, except for the maturity dimension, the exposures resulting from that decomposition or combination may be used instead of the existing securitisation exposures for the purposes of offsetting.

▼M8

4. Where, by decomposing or combining existing exposures in underlying names, the entire tranche structure of an existing securitisation exposure can be perfectly replicated, the exposures resulting from that decomposition or combination may be used instead of the existing securitisation exposures for the purposes of offsetting. Where underlying names are used in that manner, they shall be removed from the non-securitisation default risk treatment.

5. Article 325x shall apply to both existing securitisation exposures and to securitisation exposures used in accordance with paragraph 3 or 4 of this Article. The relevant maturities shall be those of the securitisation tranches.

Article 325aa

Calculation of the own funds requirement for the default risk for securitisations

1. Net JTD amounts of securitisation exposures shall be multiplied by 8 % of the risk weight that applies to the relevant securitisation exposure, including STS securitisations, in the non-trading book in accordance with the hierarchy of approaches set out in Section 3 of Chapter 5 of Title II and irrespective of the type of counterparty.

2. A maturity of one year shall be applied to all tranches, where risk weights are calculated in accordance with the SEC-IRBA and SEC-ERBA.

3. The risk-weighted JTD amounts for individual cash securitisation exposures shall be capped at the fair value of the position.

4. Risk-weighted net JTD amounts shall be assigned to the following buckets:

(a) one common bucket for all corporates, regardless of the region;

(b) 44 different buckets corresponding to one bucket per region for each of the 11 asset classes defined in the second subparagraph.

For the purposes of the first subparagraph, the 11 asset classes are ABCP, auto loans/leases, residential mortgage-backed securities (RMBS), credit cards, commercial mortgage-backed securities (CMBS), collateralised loan obligations, collateralised debt obligations squared (CDO-squared), small and medium-sized enterprises (SMEs), student loans, other retail, other wholesale. The four regions are Asia, Europe, North America, and rest of the world.

5. In order to assign a securitisation exposure to a bucket, institutions shall rely on a classification commonly used in the market. Institutions shall assign each securitisation exposure to only one of the buckets referred to in paragraph 4. Any securitisation exposure that an institution cannot assign to a bucket for an asset class or region shall be assigned to the asset class ‘other retail’ or ‘other wholesale’ or to the region ‘rest of the world’, respectively.

▼M8

6. Weighted net JTD amounts shall be aggregated within each bucket in the same manner as for default risk of non-securitisation exposures, using the formula in Article 325y(4), resulting in the own funds requirement for the default risk for each bucket.

7. The final own funds requirement for the default risk for securitisations not included in the ACTP shall be calculated as the simple sum of the bucket-level own funds requirements.

Subsection 3

Own funds requirements for the default risk for securitisations included in the ACTP

Article 325ab

Scope

1. For the ACTP, the own funds requirements shall include the default risk for securitisation exposures and for non-securitisation hedges. Those hedges shall be removed from the default risk calculations for non-securitisation. There shall be no diversification benefit between the own funds requirements for the default risk for non-securitisations, the own funds requirements for the default risk for securitisations not included in the ACTP and own funds requirements for the default risk for securitisations included in the ACTP.

2. For traded non-securitisation credit and equity derivatives, JTD amounts by individual constituents shall be determined by applying a look-through approach.

Article 325ac

Jump-to-default amounts for the ACTP

1. For the purposes of this Article, the following definitions apply:

(a) ‘decomposition with a valuation model’ means that a single name constituent of a securitisation is valued as the difference between the unconditional value of the securitisation and the conditional value of the securitisation assuming that single name defaults with an LGD of 100 %;

(b) ‘replication’ means that the combination of individual securitisation index tranches are combined to replicate another tranche of the same index series, or to replicate an untranched position in the index series;

(c) ‘decomposition’ means replicating an index by a securitisation of which the underlying exposures in the pool are identical to the single name exposures that compose the index.

2. The gross JTD amounts for securitisation exposures and non-securitisation exposures in the ACTP shall be their market value or, if their market value is not available, their fair value determined in accordance with the applicable accounting framework.

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3. Nth-to-default products shall be treated as tranched products with the following attachment and detachment points:

(a) attachment point = (N – 1) / Total Names;

(b) detachment point = N / Total Names;

where 'Total Names' shall be the total number of names in the underlying basket or pool.

4. Net JTD amounts shall be determined by offsetting long gross JTD amounts and short gross JTD amounts. Offsetting shall only be possible between exposures that are otherwise identical except for maturity. Offsetting shall only be possible as follows:

(a) for indices, index tranches and bespoke tranches, offsetting shall be possible across maturities within the same index family, series and tranche, subject to the provisions on exposures of less than one year laid down in Article 325x; long gross JTD amounts and short gross JTD amounts that perfectly replicate each other may be offset through decomposition into single name equivalent exposures using a valuation model; in such cases, the sum of the gross JTD amounts of the single name equivalent exposures obtained through decomposition shall be equal to the gross JTD amount of the undecomposed exposure;

(b) offsetting through decomposition as set out is point (a) shall not be allowed for resecuritisations or derivatives on securitisation;

(c) for indices and index tranches, offsetting shall be possible across maturities within the same index family, series and tranche by replication or by decomposition; where the long exposures and short exposures are otherwise equivalent, apart from one residual component, offsetting shall be allowed and the net JTD amount shall reflect the residual exposure;

(d) different tranches of the same index series, different series of the same index and different index families may not be used to offset each other.

Article 325ad

Calculation of the own funds requirements for the default risk for the ACTP

1. Net JTD amounts shall be multiplied by:

(a) for tranched products, the default risk weights corresponding to their credit quality as specified in Article 325y(1) and (2);

(b) for non-tranched products, the default risk weights referred to in Article 325aa(1).

2. Risk-weighted net JTD amounts shall be assigned to buckets that correspond to an index.

▼M8

3. Weighted net JTD amounts shall be aggregated within each bucket in accordance with the following formula:

$DRC_b = \max \{(\Sigma_{i \in long} RW_i \cdot \text{net JTD}_i) - WtS_{ACTP} \cdot (\Sigma_{i \in short} RW_i \cdot |\text{net JTD}_i|); 0\}$

where:

DRC_b = the own funds requirement for the default risk for bucket b;

i = an instrument belonging to bucket b; and

WtS_{ACTP} = the ratio recognising a benefit for hedging relationships within a bucket, which shall be calculated in accordance with the WtS formula set out in Article 325y(4), but using long positions and short positions across the entire ACTP and not just the positions in the particular bucket.

4. Institutions shall calculate the own funds requirements for the default risk for the ACTP by using the following formula:

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$$DRC_{ACTP} = \max\left\{\sum_b (\max\{DRC_b, 0\} + 0{,}5 \cdot \min\{DRC_b, 0\}); 0\right\}$$

▼M8

where:

DRC_{ACTP} = the own funds requirement for the default risk for the ACTP; and

DRC_b = the own funds requirement for the default risk for bucket b.

Section 6

Risk weights and correlations

Subsection 1

Delta risk weights and correlations

Article 325ae

Risk weights for general interest rate risk

▼M12

1. For currencies not included in the most liquid currency sub-category as referred to in point (b) Article 325bd(7), the risk weights of the sensitivities to the risk-free rate risk factors shall be the following:

Table 3

Bucket	Maturity	Risk Weight
1	0,25 years	1,7 %
2	0,5 years	1,7 %
3	1 year	1,6 %
4	2 years	1,3 %
5	3 years	1,2 %
6	5 years	1,1 %

▼M12

Bucket	Maturity	Risk Weight
7	10 years	1,1 %
8	15 years	1,1 %
9	20 years	1,1 %
10	30 years	1,1 %

2. Institutions shall apply a risk weight of 1,6 % to all sensitivities of inflation and to cross currency basis risk factors.

▼M8

3. For the currencies included in the most liquid currency sub-category as referred to in point (b) of 325bd(7) and the domestic currency of the institution, the risk weights of the risk-free rate risk factors shall be the risk weights referred to in Table 3 divided by $\sqrt{2}$.

Article 325af

Intra bucket correlations for general interest rate risk

1. Between two weighted sensitivities of general interest rate risk factors WS_k and WS_l within the same bucket, and with the same assigned maturity but corresponding to different curves, correlation ρ_{kl} shall be set at 99,90 %.

2. Between two weighted sensitivities of general interest rate risk factors WS_k and WS_l within the same bucket, corresponding to the same curve, but having different maturities, correlation shall be set in accordance with the following formula:

$$\max\left[e^{\left(-\theta \cdot \frac{|T_k - T_l|}{\min\{T_k;\, T_l\}}\right)};\ 40\ \%\right]$$

where:

T_k (respectivelyT_l) = the maturity that relates to the risk free rate;

θ = 3 %

3. Between two weighted sensitivities of general interest rate risk factors WS_k and WS_l within the same bucket, corresponding to different curves and having different maturities, the correlation ρ_{kl} shall be equal to the correlation parameter specified in paragraph 2, multiplied by 99,90 %.

4. Between any given weighted sensitivity of general interest rate risk factors WS_k and any given weighted sensitivity of inflation risk factors WS_l, the correlation shall be set at 40 %.

5. Between any given weighted sensitivity of cross-currency basis risk factors WS_k and any given weighted sensitivity of general interest rate risk factors WS_l, including another cross-currency basis risk factor, the correlation shall be set at 0 %.

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Article 325ag

Correlations across buckets for general interest rate risk

1. The parameter γ_{bc} = 50 % shall be used to aggregate risk factors belonging to different buckets.

2. The parameter γ_{bc} = 80 % shall be used to aggregate an interest rate risk factor based on a currency as referred to in Article 325av(3) and an interest rate risk factor based on the euro.

Article 325ah

Risk weights for credit spread risk for non-securitisations

1. Risk weights for the sensitivities to credit spread risk factors for non-securitisations shall be the same for all maturities (0,5 years, 1 year, 3 years, 5 years, 10 years) within each bucket in Table 4:

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Table 4

Bucket number	Credit quality	Sector	Risk weight
1	All	Central government, including central banks, of Member States	0,5 %
2	Credit quality step 1 to 3	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) or Article 118	0,5 %
3		Regional or local authority and public sector entities	1,0 %
4		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	5,0 %
5		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	3,0 %
6		Consumer goods and services, transportation and storage, administrative and support service activities	3,0 %
7		Technology, telecommunications	2,0 %
8		Health care, utilities, professional and technical activities	1,5 %
9		Covered bonds issued by credit institutions established in Member States	1,0 %
10	Credit quality step 1	Covered bonds issued by credit institutions in third countries	1,5 %
	Credit quality steps 2 to 3		2,5 %

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Bucket number	Credit quality	Sector	Risk weight
11	Credit quality step 4 to 6 and unrated	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) or Article 118	2 %
12		Regional or local authority and public sector entities	4,0 %
13		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	12,0 %
14		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	7,0 %
15		Consumer goods and services, transportation and storage, administrative and support service activities	8,5 %
16		Technology, telecommunications	5,5 %
17		Health care, utilities, professional and technical activities	5,0 %
18	Other sector		12,0 %
19	Listed credit indices with a majority of its individual constituents being investment grade		1,5 %
20	Listed credit indices with a majority of its individual constituents being non-investment grade or unrated		5 %

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2. To assign a risk exposure to a sector, institutions shall rely on a classification that is commonly used in the market for grouping issuers by sector. Institutions shall assign each issuer to only one of the sector buckets in Table 4. Risk exposures from any issuer that an institution cannot assign to a sector in such a manner shall be assigned to bucket 18 in Table 4.

Article 325ai

Intra-bucket correlations for credit spread risk for non-securitisations

1. The correlation parameter ρ_{kl} between two sensitivities WS_k and WS_l within the same bucket shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(name)} \cdot \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(basis)}$$

where:

$\rho_{kl}^{(name)}$ shall be equal to 1 where the two names of sensitivities k and l are identical, otherwise it shall be equal to 35 %;

$\rho_{kl}^{(tenor)}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 65 %; and

$\rho_{kl}^{(basis)}$ shall be equal to 1 where the two sensitivities are related to the same curves, otherwise it shall be equal to 99,90 %.

2. The correlation parameters referred to in paragraph 1 of this Article shall not apply to bucket 18 in Table 4 of Article 325ah(1). The capital requirement for the delta risk aggregation formula within bucket 18 shall be equal to the sum of the absolute values of the net weighted sensitivities allocated to that bucket:

$$K_{b(\text{bucket 18})} = \sum_k |WS_k|$$

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Article 325aj

Correlations across buckets for credit spread risk for non-securitisations

The correlation parameter γ_{bc} that applies to the aggregation of sensitivities between different buckets shall be set as follows:

$$\gamma_{bc} = \gamma_{bc}^{(rating)} \cdot \gamma_{bc}^{(sector)}$$

where:

$\gamma_{bc}^{(rating)}$ shall be equal to 1 where the two buckets have the same credit quality category (either credit quality step 1 to 3 or credit quality step 4 to 6), otherwise it shall be equal to 50 %; for the purposes of that calculation, bucket 1 shall be considered as belonging to the same credit quality category as buckets that have credit quality step 1 to 3; and

$\gamma_{bc}^{(sector)}$ shall be equal to 1 where the two buckets belong to the same sector, and otherwise shall be equal to the corresponding percentage set out in Table 5:

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Table 5

Bucket	1, 2 and 11	3 and 12	4 and 13	5 and 14	6 and 15	7 and 16	8 and 17	9 and 10	18	19	20
1, 2 and 11		75 %	10 %	20 %	25 %	20 %	15 %	10 %	0 %	45 %	45 %
3 and 12			5 %	15 %	20 %	15 %	10 %	10 %	0 %	45 %	45 %
4 and 13				5 %	15 %	20 %	5 %	20 %	0 %	45 %	45 %
5 and 14					20 %	25 %	5 %	5 %	0 %	45 %	45 %
6 and 15						25 %	5 %	15 %	0 %	45 %	45 %
7 and 16							5 %	20 %	0 %	45 %	45 %
8 and 17								5 %	0 %	45 %	45 %
9 and 10									0 %	45 %	45 %
18										0 %	0 %
19											75 %
20											

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Article 325ak

Risk weights for credit spread risk for securitisations included in the ACTP

Risk weights for the sensitivities to credit spread risk factors for securitisations included in the ACTP risk factors shall be the same for all maturities (0,5 years, 1 year, 3 years, 5 years, 10 years) within each bucket and shall be specified for each bucket in Table 6 pursuant to the delegated act referred to in Article 461a:

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Table 6

Bucket number	Credit quality	Sector	Risk weight
1	All	Central government, including central banks, of Member States	4,0 %
2	Credit quality step 1 to 3	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) or Article 118	4,0 %
3		Regional or local authority and public sector entities	4,0 %
4		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	8,0 %
5		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	5,0 %
6		Consumer goods and services, transportation and storage, administrative and support service activities	4,0 %
7		Technology, telecommunications	3,0 %
8		Health care, utilities, professional and technical activities	2,0 %
9		Covered bonds issued by credit institutions established in Member States	3,0 %
10		Covered bonds issued by credit institutions in third countries	6,0 %
11	Credit quality step 4 to 6 and unrated	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) or Article 118	13,0 %
12		Regional or local authority and public sector entities	13,0 %
13		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	16,0 %
14		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	10,0 %
15		Consumer goods and services, transportation and storage, administrative and support service activities	12,0 %
16		Technology, telecommunications	12,0 %
17		Health care, utilities, professional and technical activities	12,0 %
18	Other sector		13,0 %

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Article 325al

Correlations for credit spread risk for securitisations included in the ACTP

1. The delta risk correlation ρ_{kl} shall be derived in accordance with Article 325ai, except that, for the purposes of this paragraph, $\rho_{kl}^{(\text{basis})}$ shall be equal to 1 where the two sensitivities are related to the same curves, otherwise it shall be equal to 99,00 %.

2. The correlation γ_{bc} shall be derived in accordance with Article 325aj.

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Article 325am

Risk weights for credit spread risk for securitisations not included in the ACTP

1. Risk weights for the sensitivities to credit spread risk factors for securitisation not included in the ACTP shall be the same for all maturities (0,5 years, 1 year, 3 years, 5 years, 10 years) within each bucket in Table 7 and shall be specified for each bucket in Table 7 pursuant to the delegated act referred to in Article 461a:

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Table 7

Bucket number	Credit quality	Sector	Risk weight
1	Senior and Credit quality step 1 to 3	RMBS — Prime	0,9 %
2		RMBS — Mid-Prime	1,5 %
3		RMBS — Sub-Prime	2,0 %
4		CMBS	2,0 %
5		Asset backed securities (ABS) — Student loans	0,8 %
6		ABS — Credit cards	1,2 %
7		ABS — Auto	1,2 %
8		Collateralised loan obligations (CLO) non-ACTP	1,4 %
9	Non-senior and credit quality step 1 to 3	RMBS — Prime	1,125 %
10		RMBS — Mid-Prime	1,875 %
11		RMBS — Sub-Prime	2,5 %
12		CMBS	2,5 %
13		ABS — Student loans	1 %
14		ABS — Credit cards	1,5 %
15		ABS — Auto	1,5 %
16		CLO non-ACTP	1,75 %
17	Credit quality step 4 to 6 and unrated	RMBS — Prime	1,575 %
18		RMBS — Mid-Prime	2,625 %
19		RMBS — Sub-Prime	3,5 %
20		CMBS	3,5 %
21		ABS — Student loans	1,4 %
22		ABS — Credit cards	2,1 %
23		ABS — Auto	2,1 %
24		CLO non-ACTP	2,45 %
25	Other sector		3,5 %

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2. To assign a risk exposure to a sector, institutions shall rely on a classification that is commonly used in the market for grouping issuers by sector. Institutions shall assign each tranche to one of the sector buckets in Table 7. Risk exposures from any tranche that an institution cannot assign to a sector in such a manner shall be assigned to bucket 25.

Article 325an

Intra-bucket correlations for credit spread risk for securitisations not included in the ACTP

1. Between two sensitivities WS_k and WS_l within the same bucket, the correlation parameter ρ_{kl} shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(\text{tranche})} \cdot \rho_{kl}^{(\text{tenor})} \cdot \rho_{kl}^{(\text{basis})}$$

where:

►C7 $\rho_{kl}^{(\text{tranche})}$ shall be equal to 1 where ◄ the two names of sensitivities k and l are within the same bucket and are related to the same securitisation tranche (more than 80 % overlap in notional terms), otherwise it shall be equal to 40 %;

$\rho_{kl}^{(\text{tenor})}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 80 %; and

$\rho_{kl}^{(\text{basis})}$ shall be equal to 1 where the two sensitivities are related to the same curves, otherwise it shall be equal to 99,90 %.

2. The correlation parameters referred to in paragraph 1 shall not apply to bucket 25 in Table 7 of Article 325am(1). The own funds requirement for the delta risk aggregation formula within bucket 25 shall be equal to the sum of the absolute values of the net weighted sensitivities allocated to that bucket:

$$K_{b(\text{bucket 25})} = \sum_k |WS_k|$$

Article 325ao

Correlations across buckets for credit spread risk for securitisations not included in the ACTP

1. The correlation parameter γ_{bc} shall apply to the aggregation of sensitivities between different buckets and shall be set at 0 %.

2. The own funds requirement for bucket 25 shall be added to the overall risk class level capital, with no diversification or hedging effects recognised with any other bucket.

Article 325ap

Risk weights for equity risk

1. Risk weights for the sensitivities to equity and equity repo rate risk factors shall be specified for each bucket in Table 8 pursuant to the delegated act referred to in Article 461a:

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Table 8

Bucket number	Market capitalisation	Economy	Sector	Risk weight for equity spot price	Risk weight for equity repo rate
1	Large	Emerging market economy	Consumer goods and services, transportation and storage, administrative and support service activities, healthcare, utilities	55 %	0,55 %
2			Telecommunications, industrials	60 %	0,60 %
3			Basic materials, energy, agriculture, manufacturing, mining and quarrying	45 %	0,45 %
4			Financials including government-backed financials, real estate activities, technology	55 %	0,55 %
5		Advanced economy	Consumer goods and services, transportation and storage, administrative and support service activities, healthcare, utilities	30 %	0,30 %
6			Telecommunications, industrials	35 %	0,35 %
7			Basic materials, energy, agriculture, manufacturing, mining and quarrying	40 %	0,40 %
8			Financials including government-backed financials, real estate activities, technology	50 %	0,50 %
9	Small	Emerging market economy	All sectors described under bucket numbers 1, 2, 3 and 4	70 %	0,70 %
10		Advanced economy	All sectors described under bucket numbers 5, 6, 7 and 8	50 %	0,50 %
11	Other sector			70 %	0,70 %
12	Large market cap, advanced economy indices			15 %	0,15 %
13	Other indices			25 %	0,25 %

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2. For the purposes of this Article, what constitutes a small and a large market capitalisation shall be specified in the regulatory technical standards referred to in Article 325bd(7).

3. For the purposes of this Article, EBA shall develop draft regulatory technical standards to specify what constitutes an emerging market and to specify what constitutes an advanced economy.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2021.

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

4. When assigning a risk exposure to a sector, institutions shall rely on a classification that is commonly used in the market for grouping issuers by sector. Institutions shall assign each issuer to one of the sector buckets in Table 8 and shall assign all issuers from the same

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industry to the same sector. Risk exposures from any issuer that an institution cannot assign to a sector in such a manner shall be assigned to bucket 11 in Table 8. Multinational or multi-sector equity issuers shall be assigned to a particular bucket on the basis of the most material region and sector in which the equity issuer operates.

Article 325aq

Intra-bucket correlations for equity risk

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1. The delta risk correlation parameter ρ_{kl} between two sensitivities WS_k and WS_l within the same bucket shall be set at 99,90 % where one is a sensitivity to an equity spot price and the other is a sensitivity to an equity repo rate and where both sensitivities are related to the same equity issuer name.

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2. In other cases than the cases referred to in paragraph 1, the correlation parameter ρkl between two sensitivities WS_k and WS_l to equity spot price within the same bucket shall be set as follows:

(a) 15 % between two sensitivities within the same bucket that fall under the category large market capitalisation, emerging market economy (bucket number 1, 2, 3 or 4);

(b) 25 % between two sensitivities within the same bucket that fall under the category large market capitalisation, advanced economy (bucket number 5, 6, 7 or 8);

(c) 7,5 % between two sensitivities within the same bucket that fall under the category small market capitalisation, emerging market economy (bucket number 9);

(d) 12,5 % between two sensitivities within the same bucket that fall under the category small market capitalisation, advanced economy (bucket number 10);

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(e) 80 % between two sensitivities within the same bucket that fall under either index bucket (bucket number 12 or 13).

3. The correlation parameter ρ_{kl} between two sensitivities WS_k and WS_l to equity repo rates within the same bucket shall be set in accordance with points (a) to (d) of paragraph 2.

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4. Between two sensitivities WS_k and WS_l within the same bucket where one is a sensitivity to an equity spot price and the other a sensitivity to an equity repo rate and both sensitivities relate to a different equity issuer name, the correlation parameter ρkl shall be set to the correlation parameters specified in paragraph 2, multiplied by 99,90 %.

5. The correlation parameters specified in paragraphs 1 to 4 shall not apply to bucket 11. The capital requirement for the delta risk aggregation formula within bucket 11 shall be equal to the sum of the absolute values of the net weighted sensitivities allocated to that bucket:

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$$K_{b(\text{bucket 11})} = \sum_k |WS_k|$$

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Article 325ar

Correlations across buckets for equity risk

The correlation parameter γ_{bc} shall apply to the aggregation of sensitivities between different buckets.

It shall be set in relation to the buckets of Table 8 in Article 325ap as follows:

(a) 15 % where the two buckets fall within bucket numbers 1 to 10;

(b) 0 % where either of the two buckets fall within bucket number 11;

(c) 75 % where the two buckets fall within bucket number 12 and 13;

(d) 45 % otherwise.

Article 325as

Risk weights for commodity risk

Risk weights for sensitivities to commodity risk factors shall be the following:

Table 9

Bucket number	Bucket name	Risk weight
1	Energy — solid combustibles	30 %
2	Energy — liquid combustibles	35 %
3	Energy — electricity and carbon trading	60 %
4	Freight	80 %
5	Metals — non-precious	40 %
6	Gaseous combustibles	45 %
7	Precious metals (including gold)	20 %
8	Grains and oilseed	35 %
9	Livestock and dairy	25 %
10	Softs and other agricultural commodities	35 %
11	Other commodities	50 %

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Article 325at

Intra-bucket correlations for commodity risk

1. For the purposes of this Article, any two commodities shall be considered distinct commodities where there exist in the market two contracts that are differentiated only by the underlying commodity to be delivered against each contract.

2. The correlation parameter ρ_{kl} between two sensitivities WS_k and WS_l within the same bucket shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(commodity)} \cdot \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(basis)}$$

where:

$\rho_{kl}^{(commodity)}$ shall be equal to 1 where the two commodities of sensitivities k and l are identical, otherwise it shall be equal to the intra-bucket correlations in Table 10;

$\rho_{kl}^{(tenor)}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 99 %; and

$\rho_{kl}^{(basis)}$ shall be equal to 1 where the two sensitivities are identical in the delivery location of a commodity, otherwise it shall be equal to 99,90 %.

3. The intra-bucket correlations $\rho_{kl}^{(commodity)}$ are:

Table 10

Bucket number	Bucket name	Correlation ρ_{kl} (commodity)
1	Energy - solid combustibles	55 %
2	Energy - liquid combustibles	95 %
3	Energy - electricity and carbon trading	40 %
4	Freight	80 %
5	Metals – non-precious	60 %
6	Gaseous combustibles	65 %
7	Precious metals (including gold)	55 %
8	Grains and oilseed	45 %
9	Livestock and dairy	15 %
10	Softs and other agricultural commodities	40 %
11	Other commodity	15 %

4. Notwithstanding paragraph 1, the following provisions apply:

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(a) two risk factors that are allocated to bucket 3 in Table 10 and that concern electricity which is generated in different regions or is delivered at different periods under the contractual agreement shall be considered distinct commodity risk factors;

(b) two risk factors that are allocated to bucket 4 in Table 10 and that concern freight where the freight route or week of delivery differ shall be considered distinct commodity risk factors.

Article 325au

Correlations across buckets for commodity risk

The correlation parameter γ_{bc} applying to the aggregation of sensitivities between different buckets shall be set at:

(a) 20 % where the two buckets fall within bucket numbers 1 to 10;

(b) 0 % where either of the two buckets is bucket number 11.

Article 325av

Risk weights for foreign exchange risk

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1. A risk weight of 15 % shall be applied to all sensitivities of foreign exchange risk factors.

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2. The risk weight of the foreign exchange risk factors concerning currency pairs which are composed of the euro and the currency of a Member State participating in the second stage of the economic and monetary union (ERM II) shall be one of the following:

(a) the risk weight referred to in paragraph 1, divided by 3;

(b) the maximum fluctuation within the fluctuation band formally agreed by the Member State and the European Central Bank, if that fluctuation band is narrower than the fluctuation band defined under ERM II.

3. Notwithstanding paragraph 2, the risk weight of the foreign exchange risk factors concerning currencies referred to in paragraph 2 which participate in the ERM II with a formally agreed fluctuation band narrower than the standard band of plus or minus 15 % shall equal the maximum percentage fluctuation within that narrower band.

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4. The risk weight of the foreign exchange risk factors included in the most liquid currency pairs sub-category as referred to in point (c) of 325bd(7) shall be the risk weight referred to in paragraph 1 of this Article divided by √2.

5. Where the daily exchange-rate data for the preceding three years show that a currency pair composed of euro and a non-euro currency of a Member State is constant and that the institution is always able to face a zero bid/ask spread on the respective trades related to that currency pair, the institution may apply the risk weight referred to in paragraph 1 divided by 2, provided that it has the express permission of its competent authority to do so.

Article 325aw

Correlations for foreign exchange risk

A uniform correlation parameter γ_{bc} equal to 60 % shall apply to the aggregation of sensitivities to foreign exchange risk factors.

Subsection 2

Vega and curvature risk weights and correlations

Article 325ax

Vega and curvature risk weights

1. Vega risk factors shall use the delta buckets referred to in Subsection 1.

2. The risk weight for a given vega risk factor k shall be determined as a share of the current value of that risk factor k which represents the implied volatility of an underlying, as described in Section 3.

3. The share referred to in paragraph 2 shall be made dependent on the presumed liquidity of each type of risk factor in accordance with the following formula:

$$RW_k = (\text{Value of risk factor k}) \cdot \min\left\{RW_\sigma \cdot \frac{\sqrt{LH_{\text{risk class}}}}{\sqrt{10}};\ 100\ \%\right\}$$

where:

RW_k = the risk weight for a given vega risk factor k;

RW_σ shall be set at 55 %; and

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$LH_{risk\ class}$ is the regulatory liquidity horizon to be prescribed in the determination of each vega risk factor k. $LH_{risk\ class}$ is determined in accordance with the following table:

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Table 11

Risk class	$LH_{risk\ class}$	Risk weights
GIRR	60	100 %
CSR non-securitisations	120	100 %
CSR securitisations (ACTP)	120	100 %
CSR securitisations (non-ACTP)	120	100 %
Equity (large cap and indices)	20	77,78 %
Equity (small cap and other sector)	60	100 %
Commodity	120	100 %
Foreign exchange	40	100 %

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4. Buckets used in the context of delta risk in Subsection 1 shall be used in the curvature risk context unless specified otherwise in this Chapter.

5. For foreign exchange and equity curvature risk factors, the curvature risk weights shall be relative shifts equal to the delta risk weights referred to in Subsection 1.

6. For general interest rate, credit spread and commodity curvature risk factors, the curvature risk weight shall be the parallel shift of all the vertices for each curve on the basis of the highest prescribed delta risk weight referred to in Subsection 1 for the relevant risk class.

Article 325ay

Vega and curvature risk correlations

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1. Between vega risk sensitivities within the same bucket of the general interest rate risk (GIRR) class, the correlation parameter ρ_{kl} shall be set as follows:.

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$$\rho_{kl} = \min\{\rho_{kl}^{(\text{option maturity})} \cdot \rho_{kl}^{(\text{underlying maturity})}; 1\}$$

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where:

$\rho_{kl}^{(\text{option maturity})}$ shall be equal to $e^{-\alpha \cdot \frac{|T_k - T_l|}{\min\{T_k; T_l\}}}$ where α shall be set at 1 %, T_k and T_l shall be equal to the maturities of the options for which the vega sensitivities are derived, expressed as a number of years; and

$\rho_{kl}^{(\text{underlying maturity})}$ is equal to $e^{-\alpha \cdot \frac{|T_k^U - T_l^U|}{\min\{T_k^U; T_l^U\}}}$, where α is set at 1 %, T_k^U and T_l^U shall be equal to the maturities of the underlyings of the options for which the vega sensitivities are derived, minus the maturities of the corresponding options, expressed in both cases as a number of years.

2. Between vega risk sensitivities within a bucket of the other risk classes, the correlation parameter ρ_{kl} shall be set as follows:

$$\rho_{kl} = \min\{\rho_{kl}^{(\text{DELTA})} \cdot \rho_{kl}^{(\text{option maturity})}; 1\}$$

where:

$\rho_{kl}^{(\text{DELTA})}$ shall be equal to the delta intra-bucket correlation corresponding to the bucket to which vega risk factors k and l would be allocated; and

$\rho_{kl}^{(\text{option maturity})}$ shall be set in accordance with paragraph 1.

3. With regard to vega risk sensitivities between buckets within a risk class (GIRR and non-GIRR), the same correlation parameters for γ_{bc}, as specified for delta correlations for each risk class in Section 4, shall be used in the vega risk context.

4. There shall be no diversification or hedging benefit recognised in the standardised approach between vega risk factors and delta risk factors. Vega risk charges and delta risk charges shall be aggregated by simple summation.

5. The curvature risk correlations shall be the square of corresponding delta risk correlations ρ_{kl} and γ_{bc} referred to in Subsection 1.

CHAPTER 1b

Alternative internal model approach

Section 1

Permission and own funds requirements

Article 325az

Alternative internal model approach and permission to use alternative internal models

1. The alternative internal model approach as set out in this Chapter shall be used only for the purposes of the reporting requirement laid down in Article 430b(3).

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2. After having verified institutions' compliance with the requirements set out in Articles 325bh, 325bi and 325bj, competent authorities shall grant permission to those institutions to calculate their own funds requirements for the portfolio of all positions assigned to trading desks by using their alternative internal models in accordance with Article 325ba, provided that all the following requirements are met:

(a) the trading desks were established in accordance with Article 104b;

(b) the institution has provided to the competent authority a rationale for the inclusion of the trading desks in the scope of the alternative internal model approach;

(c) the trading desks have met the back-testing requirements referred to in Article 325bf(3) for the preceding year;

(d) the institution has reported to its competent authorities the results of the profit and loss attribution ('P&L attribution') requirement for the trading desks set out in Article 325bg;

(e) for trading desks that have been assigned at least one of those trading book positions referred to in Article 325bl, the trading desks fulfil the requirements set out in Article 325bm for the internal default risk model;

(f) no securitisation or re-securitisation positions have been assigned to the trading desks.

For the purposes of point (b) of the first subparagraph of this paragraph, not including a trading desk in the scope of the alternative internal model approach shall not be motivated by the fact that the own funds requirement calculated under the alternative standardised approach set out in point (a) of Article 325(3) would be lower than the own funds requirement calculated under the alternative internal model approach.

3. Institutions that have received the permission to use the alternative internal model approach shall report to the competent authorities in accordance with Article 430b(3).

4. An institution that has been granted the permission referred to in paragraph 2 shall immediately notify its competent authorities that one of its trading desks no longer meets at least one of the requirements set out in that paragraph. That institution shall no longer be permitted to apply this Chapter to any of the positions assigned to that trading desk and shall calculate the own funds requirements for market risk in accordance with the approach set out in Chapter 1a for all the positions assigned to that trading desk from the earliest reporting date and until the institution demonstrates to the competent authorities that the trading desk again fulfils all the requirements set out in paragraph 2.

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5. By way of derogation from paragraph 4, in extraordinary circumstances, competent authorities may permit an institution to continue using its alternative internal models for the purpose of calculating the own funds requirements for the market risk of a trading desk that no longer meets the conditions referred to in point (c) of paragraph 2 of this Article and in Article 325bg(1). When competent authorities exercise that discretion, they shall notify EBA and substantiate their decision.

6. For positions assigned to the trading desks for which an institution has not been granted permission as referred to in paragraph 2, the own funds requirements for market risk shall be calculated by that institution in accordance with Chapter 1a of this Title. For the purposes of that calculation, all those positions shall be considered on a stand-alone basis as a separate portfolio.

7. Material changes to the use of alternative internal models that an institution has received permission to use, the extension of the use of alternative internal models that the institution has received permission to use, and material changes to the institution's choice of the subset of the modellable risk factors referred to in Article 325bc(2), shall require separate permission from its competent authorities.

Institutions shall notify the competent authorities of all other extensions and changes to the use of the alternative internal models for which the institution has received permission.

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

(a) the conditions for assessing the materiality of extensions and changes to the use of alternative internal models and changes to the subset of the modellable risk factors referred to in Article 325bc;

(b) the assessment methodology under which competent authorities verify an institution's compliance with the requirements set out in Articles 325bh, 325bi, 325bn, 325bo and 325bp.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2024.

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

9. EBA shall develop draft regulatory technical standards to specify the extraordinary circumstances under which competent authorities may permit an institution:

(a) to continue using its alternative internal models for the purpose of calculating the own funds requirements for the market risk of a trading desk that no longer meets the conditions referred to in point (c) of paragraph 2 of this Article and in Article 325bg(1);

(b) to limit the add-on to the one resulting from overshootings under back-testing hypothetical changes.

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EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2024.

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

Article 325ba

Own funds requirements when using alternative internal models

1. An institution using an alternative internal model shall calculate the own funds requirements for the portfolio of all positions assigned to the trading desks for which the institution has been granted permission as referred to in Article 325az(2) as the higher of the following:

(a) the sum of the following values:

(i) the institution's previous day's expected shortfall risk measure, calculated in accordance with Article 325bb (ES_{t-1}), and

(ii) the institution's previous day's stress scenario risk measure, calculated in accordance with Section 5 (SS_{t-1}); or

(b) the sum of the following values:

(i) the average of the institution's daily expected shortfall risk measure, calculated in accordance with Article 325bb for each of the preceding sixty business days (ES^{avg}), multiplied by the multiplication factor (m_c); and

(ii) the average of the institution's daily stress scenario risk measure, calculated in accordance with Section 5 for each of the preceding sixty business days (SS^{avg}).

2. Institutions holding positions in traded debt and equity instruments that are included in the scope of the internal default risk model and assigned to the trading desks referred to in paragraph 1 shall fulfil an additional own funds requirement, expressed as the higher of the following values:

(a) the most recent own funds requirement for default risk, calculated in accordance with Section 3;

(b) the average of the amount referred to in point (a) over the preceding 12 weeks.

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Section 2

General requirements

Article 325bb

Expected shortfall risk measure

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1. Institutions shall calculate the expected shortfall risk measure referred to in point (a) of Article 325ba(1) for any given date 't' and for any given portfolio of trading book positions and non-trading book positions that are subject to foreign exchange or commodity risk as follows:

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$$ES_t = \rho \cdot (UES_t) + (1 - \rho) \cdot \sum_i UES_t^i$$

where:

ES_t = the expected shortfall risk measure;

i = the index that denotes the five broad categories of risk factors listed in the first column of Table 2 of Article 325bd;

UES_t = the unconstrained expected shortfall measure calculated as follows:

$$UES_t = PES_t^{RS} \cdot \max\left(\frac{PES_t^{FC}}{PES_t^{RC}},\ 1\right)$$

UES_t^i = the unconstrained expected shortfall measure for broad risk factor category i and calculated as follows:

$$UES_t^i = PES_t^{RS,i} \cdot \max\left(\frac{PES_t^{FC,i}}{PES_t^{RC,i}},\ 1\right)$$

ρ = the supervisory correlation factor across broad categories of risk; ρ = 50 %;

PES_t^{RS} = the partial expected shortfall measure that shall be calculated for all the positions in the portfolio in accordance with Article 325bc(2);

PES_t^{RC} = the partial expected shortfall measure that shall be calculated for all the positions in the portfolio in accordance with Article 325bc(3);

PES_t^{FC} = the partial expected shortfall measure that shall be calculated for all the positions in the portfolio in accordance with Article 325bc(4);

$PES_t^{RS,i}$ = the partial expected shortfall measure for broad risk factor category i that shall be calculated for all the positions in the portfolio in accordance with Article 325bc(2);

$PES_t^{RC,i}$ = the partial expected shortfall measure for broad risk factor category i that shall be calculated for all the positions in the portfolio in accordance with Article 325bc(3); and

$PES_t^{FC,i}$ = the partial expected shortfall measure for broad risk factor category i that shall be calculated for all the positions in the portfolio in accordance with of Article 325bc(4).

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2. Institutions shall only apply scenarios of future shocks to the specific set of modellable risk factors applicable to each partial expected shortfall measure, as set out in Article 325bc, when determining each partial expected shortfall measure for the calculation of the expected shortfall risk measure in accordance with paragraph 1.

3. Where at least one transaction of the portfolio has at least one modellable risk factor which has been mapped to the broad risk factor category i in accordance with Article 325bd, institutions shall calculate the unconstrained expected shortfall measure for the broad risk factor category i and include it in the formula for the expected shortfall risk measure referred to in paragraph 1 of this Article.

4. By way of derogation from paragraph 1, an institution may reduce the frequency of the calculation of the unconstrained expected shortfall measures UES_t^i and of the partial expected shortfall measures $PES_t^{RS,i}$, $PES_t^{RC,i}$ and $PES_t^{FC,i}$ for all broad risk factor categories i from daily to weekly, provided that both of the following conditions are met:

(a) the institution is able to demonstrate to its competent authority that calculating the unconstrained expected shortfall measure UES_t^i does not underestimate the market risk of the relevant trading book positions;

(b) the institution is able to increase the frequency of calculation of UES_t^i, $PES_t^{RS,i}$, $PES_t^{RC,i}$ and $PES_t^{FC,i}$ from weekly to daily where required by its competent authority.

Article 325bc

Partial expected shortfall calculations

1. Institutions shall calculate all the partial expected shortfall measures referred to in Article 325bb(1) as follows:

(a) daily calculations of the partial expected shortfall measures;

(b) at 97,5th percentile, one tailed confidence interval;

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(c) for a given portfolio of trading book positions and non-trading book positions that are subject to foreign exchange or commodity risk, institutions shall calculate the partial expected shortfall measure at time ‘t’ in accordance with the following formula:

$$PES_t = \sqrt{\left(PES_t(T)\right)^2 + \sum_{j \geq 2}\left(PES_t(T,j) \cdot \sqrt{\frac{\left(LH_j - LH_{j-1}\right)}{10}}\right)^2}$$

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where:

PES_t = the partial expected shortfall measure at time t;

j = the index that denotes the five liquidity horizons listed in the first column of Table 1;

LH_j = the length of liquidity horizons j as expressed in days in Table 1;

T = the base time horizon, where T = 10 days;

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$PES_t(T)$ = the partial expected shortfall measure that is determined by applying scenarios of future shocks with a 10-day time horizon only to the specific set of modellable risk factors of the positions in the portfolio set out in paragraphs 2, 3 and 4 for each partial expected shortfall measure referred to in Article 325bb(1); and

$PES_t(T, j)$ = the partial expected shortfall measure that is determined by applying scenarios of future shocks with a 10-day time horizon only to the specific set of modellable risk factors of the positions in the portfolio set out in paragraphs 2, 3 and 4 for each partial expected shortfall measure referred to in Article 325bb(1) and of which the effective liquidity horizon, as determined in accordance with Article 325bd(2), is equal or longer than LH_j.

Table 1

Liquidity horizon j	Length of liquidity horizon j (in days)
1	10
2	20
3	40
4	60
5	120

2. For the purpose of calculating the partial expected shortfall measures PES_t^{RS} and $PES_t^{RS,i}$ referred to in Article 325bb(1), in addition to the requirements set out in paragraph 1 of this Article, institutions shall meet the following requirements:

(a) in calculating PES_t^{RS}, institutions shall only apply scenarios of future shocks to a subset of the modellable risk factors of the positions in the portfolio which has been chosen by the institution, to the satisfaction of the competent authorities, so that the following condition is met with the sum taken over from the preceding 60 business days:

$$\frac{1}{60} \cdot \sum_{k=0}^{59} \frac{PES_{t-k}^{RC}}{PES_{t-k}^{FC}} \geq 75\ \%$$

An institution that no longer meets the requirement referred to in the first paragraph of this point shall immediately notify the competent authorities thereof and shall update the subset of the modellable risk factors within two weeks in order to meet that requirement; where, after two weeks, that institution has failed to meet that requirement, the institution shall revert to the approach set out in Chapter 1a to calculate the own funds requirements for market risk for some trading desks, until that institution is able to demonstrate to the competent authority that it is meeting the requirement set out in the first subparagraph of this point;

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(b) in calculating $PES_t^{RS,i}$, institutions shall only apply scenarios of future shocks to the subset of the modellable risk factors of the positions in the portfolio chosen by the institution for the purposes of point (a) of this paragraph and which have been mapped to the broad risk factor category 'i' in accordance with Article 325bd;

(c) the data inputs used to determine the scenarios of future shocks applied to the modellable risk factors referred to in points (a) and (b) shall be calibrated to historical data from a continuous 12-month period of financial stress that shall be identified by the institution in order to maximise the value of PES_t^{RS}; for the purpose of identifying that stress period, institutions shall use an observation period starting at least from 1 January 2007, to the satisfaction of the competent authorities; and

(d) the data inputs of $PES_t^{RS,i}$ shall be calibrated to the 12-month stress period that has been identified by the institution for the purposes of point (c).

3. For the purpose of calculating the partial expected shortfall measures PES_t^{RC} and $PES_t^{RC,i}$ referred to in Article 325bb(1), institutions shall, in addition to the requirements set out in paragraph 1 of this Article, meet the following requirements:

(a) in calculating PES_t^{RC}, institutions shall only apply scenarios of future shocks to the subset of the modellable risk factors of the positions in the portfolio referred to in point (a) of paragraph 2;

(b) in calculating $PES_t^{RC,i}$, institutions shall only apply scenarios of future shocks to the subset of the modellable risk factors of the positions in the portfolio referred to in point (b) of paragraph 2;

(c) the data inputs used to determine the scenarios of future shocks applied to the modellable risk factors referred to in points (a) and (b) of this paragraph shall be calibrated to historical data referred to in point (c) of paragraph 4; those data shall be updated on at least a monthly basis.

4. For the purpose of calculating the partial expected shortfall measures PES_t^{FC} and $PES_t^{FC,i}$ referred to in Article 325bb(1), institutions shall, in addition to the requirements set out in paragraph 1 of this Article, meet the following requirements:

(a) in calculating PES_t^{FC}, institutions shall apply scenarios of future shocks to all the modellable risk factors of the positions in the portfolio;

(b) in calculating $PES_t^{FC,i}$, institutions shall apply scenarios of future shocks to all the modellable risk factors of the positions in the portfolio which have been mapped to the broad risk factor category i in accordance with Article 325bd;

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(c) the data inputs used to determine the scenarios of future shocks applied to the modellable risk factors referred to in points (a) and (b) shall be calibrated to historical data from the preceding 12-month period; where there is a significant upsurge in the price volatility of a material number of modellable risks factors of an institution's portfolio which are not in the subset of the risk factors referred to in point (a) of paragraph 2, competent authorities may require an institution to use historical data for a period shorter than the preceding 12-months, but such a shorter period shall not be shorter than the preceding six-months; competent authorities shall notify EBA of any decision to require an institution to use historical data from a shorter period than 12 months and shall substantiate that decision.

5. In calculating a given partial expected shortfall measure as referred to in Article 325bb(1), institutions shall maintain the values of the modellable risks factors for which they have not been required to apply scenarios of future shocks for that partial expected shortfall measure under paragraphs 2, 3 and 4 of this Article.

Article 325bd

Liquidity horizons

1. Institutions shall map each risk factor of positions assigned to the trading desks for which they have been granted permission as referred to in Article 325az(2), or for which they are in the process of being granted such permission, to one of the broad categories of risk factors listed in Table 2 and to one of the broad sub-categories of risk factors listed in that Table.

2. The liquidity horizon of a risk factor of the positions referred to in paragraph 1 shall be the liquidity horizon of the corresponding broad sub-category of risk factors to which it has been mapped.

3. By way of derogation from paragraph 1 of this Article, for a given trading desk, an institution may decide to replace the liquidity horizon of a broad sub-category of risk factors listed in Table 2 of this Article with one of the longer liquidity horizons listed in Table 1 of Article 325bc. Where an institution takes such a decision, the longer liquidity horizon shall apply to all the modellable risk factors of the positions assigned to that trading desk that have been mapped to that broad sub-category of risk factors for the purpose of calculating the partial expected shortfall measures in accordance with point (c) of Article 325bc(1).

An institution shall notify the competent authorities of the trading desks and the broad sub-categories of risk factors to which it decides to apply the treatment referred to in the first subparagraph.

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4. For the purpose of calculating the partial expected shortfall measures in accordance with point (c) of Article 325bc(1), the effective liquidity horizon of a given modellable risk factor of a given trading book position or a non-trading book position that is subject to foreign exchange or commodity risk shall be calculated as follows:

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$$\text{EffectiveLH} = \begin{cases} \text{SubCatLH if Mat} > LH_5 \\ \min\left(\text{SubCatLH}, \min_j\{LH_j/LH_j \geq \text{Mat}\}\right) \text{ if } LH_1 \leq \text{Mat} \leq LH_5 \\ LH_1 \text{ if Mat} < LH_1 \end{cases}$$

where:

EffectiveLH = the effective liquidity horizon;

Mat = the maturity of the trading book position;

SubCatLH = the length of liquidity horizon of the modellable risk factor determined in accordance with paragraph 1; and

$\min_j \{LH_j/LH_j \geq \text{Mat}\}$ = the length of one of the liquidity horizons listed in Table 1 of Article 325bc which is the nearest liquidity horizon above the maturity of the trading book position.

5. Currency pairs that are composed of the euro and the currency of a Member State participating in ERM II shall be included in the most liquid currency pairs sub-category within the broad category of foreign exchange risk factor of Table 2.

6. An institution shall verify the appropriateness of the mapping referred to in paragraph 1 on at least a monthly basis.

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

(a) how institutions are to map the risk factors of the positions referred to in paragraph 1 to broad categories of risk factors and broad sub-categories of risk factors for the purposes of paragraph 1;

(b) which currencies constitute the most liquid currencies sub-category of the broad category of interest rate risk factor of Table 2;

(c) which currency pairs constitute the most liquid currency pairs sub-category of the broad category of foreign exchange risk factor of Table 2;

(d) the definitions of small market capitalisation and large market capitalisation for the purposes of the equity price and volatility sub-category of the broad category of equity risk factor of Table 2.

EBA shall submit those draft regulatory technical standards to the Commission by 28 March 2020.

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

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Table 2

Broad categories of risk factors	Broad sub-categories of risk factors	Liquidity horizons	Length of the liquidity horizon (in days)
Interest rate	Most liquid currencies and domestic currency	1	10
	Other currencies (excluding most liquid currencies)	2	20
	Volatility	4	60
	Other types	4	60
Credit spread	Central government, including central banks, of Member States	2	20
	Covered bonds issued by credit institutions in Member States (Investment Grade)	2	20
	Sovereign (Investment grade)	2	20
	Sovereign (High yield)	3	40
	Corporate (Investment grade)	3	40
	Corporate (High yield)	4	60
	Volatility	5	120
	Other types	5	120
Equity	Equity price (Large market capitalisation)	1	10
	Equity price (Small market capitalisation)	2	20
	Volatility (Large market capitalisation)	2	20
	Volatility (Small market capitalisation)	4	60
	Other types	4	60
Foreign exchange	Most liquid currency pairs	1	10
	Other currency pairs (excluding most liquid currency pairs)	2	20
	Volatility	3	40
	Other types	3	40
Commodity	Energy price and carbon emissions price	2	20
	Precious metal price and non-ferrous metal price	2	20
	Other commodity prices (excluding energy price, carbon emissions price, precious metal price and non-ferrous metal price)	4	60
	Energy volatility and carbon emissions volatility	4	60
	Precious metal volatility and non-ferrous metal volatility	4	60
	Other commodity volatilities (excluding energy volatility, carbon emissions volatility, precious metal volatility and non-ferrous metal volatility)	5	120
	Other types	5	120

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Article 325be

Assessment of the modellability of risk factors

1. Institutions shall assess the modellability of all the risk factors of the positions assigned to the trading desks for which they have been granted permission as referred to in Article 325az(2) or are in the process of being granted such permission.

2. As part of the assessment referred to in paragraph 1 of this Article, institutions shall calculate the own funds requirements for market risk in accordance with Article 325bk for those risk factors that are not modellable.

3. EBA shall develop draft regulatory technical standards to specify the criteria to assess the modellability of risk factors in accordance with paragraph 1 and to specify the frequency of that assessment.

EBA shall submit those draft regulatory technical standards to the Commission by 28 March 2020.

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

Article 325bf

Regulatory back-testing requirements and multiplication factors

1. For the purposes of this Article, an ‘overshooting’ means a one-day change in the value of a portfolio composed of all the positions assigned to the trading desk that exceeds the related value-at-risk number calculated on the basis of the institution's alternative internal model in accordance with the following requirements:

(a) the calculation of the value at risk shall be subject to a one-day holding period;

(b) scenarios of future shocks shall apply to the risk factors of the trading desk's positions referred to in Article 325bg(3) and which are considered modellable in accordance with Article 325be;

(c) data inputs used to determine the scenarios of future shocks applied to the modellable risk factors shall be calibrated to historical data referred to in point (c) of Article 325bc(4);

(d) unless stated otherwise in this Article, the institution's alternative internal model shall be based on the same modelling assumptions as those used for the calculation of the expected shortfall risk measure referred to in point (a) of Article 325ba(1).

2. Institutions shall count daily overshootings on the basis of back-testing of the hypothetical and actual changes in the value of the portfolio composed of all the positions assigned to the trading desk.

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3. An institution's trading desk shall be deemed to meet the back-testing requirements where the number of overshootings for that trading desk that occurred over the most recent 250 business days does not exceed any of the following:

(a) 12 overshootings for the value-at-risk number, calculated at a 99th percentile one tailed-confidence interval on the basis of back-testing of the hypothetical changes in the value of the portfolio;

(b) 12 overshootings for the value-at-risk number, calculated at a 99th percentile one tailed-confidence interval on the basis of back-testing of the actual changes in the value of the portfolio;

(c) 30 overshootings for the value-at-risk number, calculated at a 97,5th percentile one tailed-confidence interval on the basis of back-testing of the hypothetical changes in the value of the portfolio;

(d) 30 overshootings for the value-at-risk number, calculated at a 97,5th percentile one tailed-confidence interval on the basis of back-testing of the actual changes in the value of the portfolio.

4. Institutions shall count daily overshootings in accordance with the following:

(a) the back-testing of hypothetical changes in the value of the portfolio shall be based on a comparison between the end-of-day value of the portfolio and, assuming unchanged positions, the value of the portfolio at the end of the subsequent day;

(b) the back-testing of actual changes in the value of the portfolio shall be based on a comparison between the end-of-day value of the portfolio and its actual value at the end of the subsequent day, excluding fees and commissions;

(c) an overshooting shall be counted for each business day for which the institution is not able to assess the value of the portfolio or is not able to calculate the value-at-risk number referred to in paragraph 3.

5. An institution shall calculate, in accordance with paragraphs 6 and 7 of this Article, the multiplication factor (m_c) referred to in Article 325ba for the portfolio of all the positions assigned to the trading desks for which it has been granted permission to use alternative internal models as referred to in Article 325az(2).

6. The multiplication factor (m_c) shall be the sum of the value of 1,5 and an add-on between 0 and 0,5 in accordance with Table 3. For the portfolio referred to in paragraph 5, that add-on shall be calculated on the basis of the number of overshootings that occurred over the most recent 250 business days as evidenced by the institution's back-testing of the value-at-risk number calculated in accordance with point (a) of this subparagraph. The calculation of the add-on shall be subject to the following requirements:

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(a) an overshooting shall be a one-day change in the portfolio's value that exceeds the related value-at-risk number calculated by the institution's internal model in accordance with the following:

(i) a one-day holding period;

(ii) a 99th percentile, one tailed confidence interval;

(iii) scenarios of future shocks shall apply to the risk factors of the trading desks' positions referred to in Article 325bg(3) and which are considered modellable in accordance with Article 325be;

(iv) the data inputs used to determine the scenarios of future shocks applied to the modellable risk factors shall be calibrated to historical data referred to in point (c) of Article 325bc(4);

(v) unless stated otherwise in this Article, the institution's internal model shall be based on the same modelling assumptions as those used for the calculation of the expected shortfall risk measure referred to in point (a) of Article 325ba(1);

(b) the number of overshootings shall be equal to the greater of the number of overshootings under hypothetical and the actual changes in the value of the portfolio.

Table 3

Number of overshootings	Add-on
Fewer than 5	0,00
5	0,20
6	0,26
7	0,33
8	0,38
9	0,42
More than 9	0,50

In extraordinary circumstances, competent authorities may limit the add-on to that resulting from overshootings under back-testing hypothetical changes where the number of overshootings under back-testing actual changes does not result from deficiencies in the internal model.

7. Competent authorities shall monitor the appropriateness of the multiplication factor referred to in paragraph 5 and the compliance of trading desks with the back-testing requirements referred to in paragraph 3. Institutions shall promptly notify, the competent authorities of overshootings that result from their back-testing programme and provide an explanation for those overshootings, and in any case shall notify the competent authorities thereof no later than within five business days after the occurrence of an overshooting.

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8. By way of derogation from paragraphs 2 and 6 of this Article, competent authorities may permit an institution not to count an overshooting where a one-day change in the value of its portfolio that exceeds the related value-at-risk number calculated by that institution's internal model is attributable to a non-modellable risk factor. To do so, the institution shall demonstrate to its competent authority that the stress scenario risk measure calculated in accordance with Article 325bk for that non-modellable risk factor is higher than the positive difference between the change in the value of the institution's portfolio and the related value-at-risk number.

9. EBA shall develop draft regulatory technical standards to specify the technical elements to be included in the actual and hypothetical changes to the value of the portfolio of an institution for the purposes of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by 28 March 2020.

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

Article 325bg

Profit and loss attribution requirement

1. An institution's trading desk meets the P&L attribution requirements where that trading desk complies with the requirements set out in this Article.

2. The P&L attribution requirement shall ensure that the theoretical changes in the value of a trading desk's portfolio, based on the institution's risk-measurement model, are sufficiently close to the hypothetical changes in the value of the trading desk's portfolio, based on the institution's pricing model.

3. For each position of a given trading desk, an institution's compliance with the P&L attribution requirement shall lead to the identification of a precise list of risk factors that are deemed appropriate for verifying the institution's compliance with the back-testing requirement set out in Article 325bf.

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

(a) the criteria necessary to ensure that the theoretical changes in the value of a trading desk's portfolio is sufficiently close to the hypothetical changes in the value of a trading desk's portfolio for the purposes of paragraph 2, taking into account international regulatory developments;

(b) the consequences for an institution where the theoretical changes in the value of a trading desk's portfolio are not sufficiently close to the hypothetical changes in the value of a trading desk's portfolio for the purposes of paragraph 2;

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(c) the frequency at which the P&L attribution is to be performed by an institution;

(d) the technical elements to be included in the theoretical and hypothetical changes in the value of a trading desk's portfolio for the purposes of this Article;

(e) the manner in which institutions that use the internal model are to aggregate the total own funds requirement for market risk for all their trading book positions and non-trading book positions that are subject to foreign exchange risk or commodity risk, taking into account the consequences referred to in point (b).

EBA shall submit those draft regulatory technical standards to the Commission by 28 March 2020.

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

Article 325bh

Requirements on risk measurement

1. Institutions using an internal risk-measurement model that is used to calculate the own funds requirements for market risk as referred to in Article 325ba shall ensure that that model meets all the following requirements:

(a) the internal risk-measurement model shall capture a sufficient number of risk factors, which shall include at least the risk factors referred to in Subsection 1 of Section 3 of Chapter 1a unless the institution demonstrates to the competent authorities that the omission of those risk factors does not have a material impact on the results of the P&L attribution requirement referred to in Article 325bg; an institution shall be able to explain to the competent authorities why it has incorporated a risk factor in its pricing model but not in its internal risk-measurement model;

(b) the internal risk-measurement model shall capture nonlinearities for options and other products as well as correlation risk and basis risk;

(c) the internal risk-measurement model shall incorporate a set of risk factors that correspond to the interest rates in each currency in which the institution has interest rate sensitive on- or off-balance-sheet positions; the institution shall model the yield curves using one of the generally accepted approaches; the yield curve shall be divided into various maturity segments to capture the variations of volatility of rates along the yield curve; for material exposures to interest-rate risk in the major currencies and markets, the yield curve shall be modelled using a minimum of six maturity segments, and the number of risk factors used to model the yield curve shall be proportionate to the nature and complexity of the institution's trading strategies, the model shall also capture the risk spread of less than perfectly correlated movements between different yield curves or different financial instruments on the same underlying issuer;

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(d) the internal risk-measurement model shall incorporate risk factors corresponding to gold and to the individual foreign currencies in which the institution's positions are denominated; for CIUs, the actual foreign exchange positions of the CIU shall be taken into account; institutions may rely on third-party reporting of the foreign exchange position of the CIU, provided that the correctness of that report is adequately ensured; foreign exchange positions of a CIU of which an institution is not aware of shall be carved out from the internal models approach and treated in accordance with Chapter 1a;

(e) the sophistication of the modelling technique shall be proportionate to the materiality of the institutions' activities in the equity markets; the internal risk-measurement model shall use a separate risk factor at least for each of the equity markets in which the institution holds significant positions and at least one risk factor that captures systemic movements in equity prices and the dependency of that risk factor on the individual risk factors for each equity market;

(f) the internal risk-measurement model shall use a separate risk factor at least for each commodity in which the institution holds significant positions, unless the institution has a small aggregate commodity position compared to all its trading activities, in which case it may use a separate risk factor for each broad commodity type; for material exposures to commodity markets, the model shall capture the risk of less than perfectly correlated movements between commodities that are similar, but not identical, the exposure to changes in forward prices arising from maturity mismatches, and the convenience yield between derivative and cash positions;

(g) the proxies used shall show a good track record for the actual position held, shall be appropriately conservative, and shall be used only where the available data are insufficient, such as during the period of stress referred to in point (c) of Article 325bc(2);

(h) for material exposures to volatility risks in instruments with optionality, the internal risk-measurement model shall capture the dependency of implied volatilities across strike prices and options' maturities.

2. Institutions may use empirical correlations within broad categories of risk factors and, for the purpose of calculating the unconstrained expected shortfall measure UES_t as referred to in Article 325bb(1), across broad categories of risk factors only where the institution's approach for measuring those correlations is sound, consistent with the applicable liquidity horizons, and implemented with integrity.

3. By 28 September 2020, EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, specifying criteria for the use of data inputs in the risk-measurement model referred to in Article 325bc.

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Article 325bi

Qualitative requirements

1. Any internal risk-measurement model used for the purposes of this Chapter shall be conceptually sound, shall be calculated and implemented with integrity, and shall comply with all the following qualitative requirements:

(a) any internal risk-measurement model used to calculate capital requirements for market risk shall be closely integrated into the daily risk management process of the institution and shall serve as the basis for reporting risk exposures to senior management;

(b) an institution shall have a risk control unit that is independent from business trading units and that reports directly to senior management; that unit shall be responsible for designing and implementing any internal risk-measurement model; that unit shall conduct the initial and on-going validation of any internal model used for the purposes of this Chapter and shall be responsible for the overall risk management system; that unit shall produce and analyse daily reports on the output of any internal model used to calculate capital requirements for market risk, as well as reports on the appropriateness of measures to be taken in terms of trading limits;

(c) the management body and senior management shall be actively involved in the risk-control process, and the daily reports produced by the risk control unit shall be reviewed at a level of management with sufficient authority to require the reduction of positions taken by individual traders and to require the reduction of the institution's overall risk exposure;

(d) the institution shall have a sufficient number of staff with a level of skills that is appropriate to the sophistication of the internal risk-measurement models, and a sufficient number of staff with skills in the trading, risk control, audit and back-office areas;

(e) the institution shall have in place a documented set of internal policies, procedures and controls for monitoring and ensuring compliance with the overall operation of its internal risk-measurement models;

(f) any internal risk-measurement model, including any pricing model, shall have a proven track record of being reasonably accurate in measuring risks, and shall not differ significantly from the models that the institution uses for its internal risk management;

(g) the institution shall frequently conduct rigorous programmes of stress testing, including reverse stress tests, which shall encompass any internal risk-measurement model; the results of those stress tests shall be reviewed by senior management at least on a monthly basis and shall comply with the policies and limits approved by the management body; the institution shall take appropriate actions where the results of those stress tests show excessive losses arising from the trading's business of the institution under certain circumstances;

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(h) the institution shall conduct an independent review of its internal risk-measurement models, either as part of its regular internal auditing process, or by mandating a third-party undertaking to conduct that review, which shall be conducted to the satisfaction of the competent authorities.

For the purposes of point (h) of the first subparagraph, a third-party undertaking means an undertaking that provides auditing or consulting services to institutions and that has staff who have sufficient skills in the area of market risk in trading activities.

2. The review referred to in point (h) of paragraph 1 shall include both the activities of the business trading units and the independent risk control unit. The institution shall conduct a review of its overall risk management process at least once a year. That review shall assess the following:

(a) the adequacy of the documentation of the risk management system and process and the organisation of the risk control unit;

(b) the integration of risk measures into daily risk management and the integrity of the management information system;

(c) the processes the institution employs for approving the risk-pricing models and valuation systems that are used by front and back-office personnel;

(d) the scope of risks captured by the model, the accuracy and appropriateness of the risk-measurement system, and the validation of any significant changes to the internal risk-measurement model;

(e) the accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, the accuracy of valuation and risk sensitivity calculations, and the accuracy and appropriateness for generating data proxies where the available data are insufficient to meet the requirement set out in this Chapter;

(f) the verification process that the institution employs to evaluate the consistency, timeliness and reliability of the data sources used to run any of its internal risk-measurement models, including the independence of those data sources;

(g) the verification process that the institution employs to evaluate back-testing requirements and P&L attribution requirements that are conducted in order to assess the accuracy of its internal risk-measurement models;

(h) where the review is performed by a third-party undertaking in accordance with point (h) of paragraph 1 of this Article, the verification that the internal validation process set out in Article 325bj fulfils its objectives.

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3. Institutions shall update the techniques and practices they use for any of the internal risk-measurement models used for the purposes of this Chapter to take into account the evolution of new techniques and best practices that develop in respect of those internal risk-measurement models.

Article 325bj

Internal validation

1. Institutions shall have processes in place to ensure that any internal risk-measurement models used for the purposes of this Chapter have been adequately validated by suitably qualified parties that are independent of the development process, in order to ensure that any such models are conceptually sound and adequately capture all material risks.

2. Institutions shall conduct the validation referred to in paragraph 1 in the following circumstances:

(a) when any internal risk-measurement model is initially developed and when any significant changes are made to that model;

(b) on a periodic basis, and where there have been significant structural changes in the market or changes to the composition of the portfolio which might lead to the internal risk-measurement model no longer being adequate.

3. The validation of the internal risk-measurement models of an institution shall not be limited to back-testing and P&L attribution requirements, but shall, at a minimum, include the following:

(a) tests to verify whether the assumptions made in the internal model are appropriate and do not underestimate or overestimate the risk;

(b) own internal model validation tests, including back-testing in addition to the regulatory back-testing programmes, in relation to the risks and structures of their portfolios;

(c) the use of hypothetical portfolios to ensure that the internal risk-measurement model is able to account for particular structural features that may arise, for example, material basis risks and concentration risk, or the risks associated with the use of proxies.

Article 325bk

Calculation of stress scenario risk measure

1. The ‘stress scenario risk measure’ of a given non-modellable risk factor means the loss that is incurred in all trading book positions or non-trading book positions that are subject to foreign exchange or commodity risk of the portfolio which includes that non-modellable risk factor when an extreme scenario of future shock is applied to that risk factor.

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2. Institutions shall develop appropriate extreme scenarios of future shock for all non-modellable risk factors, to the satisfaction of their competent authorities.

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

(a) how institutions are to develop extreme scenarios of future shock applicable to non-modellable risk factors and how they are to apply those extreme scenarios of future shock to those risk factors;

(b) a regulatory extreme scenario of future shock for each broad sub-category of risk factors listed in Table 2 of Article 325bd, which institutions may use when they are unable to develop an extreme scenario of future shock in accordance with point (a) of this subparagraph, or which competent authorities may require that institution apply if those authorities are not satisfied with the extreme scenario of future shock developed by the institution;

(c) the circumstances under which institutions may calculate a stress scenario risk measure for more than one non-modellable risk factor;

(d) how institutions are to aggregate the stress scenario risk measures of all non-modellable risk factors included in their trading book positions and non-trading book positions that are subject to foreign exchange risk or commodity risk.

In developing those draft regulatory technical standards, EBA shall take into consideration the requirement that the level of own funds requirements for market risk of a non-modellable risk factor as set out in this Article shall be as high as the level of own funds requirements for market risk that would have been calculated under this Chapter if that risk factor were modellable.

EBA shall submit those draft regulatory technical standards to the Commission by 28 September 2020.

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

Section 3

Internal default risk model

Article 325bl

Scope of the internal default risk model

1. All the positions of an institution that have been assigned to the trading desks for which the institution has been granted permission as referred to in Article 325az(2) shall be subject to an own funds requirement for default risk where those positions contain at least one risk factor that has been mapped to the broad categories of ‘equity’ or ‘credit spread’ risk factors in accordance with Article 325bd(1). That

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own funds requirement, which is incremental to the risks captured by the own funds requirements referred to in Article 325ba(1), shall be calculated using the institution's internal default risk model. That model which shall comply with the requirements laid down in this Section.

2. For each of the positions referred to in paragraph 1, an institution shall identify one issuer of traded debt or equity instruments related to at least one risk factor.

Article 325bm

Permission to use an internal default risk model

1. Competent authorities shall grant an institution permission to use an internal default risk model to calculate the own funds requirements referred to in Article 325ba(2) for all the trading book positions referred to in Article 325bl that are assigned to a trading desk for which the internal default risk model complies with the requirements set out in Articles 325bi, 325bj, 325bn, 325bo and 325bp.

2. Where the trading desk of an institution, to which at least one of the trading book positions referred to in Article 325bl has been assigned, does not meet the requirements set out in paragraph 1 of this Article, the own funds requirements for market risk of all positions in that trading desk shall be calculated in accordance with the approach set out in Chapter 1a.

Article 325bn

Own funds requirements for default risk using an internal default risk model

1. Institutions shall calculate the own funds requirements for default risk using an internal default risk model for the portfolio of all trading book positions as referred to in Article 325bl as follows:

(a) the own funds requirements shall be equal to a value-at-risk number measuring potential losses in the market value of the portfolio caused by the default of issuers related to those positions at the 99,9 % confidence interval over a one-year time horizon;

(b) the potential loss referred to in point (a) means a direct or indirect loss in the market value of a position which was caused by the default of the issuers and which is incremental to any losses already taken into account in the current valuation of the position; the default of the issuers of equity positions shall be represented by the value for the issuers' equity prices being set to zero;

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(c) institutions shall determine default correlations between different issuers on the basis of a conceptually sound methodology, using objective historical data on market credit spreads or equity prices that cover at least a 10 year period that includes the stress period identified by the institution in accordance with Article 325bc(2); the calculation of default correlations between different issuers shall be calibrated to a one-year time horizon;

(d) the internal default risk model shall be based on a one-year constant position assumption.

2. Institutions shall calculate the own funds requirement for default risk using an internal default risk model as referred to in paragraph 1 on at least a weekly basis.

3. By way of derogation from points (a) and (c) of paragraph 1, an institution may replace the one-year time horizon with a time horizon of sixty days for the purpose of calculating the default risk of some or all of the equity positions, where appropriate. In such case, the calculation of default correlations between equity prices and default probabilities shall be consistent with a time horizon of sixty days and the calculation of default correlations between equity prices and bond prices shall be consistent with a one-year time horizon.

Article 325bo

Recognition of hedges in an internal default risk model

1. Institutions may incorporate hedges in their internal default risk model and may net positions where the long positions and short positions relate to the same financial instrument.

2. In their internal default risk models, institutions may only recognise hedging or diversification effects associated with long and short positions involving different instruments or different securities of the same obligor, as well as long and short positions in different issuers by explicitly modelling the gross long and short positions in the different instruments, including modelling of basis risks between different issuers.

3. In their internal default risk models, institutions shall capture material risks between a hedging instrument and the hedged instrument that could occur during the interval between the maturity of a hedging instrument and the one-year time horizon, as well as the potential for significant basis risks in hedging strategies that arise from differences in the type of product, seniority in the capital structure, internal or external ratings, maturity, vintage and other differences. Institutions shall recognise a hedging instrument only to the extent that it can be maintained even as the obligor approaches a credit event or other event.

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Article 325bp

Particular requirements for an internal default risk model

1. The internal default risk model referred to in Article 325bm(1) shall be capable of modelling the default of individual issuers as well as the simultaneous default of multiple issuers, and shall take into account the impact of those defaults in the market values of the positions that are included in the scope of that model. For that purpose, the default of each individual issuer shall be modelled using two types of systematic risk factors.

2. The internal default risk model shall reflect the economic cycle, including the dependency between recovery rates and the systematic risk factors referred to in paragraph 1.

3. The internal default risk model shall reflect the nonlinear impact of options and other positions with material nonlinear behaviour with respect to price changes. Institutions shall also have due regard to the amount of model risk inherent in the valuation and estimation of price risks associated with those products.

4. The internal default risk model shall be based on data that are objective and up-to-date.

5. To simulate the default of issuers in the internal default risk model, the institution's estimates of default probabilities shall meet the following requirements:

(a) the default probabilities shall be floored at 0,03 %;

(b) the default probabilities shall be based on a one-year time horizon, unless stated otherwise in this Section;

(c) the default probabilities shall be measured using, solely or in combination with current market prices, data observed during a historical period of at least five years of actual past defaults and extreme declines in market prices equivalent to default events; default probabilities shall not be inferred solely from current market prices;

(d) an institution that has been granted permission to estimate default probabilities in accordance with Section 1 of Chapter 3 of Title II shall use the methodology set out therein to calculate default probabilities;

(e) an institution that has not been granted permission to estimate default probabilities in accordance with Section 1 of Chapter 3 of Title II shall develop an internal methodology or use external sources to estimate default probabilities; in both situations, the estimates of default probabilities shall be consistent with the requirements set out in this Article.

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6. To simulate the default of issuers in the internal default risk model, the institution's estimates of loss given default shall meet the following requirements:

(a) the loss given default estimates are floored at 0 %;

(b) the loss given default estimates shall reflect the seniority of each position;

(c) an institution that has been granted permission to estimate loss given default in accordance with Section 1 of Chapter 3 of Title II shall use the methodology set out therein to calculate loss given default estimates;

(d) an institution that has not been granted permission to estimate loss given default in accordance with Section 1 of Chapter 3 of Title II shall develop an internal methodology or use external sources to estimate loss given default; in both situations, the estimates of loss given default shall be consistent with the requirements set out in this Article.

7. As part of the independent review and validation of the internal models that they use for the purposes of this Chapter, including for the risk-measurement system, institutions shall:

(a) verify that their approach for the modelling of correlations and price changes is appropriate for their portfolio, including the choice and weights of the systematic risk factors in the model;

(b) perform a variety of stress tests, including sensitivity analyses and scenario analyses, to assess the qualitative and quantitative reasonableness of the internal default risk model, in particular with regard to the treatment of concentrations; and

(c) apply appropriate quantitative validation including relevant internal modelling benchmarks.

The tests referred to in point (b) shall not be limited to the range of past events experienced.

8. The internal default risk model shall appropriately reflect issuer concentrations and concentrations that can arise within and across product classes under stressed conditions.

9. The internal default risk model shall be consistent with the institution's internal risk management methodologies for identifying, measuring, and managing trading risks.

10. Institutions shall have clearly defined policies and procedures for determining the default assumptions for correlations between different issuers in accordance with point (c) of Article 325bn(1) and the preferred choice of method for estimating the default probabilities in point (e) of paragraph 5 of this Article and the loss given default in point (d) of paragraph 6 of this Article.

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11. Institutions shall document their internal models so that their correlation assumptions and other modelling assumptions are transparent to the competent authorities.

12. EBA shall develop draft regulatory technical standards to specify the requirements that an institution's internal methodology or external sources are to fulfil for estimating default probabilities and losses given default in accordance with point (e) of paragraph 5 and point (d) of paragraph 6.

EBA shall submit those draft regulatory technical standards to the Commission by 28 September 2020.

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

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CHAPTER 2

Own funds requirements for position risk

Section 1

General provisions and specific instruments

Article 326

Own funds requirements for position risk

The institution's own funds requirement for position risk shall be the sum of the own funds requirements for the general and specific risk of its positions in debt and equity instruments. Securitisation positions in the trading book shall be treated as debt instruments.

Article 327

Netting

1. The absolute value of the excess of an institution's long (short) positions over its short (long) positions in the same equity, debt and convertible issues and identical financial futures, options, warrants and covered warrants shall be its net position in each of those different instruments. In calculating the net position, positions in derivative instruments shall be treated as laid down in Articles 328 to 330. Institutions' holdings of their own debt instruments shall be disregarded in calculating specific risk capital requirements under Article 336.

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2. No netting shall be allowed between a convertible and an offsetting position in the instrument underlying it, unless the competent authorities adopt an approach under which the likelihood of a particular convertible's being converted is taken into account or require an own funds requirement to cover any loss which conversion might entail. Such approaches or own funds requirements shall be notified to EBA. EBA shall monitor the range of practices in this area and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines.

3. All net positions, irrespective of their signs, shall be converted on a daily basis into the institution's reporting currency at the prevailing spot exchange rate before their aggregation.

Article 328

Interest rate futures and forwards

1. Interest-rate futures, forward-rate agreements (FRAs) and forward commitments to buy or sell debt instruments shall be treated as combinations of long and short positions. Thus a long interest-rate futures position shall be treated as a combination of a borrowing maturing on the delivery date of the futures contract and a holding of an asset with maturity date equal to that of the instrument or notional position underlying the futures contract in question. Similarly a sold FRA will be treated as a long position with a maturity date equal to the settlement date plus the contract period, and a short position with maturity equal to the settlement date. Both the borrowing and the asset holding shall be included in the first category set out in Table 1 in Article 336 in order to calculate the own funds requirement for specific risk for interest-rate futures and FRAs. A forward commitment to buy a debt instrument shall be treated as a combination of a borrowing maturing on the delivery date and a long (spot) position in the debt instrument itself. The borrowing shall be included in the first category set out in Table 1 in Article 336 for purposes of specific risk, and the debt instrument under whichever column is appropriate for it in the same table.

2. For the purposes of this Article, ‘long position’ means a position in which an institution has fixed the interest rate it will receive at some time in the future, and ‘short position’ means a position in which it has fixed the interest rate it will pay at some time in the future.

Article 329

Options and warrants

1. Options and warrants on interest rates, debt instruments, equities, equity indices, financial futures, swaps and foreign currencies shall be treated as if they were positions equal in value to the amount of the underlying instrument to which the option refers, multiplied by its delta for the purposes of this Chapter. The latter positions may be netted off against any offsetting positions in the identical underlying securities or derivatives. The delta used shall be that of the exchange concerned. For

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OTC-options, or where delta is not available from the exchange concerned, the institution may calculate delta itself using an appropriate model, subject to permission by the competent authorities. Permission shall be granted if the model appropriately estimates the rate of change of the option's or warrant's value with respect to small changes in the market price of the underlying.

2. Institutions shall adequately reflect other risks, apart from the delta risk, associated with options in the own funds requirements.

3. EBA shall develop draft regulatory technical standards defining a range of methods to reflect in the own funds requirements other risks, apart from delta risk, referred to in paragraph 2 in a manner proportionate to the scale and complexity of institutions' activities in options and warrants.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.

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

4. Before the entry into force of the technical standards referred to in paragraph 3, competent authorities may continue to apply the existing national treatments, where the competent authorities have applied those treatments before 31 December 2013.

Article 330

Swaps

Swaps shall be treated for interest-rate risk purposes on the same basis as on-balance-sheet instruments. Thus, an interest-rate swap under which an institution receives floating-rate interest and pays fixed-rate interest shall be treated as equivalent to a long position in a floating-rate instrument of maturity equivalent to the period until the next interest fixing and a short position in a fixed-rate instrument with the same maturity as the swap itself.

Article 331

Interest rate risk on derivative instruments

1. Institutions which mark to market and manage the interest-rate risk on the derivative instruments covered in Articles 328 to 330 on a discounted-cash-flow basis may, subject to permission by the competent authorities, use sensitivity models to calculate the positions referred to in those Articles and may use them for any bond which is amortised over its residual life rather than via one final repayment of principal. Permission shall be granted if these models generate positions which have the same sensitivity to interest-rate changes as the underlying cash flows. This sensitivity shall be assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 in Article 339. The positions shall be included in the calculation of own funds requirements for general risk of debt instruments.

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2. Institutions which do not use models under paragraph 1 may, treat as fully offsetting any positions in derivative instruments covered in Articles 328 to 330 which meet the following conditions at least:

(a) the positions are of the same value and denominated in the same currency;

(b) the reference rate (for floating-rate positions) or coupon (for fixed-rate positions) is closely matched;

(c) the next interest-fixing date or, for fixed coupon positions, residual maturity corresponds with the following limits:

(i) less than one month hence: same day;

(ii) between one month and one year hence: within seven days;

(iii) over one year hence: within 30 days.

Article 332

Credit Derivatives

1. When calculating the own funds requirement for general and specific risk of the party who assumes the credit risk (the ‘protection seller’), unless specified differently, the notional amount of the credit derivative contract shall be used. Notwithstanding the first sentence, the institution may elect to replace the notional value by the notional value plus the net market value change of the credit derivative since trade inception, a net downward change from the protection seller's perspective carrying a negative sign. For the purpose of calculating the specific risk charge, other than for total return swaps, the maturity of the credit derivative contract, rather than the maturity of the obligation, shall apply. Positions are determined as follows:

(a) a total return swap creates a long position in the general risk of the reference obligation and a short position in the general risk of a government bond with a maturity equivalent to the period until the next interest fixing and which is assigned a 0 % risk weight under Title II, Chapter 2. It also creates a long position in the specific risk of the reference obligation;

(b) a credit default swap does not create a position for general risk. For the purposes of specific risk, the institution shall record a synthetic long position in an obligation of the reference entity, unless the derivative is rated externally and meets the conditions for a qualifying debt item, in which case a long position in the derivative is recorded. If premium or interest payments are due under the product, these cash flows shall be represented as notional positions in government bonds;

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(c) a single name credit linked note creates a long position in the general risk of the note itself, as an interest rate product. For the purpose of specific risk, a synthetic long position is created in an obligation of the reference entity. An additional long position is created in the issuer of the note. Where the credit linked note has an external rating and meets the conditions for a qualifying debt item, a single long position with the specific risk of the note need only be recorded;

(d) in addition to a long position in the specific risk of the issuer of the note, a multiple name credit linked note providing proportional protection creates a position in each reference entity, with the total notional amount of the contract assigned across the positions according to the proportion of the total notional amount that each exposure to a reference entity represents. Where more than one obligation of a reference entity can be selected, the obligation with the highest risk weighting determines the specific risk;

(e) a first-asset-to-default credit derivative creates a position for the notional amount in an obligation of each reference entity. If the size of the maximum credit event payment is lower than the own funds requirement under the method in the first sentence of this point, the maximum payment amount may be taken as the own funds requirement for specific risk.

A -n-th-asset-to-default credit derivative creates a position for the notional amount in an obligation of each reference entity less the n-1 reference entities with the lowest specific risk own funds requirement. If the size of the maximum credit event payment is lower than the own funds requirement under the method in the first sentence of this point, this amount may be taken as the own funds requirement for specific risk.

Where an n-th-to-default credit derivative is externally rated, the protection seller shall calculate the specific risk own funds requirement using the rating of the derivative and apply the respective securitisation risk weights as applicable.

2. For the party who transfers credit risk (the protection buyer), the positions are determined as the mirror principle of the protection seller, with the exception of a credit linked note (which entails no short position in the issuer). When calculating the own funds requirement for the ‘protection buyer’, the notional amount of the credit derivative contract shall be used. Notwithstanding the first sentence, the institution may elect to replace the notional value by the notional value plus the net market value change of the credit derivative since trade inception, a net downward change from the protection seller's perspective carrying a negative sign. If at a given moment there is a call option in combination with a step-up, such moment is treated as the maturity of the protection.

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3. Credit derivatives in accordance with Article 338(1) or (3) shall be included only in the determination of the specific risk own funds requirement in accordance with Article 338(4).

Article 333

Securities sold under a repurchase agreement or lent

The transferor of securities or guaranteed rights relating to title to securities in a repurchase agreement and the lender of securities in a securities lending shall include these securities in the calculation of its own funds requirement under this Chapter provided that such securities are trading book positions.

Section 2

Debt instruments

Article 334

Net positions in debt instruments

Net positions shall be classified according to the currency in which they are denominated and shall calculate the own funds requirement for general and specific risk in each individual currency separately.

Sub-Section 1

Specific risk

Article 335

Cap on the own funds requirement for a net position

The institution may cap the own funds requirement for specific risk of a net position in a debt instrument at the maximum possible default-risk related loss. For a short position, that limit may be calculated as a change in value due to the instrument or, where relevant, the underlying names immediately becoming default risk-free.

Article 336

Own funds requirement for non-securitisation debt instruments

1. The institution shall assign its net positions in the trading book in instruments that are not securitisation positions as calculated in accordance with Article 327 to the appropriate categories in Table 1 on the basis of their issuer or obligor, external or internal credit assessment, and residual maturity, and then multiply them by the weightings shown in that table. It shall sum its weighted positions resulting from the application of this Article regardless of whether they are long or short in order to calculate its own funds requirement against specific risk.

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Table 1

Categories	Specific risk own funds requirement
Debt securities which would receive a 0 % risk weight under the Standardised Approach for credit risk.	0 %
Debt securities which would receive a 20 % or 50 % risk weight under the Standardised Approach for credit risk and other qualifying items as defined in paragraph 4.	0,25 % (residual term to final maturity six months or less) 1,00 % (residual term to final maturity greater than six months and up to and including 24 months) 1,60 % (residual term to maturity exceeding 24 months)
Debt securities which would receive a 100 % risk weight under the Standardised Approach for credit risk.	8,00 %
Debt which would receive a 150 % risk weight under the Standardised Approach for credit risk.	12,00 %

2. For institutions which apply the IRB Approach to the exposure class of which the issuer of the debt instrument forms part, to qualify for a risk weight under the Standardised Approach for credit risk as referred to in paragraph 1, the issuer of the exposure shall have an internal rating with a PD equivalent to or lower than that associated with the appropriate credit quality step under the Standardised Approach.

3. Institutions may calculate the specific risk requirements for any bonds that qualify for a 10 % risk weight in accordance with the treatment set out in Article 129(4), (5) and (6) as half of the applicable specific risk own funds requirement for the second category in Table 1.

4. Other qualifying items are:

(a) long and short positions in assets for which a credit assessment by a nominated ECAI is not available and which meet all of the following conditions:

(i) they are considered by the institution concerned to be sufficiently liquid;

(ii) their investment quality is, according to the institution's own discretion, at least equivalent to that of the assets referred to under Table 1 second row;

(iii) they are listed on at least one regulated market in a Member State or on a stock exchange in a third country provided that the exchange is recognised by the competent authorities of the relevant Member State;

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(b) long and short positions in assets issued by institutions subject to the own funds requirements set out in this Regulation which are considered by the institution concerned to be sufficiently liquid and whose investment quality is, according to the institution's own discretion, at least equivalent to that of the assets referred to under Table 1 second row;

(c) securities issued by institutions that are deemed to be of equivalent, or higher, credit quality than those associated with credit quality step 2 under the Standardised Approach for credit risk of exposures to institutions and that are subject to supervisory and regulatory arrangements comparable to those under this Regulation and Directive 2013/36/EU.

Institutions that make use of point (a) or (b) shall have a documented methodology in place to assess whether assets meet the requirements in those points and shall notify this methodology to the competent authorities.

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Article 337

Own funds requirement for securitisation instruments

1. For instruments in the trading book that are securitisation positions, the institution shall weight the net positions as calculated in accordance with Article 327(1) with 8 % of the risk weight the institution would apply to the position in its non-trading book according to Section 3 of Chapter 5 of Title II.

2. When determining risk weights for the purposes of paragraph 1, estimates of PD and LGD may be determined based on estimates that are derived from an internal incremental default and migration risk model (IRC model) of an institution that has been granted permission to use an internal model for specific risk of debt instruments. The latter alternative may be used only subject to permission by the competent authorities, which shall be granted if those estimates meet the quantitative requirements for the IRB Approach set out in Chapter 3 of Title II.

In accordance with Article 16 of Regulation (EU) No 1093/2010, the EBA shall issue guidelines on the use of estimates of PD and LGD as inputs when those estimates are based on an IRC model.

3. For securitisation positions that are subject to an additional risk weight in accordance with Article 247(6), 8 % of the total risk weight shall be applied.

4. The institution shall sum its weighted positions resulting from the application of paragraphs 1, 2 and 3 regardless of whether they are long or short, in order to calculate its own funds requirement against specific risk, except for securitisation positions subject to Article 338(4).

5. Where an originator institution of a traditional securitisation does not meet the conditions for significant risk transfer set out in Article 244, the originator institution shall include the exposures underlying the securitisation in its calculation of own funds requirement as if those exposures had not been securitised.

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Where an originator institution of a synthetic securitisation does not meet the conditions for significant risk transfer set out in Article 245, the originator institution shall include the exposures underlying the securitisation in its calculation of own funds requirements as if those exposures had not been securitised and shall ignore the effect of the synthetic securitisation for credit protection purposes.

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Article 338

Own funds requirement for the correlation trading portfolio

1. The correlation trading portfolio shall consist of securitisation positions and n-th-to-default credit derivatives that meet all of the following criteria:

(a) the positions are neither re-securitisation positions, nor options on a securitisation tranche, nor any other derivatives of securitisation exposures that do not provide a pro-rata share in the proceeds of a securitisation tranche;

(b) all reference instruments are either of the following:

(i) single-name instruments, including single-name credit derivatives, for which a liquid two-way market exists;

(ii) commonly-traded indices based on those reference entities.

A two-way market is deemed to exist where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at such price within a relatively short time conforming to trade custom.

2. Positions which reference any of the following shall not be part of the correlation trading portfolio:

(a) an underlying that is capable of being assigned to the exposure class ‘retail exposures’ or to the exposure class ‘exposures secured by mortgages on immovable property’ under the Standardised Approach for credit risk in an institution's non-trading book;

(b) a claim on a special purpose entity, collateralised, directly or indirectly, by a position that would itself not be eligible for inclusion in the correlation trading portfolio in accordance with paragraph 1 and this paragraph.

3. An institution may include in the correlation trading portfolio positions which are neither securitisation positions nor n-th-to-default credit derivatives but which hedge other positions of that portfolio, provided that a liquid two-way market as described in the last subparagraph of paragraph 1 exists for the instrument or its underlyings.

4. An institution shall determine the larger of the following amounts as the specific risk own funds requirement for the correlation trading portfolio:

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(a) the total specific risk own funds requirement that would apply just to the net long positions of the correlation trading portfolio;

(b) the total specific risk own funds requirement that would apply just to the net short positions of the correlation trading portfolio.

Sub-Section 2

General risk

Article 339

Maturity-based calculation of general risk

1. In order to calculate own funds requirements against general risk all positions shall be weighted according to maturity as explained in paragraph 2 in order to compute the amount of own funds required against them. This requirement shall be reduced when a weighted position is held alongside an opposite weighted position within the same maturity band. A reduction in the requirement shall also be made when the opposite weighted positions fall into different maturity bands, with the size of this reduction depending both on whether the two positions fall into the same zone, or not, and on the particular zones they fall into.

2. The institution shall assign its net positions to the appropriate maturity bands in column 2 or 3, as appropriate, in Table 2 in paragraph 4. It shall do so on the basis of residual maturity in the case of fixed-rate instruments and on the basis of the period until the interest rate is next set in the case of instruments on which the interest rate is variable before final maturity. It shall also distinguish between debt instruments with a coupon of 3 % or more and those with a coupon of less than 3 % and thus allocate them to column 2 or column 3 in Table 2. It shall then multiply each of them by the weighing for the maturity band in question in column 4 in Table 2.

3. The institution shall then work out the sum of the weighted long positions and the sum of the weighted short positions in each maturity band. The amount of the former which are matched by the latter in a given maturity band shall be the matched weighted position in that band, while the residual long or short position shall be the unmatched weighted position for the same band. The total of the matched weighted positions in all bands shall then be calculated.

4. The institution shall compute the totals of the unmatched weighted long positions for the bands included in each of the zones in Table 2 in order to derive the unmatched weighted long position for each zone. Similarly, the sum of the unmatched weighted short positions for each band in a particular zone shall be summed to compute the unmatched weighted short position for that zone. That part of the unmatched

▼C2

weighted long position for a given zone that is matched by the unmatched weighted short position for the same zone shall be the matched weighted position for that zone. That part of the unmatched weighted long or unmatched weighted short position for a zone that cannot be thus matched shall be the unmatched weighted position for that zone.

Table 2

Zone	Maturity band		Weighting (in %)	Assumed interest rate change (in %)
	Coupon of 3 % or more	Coupon of less than 3 %		
One	0 ≤ 1 month	0 ≤ 1 month	0,00	—
	> 1 ≤ 3 months	> 1 ≤ 3 months	0,20	1,00
	> 3 ≤ 6 months	> 3 ≤ 6 months	0,40	1,00
	> 6 ≤ 12 months	> 6 ≤ 12 months	0,70	1,00
Two	> 1 ≤ 2 years	> 1,0 ≤ 1,9 years	1,25	0,90
	> 2 ≤ 3 years	> 1,9 ≤ 2,8 years	1,75	0,80
	> 3 ≤ 4 years	> 2,8 ≤ 3,6 years	2,25	0,75
Three	> 4 ≤ 5 years	> 3,6 ≤ 4,3 years	2,75	0,75
	> 5 ≤ 7 years	> 4,3 ≤ 5,7 years	3,25	0,70
	> 7 ≤ 10 years	> 5,7 ≤ 7,3 years	3,75	0,65
	> 10 ≤ 15 years	> 7,3 ≤ 9,3 years	4,50	0,60
	> 15 ≤ 20 years	> 9,3 ≤ 10,6 years	5,25	0,60
	> 20 years	> 10,6 ≤ 12,0 years	6,00	0,60
		> 12,0 ≤ 20,0 years	8,00	0,60
		> 20 years	12,50	0,60

5. The amount of the unmatched weighted long or short position in zone one which is matched by the unmatched weighted short or long position in zone two shall then be the matched weighted position between zones one and two. The same calculation shall then be undertaken with regard to that part of the unmatched weighted position in zone two which is left over and the unmatched weighted position in zone three in order to calculate the matched weighted position between zones two and three.

6. The institution may reverse the order in paragraph 5 so as to calculate the matched weighted position between zones two and three before calculating that position between zones one and two.

7. The remainder of the unmatched weighted position in zone one shall then be matched with what remains of that for zone three after the latter's matching with zone two in order to derive the matched weighted position between zones one and three.

8. Residual positions, following the three separate matching calculations in paragraphs 5, 6 and 7 shall be summed.

9. The institution's own funds requirement shall be calculated as the sum of:

(a) 10 % of the sum of the matched weighted positions in all maturity bands;

▼C2

(b) 40 % of the matched weighted position in zone one;

(c) 30 % of the matched weighted position in zone two;

(d) 30 % of the matched weighted position in zone three;

(e) 40 % of the matched weighted position between zones one and two and between zones two and three;

(f) 150 % of the matched weighted position between zones one and three;

(g) 100 % of the residual unmatched weighted positions.

Article 340

Duration-based calculation of general risk

1. Institutions may use an approach for calculating the own funds requirement for the general risk on debt instruments which reflects duration, instead of the approach set out in Article 339, provided that the institution does so on a consistent basis.

2. Under the duration-based approach referred to in paragraph 1, the institution shall take the market value of each fixed-rate debt instrument and hence calculate its yield to maturity, which is implied discount rate for that instrument. In the case of floating-rate instruments, the institution shall take the market value of each instrument and hence calculate its yield on the assumption that the principal is due when the interest rate can next be changed.

3. The institution shall then calculate the modified duration of each debt instrument on the basis of the following formula:

$$modified\ duration = \frac{D}{1+R}$$

where:

D = duration calculated according to the following formula:

$$D = \frac{\sum_{t=1}^{M} \frac{t \cdot C_t}{(1+R)^t}}{\sum_{t=1}^{M} \frac{C_t}{(1+R)^t}}$$

where:

R = yield to maturity;

C_t = cash payment in time t;

M = total maturity.

Correction shall be made to the calculation of the modified duration for debt instruments which are subject to prepayment risk. EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines about how to apply such corrections.

▼C2

4. The institution shall then allocate each debt instrument to the appropriate zone in Table 3. It shall do so on the basis of the modified duration of each instrument.

Table 3

Zone	Modified duration (in years)	Assumed interest (change in %)
One	> 0 ≤ 1,0	1,0
Two	> 1,0 ≤ 3,6	0,85
Three	> 3,6	0,7

5. The institution shall then calculate the duration-weighted position for each instrument by multiplying its market price by its modified duration and by the assumed interest-rate change for an instrument with that particular modified duration (see column 3 in Table 3).

6. The institution shall calculate its duration-weighted long and its duration-weighted short positions within each zone. The amount of the former which are matched by the latter within each zone shall be the matched duration-weighted position for that zone.

The institution shall then calculate the unmatched duration-weighted positions for each zone. It shall then follow the procedures laid down for unmatched weighted positions in Article 339(5) to (8).

7. The institution's own funds requirement shall then be calculated as the sum of the following:

(a) 2 % of the matched duration-weighted position for each zone;

(b) 40 % of the matched duration-weighted positions between zones one and two and between zones two and three;

(c) 150 % of the matched duration-weighted position between zones one and three;

(d) 100 % of the residual unmatched duration-weighted positions.

Section 3

Equities

Article 341

Net positions in equity instruments

1. The institution shall separately sum all its net long positions and all its net short positions in accordance with Article 327. The sum of the absolute values of the two figures shall be its overall gross position.

▼C2

2. The institution shall calculate, separately for each market, the difference between the sum of the net long and the net short positions. The sum of the absolute values of those differences shall be its overall net position.

3. EBA shall develop draft regulatory technical standards defining the term market referred to in paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 31 January 2014.

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

Article 342

Specific risk of equity instruments

The institution shall multiply its overall gross position by 8 % in order to calculate its own funds requirement against specific risk.

Article 343

General risk of equity instruments

The own funds requirement against general risk shall be the institution's overall net position multiplied by 8 %.

Article 344

Stock indices

1. EBA shall develop draft implementing technical standards listing the stock indices for which the treatments set out in the second sentence of paragraph 4 is available.

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

2. Before the entry into force of the technical standards referred to in paragraph 1, institutions may continue to apply the treatment set out in the second sentence of paragraph 4, where the competent authorities have applied that treatment before 1 January 2014.

3. Stock-index futures, the delta-weighted equivalents of options in stock-index futures and stock indices collectively referred to hereafter as ‘stock-index futures’, may be broken down into positions in each of their constituent equities. These positions may be treated as underlying positions in the equities in question, and may, be netted against opposite positions in the underlying equities themselves. Institutions shall notify the competent authority of the use they make of that treatment.

▼C2

4. Where a stock-index future is not broken down into its underlying positions, it shall be treated as if it were an individual equity. However, the specific risk on this individual equity can be ignored if the stock-index future in question is exchange traded and represents a relevant appropriately diversified index.

Section 4

Underwriting

Article 345

Reduction of net positions

1. In the case of the underwriting of debt and equity instruments, an institution may use the following procedure in calculating its own funds requirements. The institution shall first calculate the net positions by deducting the underwriting positions which are subscribed or sub-underwritten by third parties on the basis of formal agreements. The institution shall then reduce the net positions by the reduction factors in Table 4 and calculate its own funds requirements using the reduced underwriting positions.

Table 4

working day 0:	100 %
working day 1:	90 %
working days 2 to 3:	75 %
working day 4:	50 %
working day 5:	25 %
after working day 5:	0 %.

‘Working day zero’ shall be the working day on which the institution becomes unconditionally committed to accepting a known quantity of securities at an agreed price.

2. The institutions shall notify to the competent authorities the use they make of paragraph 1.

Section 5

Specific risk own funds requirements for positions hedged by credit derivatives

Article 346

Allowance for hedges by credit derivatives

1. An allowance shall be given for hedges provided by credit derivatives, in accordance with the principles set out in paragraphs 2 to 6.

2. Institutions shall treat the position in the credit derivative as one ‘leg’ and the hedged position that has the same nominal, or, where applicable, notional amount, as the other ‘leg’.

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3. Full allowance shall be given when the values of the two legs always move in the opposite direction and broadly to the same extent. This will be the case in the following situations:

(a) the two legs consist of completely identical instruments;

(b) a long cash position is hedged by a total rate of return swap (or vice versa) and there is an exact match between the reference obligation and the underlying exposure (i.e., the cash position). The maturity of the swap itself may be different from that of the underlying exposure.

In these situations, a specific risk own funds requirement shall not be applied to either side of the position.

4. An 80 % offset will be applied when the values of the two legs always move in the opposite direction and where there is an exact match in terms of the reference obligation, the maturity of both the reference obligation and the credit derivative, and the currency of the underlying exposure. In addition, key features of the credit derivative contract shall not cause the price movement of the credit derivative to materially deviate from the price movements of the cash position. To the extent that the transaction transfers risk, an 80 % specific risk offset will be applied to the side of the transaction with the higher own funds requirement, while the specific risk requirements on the other side shall be zero.

5. Partial allowance shall be given, absent the situations in paragraphs 3 and 4, in the following situations:

(a) the position falls under paragraph 3(b) but there is an asset mismatch between the reference obligation and the underlying exposure. However, the positions meet the following requirements:

(i) the reference obligation ranks pari passu with or is junior to the underlying obligation;

(ii) the underlying obligation and reference obligation share the same obligor and have legally enforceable cross-default or cross-acceleration clauses;

(b) the position falls under paragraph 3(a) or paragraph 4 but there is a currency or maturity mismatch between the credit protection and the underlying asset. Such currency mismatch shall be included in the own funds requirement for foreign exchange risk;

(c) the position falls under paragraph 4 but there is an asset mismatch between the cash position and the credit derivative. However, the underlying asset is included in the (deliverable) obligations in the credit derivative documentation.

In order to give partial allowance, rather than adding the specific risk own funds requirements for each side of the transaction, only the higher of the two own funds requirements shall apply.

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6. In all situations not falling under paragraphs 3 to 5, an own funds requirement for specific risk shall be calculated for both sides of the positions separately.

Article 347

Allowance for hedges by first and nth-to default credit derivatives

In the case of first-to-default credit derivatives and nth-to-default credit derivatives, the following treatment applies for the allowance to be given in accordance with Article 346:

(a) where an institution obtains credit protection for a number of reference entities underlying a credit derivative under the terms that the first default among the assets shall trigger payment and that this credit event shall terminate the contract, the institution may offset specific risk for the reference entity to which the lowest specific risk percentage charge among the underlying reference entities applies in accordance with Table 1 in Article 336;

(b) where the nth default among the exposures triggers payment under the credit protection, the protection buyer may only offset specific risk if protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. In such cases, the methodology set out in point (a) for first-to-default credit derivatives shall be followed appropriately amended for nth-to-default products.

Section 6

Own funds requirements for CIUs

Article 348

Own funds requirements for CIUs

1. Without prejudice to other provisions in this Section, positions in CIUs shall be subject to an own funds requirement for position risk, comprising specific and general risk, of 32 %. Without prejudice to Article 353 taken together with the amended gold treatment set out in Article 352(4) and Article 367(2)(b) positions in CIUs shall be subject to an own funds requirement for position risk, comprising specific and general risk, and foreign-exchange risk of 40 %.

2. Unless noted otherwise in Article 350, no netting is permitted between the underlying investments of a CIU and other positions held by the institution.

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Article 349

General criteria for CIUs

CIUs shall be eligible for the approach set out in Article 350, where all the following conditions are met:

(a) the CIU's prospectus or equivalent document shall include all of the following:

(i) the categories of assets in which the CIU is authorised to invest;

(ii) where investment limits apply, the relative limits and the methodologies to calculate them;

(iii) where leverage is allowed, the maximum level of leverage;

(iv) where concluding OTC financial derivatives transactions or repurchase transactions or securities borrowing or lending is allowed, a policy to limit counterparty risk arising from these transactions;

(b) the business of the CIU shall be reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period;

(c) the shares or units of the CIU shall be redeemable in cash, out of the undertaking's assets, on a daily basis at the request of the unit holder;

(d) investments in the CIU shall be segregated from the assets of the CIU manager;

(e) there shall be adequate risk assessment of the CIU, by the investing institution;

(f) CIUs shall be managed by persons supervised in accordance with Directive 2009/65/EC or equivalent legislation.

Article 350

Specific methods for CIUs

1. Where the institution is aware of the underlying investments of the CIU on a daily basis, the institution may look through to those underlying investments in order to calculate the own funds requirements for position risk, comprising specific and general risk. Under such an approach, positions in CIUs shall be treated as positions in the underlying investments of the CIU. Netting shall be permitted between positions in the underlying investments of the CIU and other positions held by the institution, provided that the institution holds a sufficient quantity of shares or units to allow for redemption/creation in exchange for the underlying investments.

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2. Institutions may calculate the own funds requirements for position risk, comprising specific and general risk, for positions in CIUs by assuming positions representing those necessary to replicate the composition and performance of the externally generated index or fixed basket of equities or debt securities referred to in point (a), subject to the following conditions:

(a) the purpose of the CIU's mandate is to replicate the composition and performance of an externally generated index or fixed basket of equities or debt securities;

(b) a minimum correlation coefficient between daily returns on the CIU and the index or basket of equities or debt securities it tracks of 0,9 can be clearly established over a minimum period of six months.

3. Where the institution is not aware of the underlying investments of the CIU on a daily basis, the institution may calculate the own funds requirements for position risk, comprising specific and general risk, subject to the following conditions:

(a) it will be assumed that the CIU first invests to the maximum extent allowed under its mandate in the asset classes attracting the highest own funds requirement for specific and general risk separately, and then continues making investments in descending order until the maximum total investment limit is reached. The position in the CIU will be treated as a direct holding in the assumed position;

(b) institutions shall take account of the maximum indirect exposure that they could achieve by taking leveraged positions through the CIU when calculating their own funds requirement for specific and general risk separately, by proportionally increasing the position in the CIU up to the maximum exposure to the underlying investment items resulting from the mandate;

(c) if the own funds requirement for specific and general risk together in accordance with this paragraph exceed that set out in Article 348(1) the own funds requirement shall be capped at that level.

4. Institutions may rely on the following third parties to calculate and report own funds requirements for position risk for positions in CIUs falling under paragraphs 1 to 4, in accordance with the methods set out in this Chapter:

(a) the depository of the CIU provided that the CIU exclusively invests in securities and deposits all securities at this depository;

(b) for other CIUs, the CIU management company, provided that the CIU management company meets the criteria set out in Article 132(3)(a).

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The correctness of the calculation shall be confirmed by an external auditor.

CHAPTER 3

Own funds requirements for foreign-exchange risk

Article 351

De minimis and weighting for foreign exchange risk

If the sum of an institution's overall net foreign-exchange position and its net gold position, calculated in accordance with the procedure set out in Article 352, including for any foreign exchange and gold positions for which own funds requirements are calculated using an internal model, exceeds 2 % of its total own funds, the institution shall calculate an own funds requirement for foreign exchange risk. The own funds requirement for foreign exchange risk shall be the sum of its overall net foreign-exchange position and its net gold position in the reporting currency, multiplied by 8 %.

Article 352

Calculation of the overall net foreign exchange position

1. The institution's net open position in each currency (including the reporting currency) and in gold shall be calculated as the sum of the following elements (positive or negative):

(a) the net spot position (i.e. all asset items less all liability items, including accrued interest, in the currency in question or, for gold, the net spot position in gold);

(b) the net forward position, which are all amounts to be received less all amounts to be paid under forward exchange and gold transactions, including currency and gold futures and the principal on currency swaps not included in the spot position;

(c) irrevocable guarantees and similar instruments that are certain to be called and likely to be irrecoverable;

(d) the net delta, or delta-based, equivalent of the total book of foreign-currency and gold options;

(e) the market value of other options.

The delta used for purposes of point (d) shall be that of the exchange concerned. For OTC options, or where delta is not available from the exchange concerned, the institution may calculate delta itself using an appropriate model, subject to permission by the competent authorities. Permission shall be granted if the model appropriately estimates the rate of change of the option's or warrant's value with respect to small changes in the market price of the underlying.

▼C2

The institution may include net future income/expenses not yet accrued but already fully hedged if it does so consistently.

The institution may break down net positions in composite currencies into the component currencies in accordance with the quotas in force.

2. Any positions which an institution has deliberately taken in order to hedge against the adverse effect of the exchange rate on its ratios in accordance with Article 92(1) may, subject to permission by the competent authorities, be excluded from the calculation of net open currency positions. Such positions shall be of a non-trading or structural nature and any variation of the terms of their exclusion, subject to separate permission by the competent authorities. The same treatment subject to the same conditions may be applied to positions which an institution has which relate to items that are already deducted in the calculation of own funds.

3. An institution may use the net present value when calculating the net open position in each currency and in gold provided that the institution applies this approach consistently.

4. Net short and long positions in each currency other than the reporting currency and the net long or short position in gold shall be converted at spot rates into the reporting currency. They shall then be summed separately to form the total of the net short positions and the total of the net long positions respectively. The higher of these two totals shall be the institution's overall net foreign-exchange position.

5. Institutions shall adequately reflect other risks associated with options, apart from the delta risk, in the own funds requirements.

6. EBA shall develop draft regulatory technical standards defining a range of methods to reflect in the own funds requirements other risks, apart from delta risk, in a manner proportionate to the scale and complexity of institutions' activities in options.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.

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

Before the entry into force of the technical standards referred to in the first subparagraph, competent authorities may continue to apply the existing national treatments, where the competent authorities have applied those treatments before 31 December 2013.

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Article 353

Foreign exchange risk of CIUs

1. For the purposes of Article 352, in respect of CIUs the actual foreign exchange positions of the CIU shall be taken into account.

2. Institutions may rely on the following third parties' reporting of the foreign exchange positions in the CIU:

(a) the depository institution of the CIU provided that the CIU exclusively invests in securities and deposits all securities at this depository institution;

(b) for other CIUs, the CIU management company, provided that the CIU management company meets the criteria set out in point (a) of Article 132(3).

The correctness of the calculation shall be confirmed by an external auditor.

3. Where an institution is not aware of the foreign exchange positions in a CIU, it shall be assumed that the CIU is invested up to the maximum extent allowed under the CIU's mandate in foreign exchange and institutions shall, for trading book positions, take account of the maximum indirect exposure that they could achieve by taking leveraged positions through the CIU when calculating their own funds requirement for foreign exchange risk. This shall be done by proportionally increasing the position in the CIU up to the maximum exposure to the underlying investment items resulting from the investment mandate. The assumed position of the CIU in foreign exchange shall be treated as a separate currency according to the treatment of investments in gold, subject to the addition of the total long position to the total long open foreign exchange position and the total short position to the total short open foreign exchange position where the direction of the CIU's investment is available. There shall be no netting allowed between such positions prior to the calculation.

Article 354

Closely correlated currencies

1. Institutions may provide lower own funds requirements against positions in relevant closely correlated currencies. A pair of currencies is deemed to be closely correlated only if the likelihood of a loss — calculated on the basis of daily exchange-rate data for the preceding three or five years — occurring on equal and opposite positions in such currencies over the following 10 working days, which is 4 % or less of the value of the matched position in question (valued in terms of the reporting currency) has a probability of at least 99 %, when an observation period of three years is used, and 95 %, when an observation period of five years is used. The own-funds requirement on the matched position in two closely correlated currencies shall be 4 % multiplied by the value of the matched position.

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2. In calculating the requirements of this Chapter, institutions may disregard positions in currencies, which are subject to a legally binding intergovernmental agreement to limit its variation relative to other currencies covered by the same agreement. Institutions shall calculate their matched positions in such currencies and subject them to an own funds requirement no lower than half of the maximum permissible variation laid down in the intergovernmental agreement in question in respect of the currencies concerned.

3. EBA shall develop draft implementing technical standards listing the currencies for which the treatment set out in paragraph 1 is available.

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

4. The own funds requirement on the matched positions in currencies of Member States participating in the second stage of the economic and monetary union may be calculated as 1,6 % of the value of such matched positions.

5. Only the unmatched positions in currencies referred to in this Article shall be incorporated into the overall net open position in accordance with Article 352(4).

6. Where daily exchange-rate data for the preceding three or five years — occurring on equal and opposite positions in a pair of currencies over the following 10 working days show that these two currencies are perfectly positively correlated and the institution always can face a zero bid/ask spread on the respective trades, the institution can, upon explicit permission by its competent authority, apply an own funds requirement of 0 % until the end of 2017.

CHAPTER 4

Own funds requirements for commodities risk

Article 355

Choice of method for commodities risk

Subject to Articles 356 to 358, institutions shall calculate the own funds requirement for commodities risk with one of the methods set out in Article 359, 360 or 361.

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Article 356

Ancillary commodities business

1. Institutions with ancillary agricultural commodities business may determine the own funds requirements for their physical commodity stock at the end of each year for the following year where all of the following conditions are met:

(a) at any time of the year it holds own funds for this risk which are not lower than the average own funds requirement for that risk estimated on a conservative basis for the coming year;

(b) it estimates on a conservative basis the expected volatility for the figure calculated under point (a);

(c) its average own funds requirement for this risk does not exceed 5 % of its own funds or EUR 1 million and, taking into account the volatility estimated in accordance with (b), the expected peak own funds requirements do not exceed 6,5 % of its own funds;

(d) the institution monitors on an ongoing basis whether the estimates carried out under points (a) and (b) still reflect the reality.

2. Institutions shall notify to the competent authorities the use they make of the option provided in paragraph 1.

Article 357

Positions in commodities

1. Each position in commodities or commodity derivatives shall be expressed in terms of the standard unit of measurement. The spot price in each commodity shall be expressed in the reporting currency.

2. Positions in gold or gold derivatives shall be considered as being subject to foreign-exchange risk and treated in accordance with Chapter 3 or 5, as appropriate, for the purpose of calculating commodities risk.

3. For the purpose of Article 360(1), the excess of an institution's long positions over its short positions, or vice versa, in the same commodity and identical commodity futures, options and warrants shall be its net position in each commodity. Derivative instruments shall be treated, as laid down in Article 358, as positions in the underlying commodity.

4. For the purposes of calculating a position in a commodity, the following positions shall be treated as positions in the same commodity:

▼C2

(a) positions in different sub-categories of commodities in cases where the sub-categories are deliverable against each other;

(b) positions in similar commodities if they are close substitutes and where a minimum correlation of 0,9 between price movements can be clearly established over a minimum period of one year.

Article 358

Particular instruments

1. Commodity futures and forward commitments to buy or sell individual commodities shall be incorporated in the measurement system as notional amounts in terms of the standard unit of measurement and assigned a maturity with reference to expiry date.

2. Commodity swaps where one side of the transaction is a fixed price and the other the current market price shall be treated, as a series of positions equal to the notional amount of the contract, with, where relevant, one position corresponding with each payment on the swap and slotted into the maturity bands in Article 359(1). The positions shall be long positions if the institution is paying a fixed price and receiving a floating price and short positions if the institution is receiving a fixed price and paying a floating price. Commodity swaps where the sides of the transaction are in different commodities are to be reported in the relevant reporting ladder for the maturity ladder approach.

3. Options and warrants on commodities or on commodity derivatives shall be treated as if they were positions equal in value to the amount of the underlying to which the option refers, multiplied by its delta for the purposes of this Chapter. The latter positions may be netted off against any offsetting positions in the identical underlying commodity or commodity derivative. The delta used shall be that of the exchange concerned. For OTC options, or where delta is not available from the exchange concerned the institution may calculate delta itself using an appropriate model, subject to permission by the competent authorities. Permission shall be granted if the model appropriately estimates the rate of change of the option's or warrant's value with respect to small changes in the market price of the underlying.

Institutions shall adequately reflect other risks associated with options, apart from the delta risk, in the own funds requirements.

4. EBA shall develop draft regulatory technical standards defining a range of methods to reflect in the own funds requirements other risks, apart from delta risk, in a manner proportionate to the scale and complexity of institutions' activities in options.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2013.

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

Before the entry into force of the technical standards referred to in the first subparagraph, competent authorities may continue to apply the existing national treatments, where the competent authorities have applied those treatments before 31 December 2013.

5. Where an institution is either of the following, it shall include the commodities concerned in the calculation of its own funds requirement for commodities risk:

(a) the transferor of commodities or guaranteed rights relating to title to commodities in a repurchase agreement;

(b) the lender of commodities in a commodities lending agreement.

Article 359

Maturity ladder approach

1. The institution shall use a separate maturity ladder in line with Table 1 for each commodity. All positions in that commodity shall be assigned to the appropriate maturity bands. Physical stocks shall be assigned to the first maturity band between 0 and up to and including 1 month.

Table 1

Maturity band (1)	Spread rate (in %) (2)
0 ≤ 1 month	1,50
> 1 ≤ 3 months	1,50
> 3 ≤ 6 months	1,50
> 6 ≤ 12 months	1,50
> 1 ≤ 2 years	1,50
> 2 ≤ 3 years	1,50
> 3 years	1,50

2. Positions in the same commodity may be offset and assigned to the appropriate maturity bands on a net basis for the following:

(a) positions in contracts maturing on the same date;

(b) positions in contracts maturing within 10 days of each other if the contracts are traded on markets which have daily delivery dates.

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3. The institution shall then calculate the sum of the long positions and the sum of the short positions in each maturity band. The amount of the former which are matched by the latter in a given maturity band shall be the matched positions in that band, while the residual long or short position shall be the unmatched position for the same band.

4. That part of the unmatched long position for a given maturity band that is matched by the unmatched short position, or vice versa, for a maturity band further out shall be the matched position between two maturity bands. That part of the unmatched long or unmatched short position that cannot be thus matched shall be the unmatched position.

5. The institution's own funds requirement for each commodity shall be calculated on the basis of the relevant maturity ladder as the sum of the following:

(a) the sum of the matched long and short positions, multiplied by the appropriate spread rate as indicated in the second column of Table 1 for each maturity band and by the spot price for the commodity;

(b) the matched position between two maturity bands for each maturity band into which an unmatched position is carried forward, multiplied by 0,6 %, which is the carry rate and by the spot price for the commodity;

(c) the residual unmatched positions, multiplied by 15 % which is the outright rate and by the spot price for the commodity.

6. The institution's overall own funds requirement for commodities risk shall be calculated as the sum of the own funds requirements calculated for each commodity in accordance with paragraph 5.

Article 360

Simplified approach

1. The institution's own funds requirement for each commodity shall be calculated as the sum of the following:

(a) 15 % of the net position, long or short, multiplied by the spot price for the commodity;

(b) 3 % of the gross position, long plus short, multiplied by the spot price for the commodity.

2. The institution's overall own funds requirement for commodities risk shall be calculated as the sum of the own funds requirements calculated for each commodity in accordance with paragraph 1.

▼C2

Article 361

Extended maturity ladder approach

Institutions may use the minimum spread, carry and outright rates set out in the following Table 2 instead of those indicated in Article 359 provided that the institutions:

(a) undertake significant commodities business;

(b) have an appropriately diversified commodities portfolio;

(c) are not yet in a position to use internal models for the purpose of calculating the own funds requirement for commodities risk.

Table 2

	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
Spread rate (%)	1,0	1,2	1,5	1,5
Carry rate (%)	0,3	0,5	0,6	0,6
Outright rate (%)	8	10	12	15

Institutions shall notify the use they make of this Article to their competent authorities together with evidence of their efforts to implement an internal model for the purpose of calculating the own funds requirement for commodities risk.

CHAPTER 5

Use of internal models to calculate own funds requirements

Section 1

Permission and own funds requirements

Article 362

Specific and general risks

Position risk on a traded debt instrument or equity instrument or derivative thereof may be divided into two components for purposes of this Chapter. The first shall be its specific risk component and shall encompass the risk of a price change in the instrument concerned due to factors related to its issuer or, in the case of a derivative, the issuer of the underlying instrument. The general risk component shall encompass the risk of a price change in the instrument due in the case of a traded debt instrument or debt derivative to a change in the level of interest rates or in the case of an equity or equity derivative to a broad equity-market movement unrelated to any specific attributes of individual securities.

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Article 363

Permission to use internal models

1. After having verified an institution's compliance with the requirements of Sections 2, 3 and 4 as relevant, competent authorities shall grant permission to institutions to calculate their own funds requirements for one or more of the following risk categories by using their internal models instead of or in combination with the methods in Chapters 2 to 4:

(a) general risk of equity instruments;

(b) specific risk of equity instruments;

(c) general risk of debt instruments;

(d) specific risk of debt instruments;

(e) foreign-exchange risk;

(f) commodities risk.

2. For risk categories for which the institution has not been granted the permission referred to in paragraph 1 to use its internal models, that institution shall continue to calculate own funds requirements in accordance with those Chapters 2, 3 and 4 as relevant. Permission by the competent authorities for the use of internal models shall be required for each risk category and shall be granted only if the internal model covers a significant share of the positions of a certain risk category.

3. Material changes to the use of internal models that the institution has received permission to use, the extension of the use of internal models that the institution has received permission to use, in particular to additional risk categories, and the initial calculation of stressed value-at-risk in accordance with Article 365(2) require a separate permission by the competent authority.

Institutions shall notify the competent authorities of all other extensions and changes to the use of those internal models that the institution has received permission to use.

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

(a) the conditions for assessing materiality of extensions and changes to the use of internal models;

(b) the assessment methodology under which competent authorities permit institutions to use internal models;

(c) the conditions under which the share of positions covered by the internal model within a risk category shall be considered significant as referred to in paragraph 2.

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EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

Article 364

Own funds requirements when using internal models

1. Each institution using an internal model shall fulfil, in addition to own funds requirements calculated in accordance with Chapters 2, 3 and 4 for those risk categories for which permission to use an internal model has not been granted, an own funds requirement expressed as the sum of points (a) and (b):

(a) the higher of the following values:

(i) its previous day's value-at-risk number calculated in accordance with Article 365(1) (VaR_{t-1});

(ii) an average of the daily value-at-risk numbers calculated in accordance with Article 365(1) on each of the preceding sixty business days (VaR_{avg}), multiplied by the multiplication factor (m_c) in accordance with Article 366;

(b) the higher of the following values:

(i) its latest available stressed-value-at-risk number calculated in accordance with Article 365(2) ($sVaR_{t-1}$); and

(ii) an average of the stressed value-at-risk numbers calculated in the manner and frequency specified in Article 365(2) during the preceding sixty business days ($sVaR_{avg}$), multiplied by the multiplication factor (m_s) in accordance with Article 366;

2. Institutions that use an internal model to calculate their own funds requirement for specific risk of debt instruments shall fulfil an additional own funds requirement expressed as the sum of the following points (a) and (b):

(a) the own funds requirement calculated in accordance with Article 337 and 338 for the specific risk of securitisation positions and nth to default credit derivatives in the trading book with the exception of those incorporated in an own funds requirement for the specific risk of the correlation trading portfolio in accordance with Section 5 and, where applicable, the own funds requirement for specific risk in accordance with Chapter 2, Section 6, for those positions in CIUs for which neither the conditions in Article 350(1) nor Article 350(2) are fulfilled;

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(b) the higher of:

(i) the most recent risk number for the incremental default and migration risk calculated in accordance with Section 3;

(ii) the average of this number over the preceding 12 weeks.

3. Institutions that have a correlation trading portfolio, which meets the requirements in Article 338(1) to (3), may fulfil an own funds requirement on the basis of Article 377 instead of Article 338(4), calculated as the higher of the following:

(a) the most recent risk number for the correlation trading portfolio calculated in accordance with Section 5;

(b) the average of this number over the preceding 12-weeks;

(c) 8 % of the own funds requirement that would, at the time of calculation of the most recent risk number referred to in point (a), be calculated in accordance with Article 338(4) for all those positions incorporated into the internal model for the correlation trading portfolio.

Section 2

General requirements

Article 365

VaR and stressed VaR Calculation

1. The calculation of the value-at-risk number referred to in Article 364 shall be subject to the following requirements:

(a) daily calculation of the value-at-risk number;

(b) a 99th percentile, one-tailed confidence interval;

(c) a 10-day holding period;

(d) an effective historical observation period of at least one year except where a shorter observation period is justified by a significant upsurge in price volatility;

(e) at least monthly data set updates.

The institution may use value-at-risk numbers calculated according to shorter holding periods than 10 days scaled up to 10 days by an appropriate methodology that is reviewed periodically.

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2. In addition, the institution shall at least weekly calculate a ‘stressed value-at-risk’ of the current portfolio, in accordance with the requirements set out in the first paragraph, with value-at-risk model inputs calibrated to historical data from a continuous 12-month period of significant financial stress relevant to the institution's portfolio. The choice of such historical data shall be subject to at least annual review by the institution, which shall notify the outcome to the competent authorities. EBA shall monitor the range of practices for calculating stressed value at risk and shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines on such practices.

Article 366

Regulatory back testing and multiplication factors

1. The results of the calculations referred to in Article 365 shall be scaled up by the multiplication factors (m_c) and (m_s).

2. Each of the multiplication factors (m_c) and (m_s) shall be the sum of at least 3 and an addend between 0 and 1 in accordance with Table 1. That addend shall depend on the number of overshootings for the most recent 250 business days as evidenced by the institution's back-testing of the value-at-risk number as set out in Article 365(1).

Table 1

Number of overshootings	addend
Fewer than 5	0,00
5	0,40
6	0,50
7	0,65
8	0,75
9	0,85
10 or more	1,00

3. The institutions shall count daily overshootings on the basis of back-testing on hypothetical and actual changes in the portfolio's value. An overshooting is a one-day change in the portfolio's value that exceeds the related one-day value-at-risk number generated by the institution's model. For the purpose of determining the addend the number of overshootings shall be assessed at least quarterly and shall be equal to the higher of the number of overshootings under hypothetical and actual changes in the value of the portfolio.

Back-testing on hypothetical changes in the portfolio's value shall be based on a comparison between the portfolio's end-of-day value and, assuming unchanged positions, its value at the end of the subsequent day.

Back-testing on actual changes in the portfolio's value shall be based on a comparison between the portfolio's end-of-day value and its actual value at the end of the subsequent day excluding fees, commissions, and net interest income.

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4. The competent authorities may in individual cases limit the addend to that resulting from overshootings under hypothetical changes, where the number of overshootings under actual changes does not result from deficiencies in the internal model.

5. In order to allow competent authorities to monitor the appropriateness of the multiplication factors on an ongoing basis, institutions shall notify promptly, and in any case no later than within five working days, the competent authorities of overshootings that result from their back-testing programme.

Article 367

Requirements on risk measurement

1. Any internal model used to calculate capital requirements for position risk, foreign exchange risk, commodities risk and any internal model for correlation trading shall meet all of the following requirements:

(a) the model shall capture accurately all material price risks;

(b) the model shall capture a sufficient number of risk factors, depending on the level of activity of the institution in the respective markets. Where a risk factor is incorporated into the institution's pricing model but not into the risk-measurement model, the institution shall be able to justify such an omission to the satisfaction of the competent authority. The risk- measurement model shall capture nonlinearities for options and other products as well as correlation risk and basis risk. Where proxies for risk factors are used they shall show a good track record for the actual position held.

2. Any internal model used to calculate capital requirements for position risk, foreign exchange risk or commodities risk shall meet all of the following requirements:

(a) the model shall incorporate a set of risk factors corresponding to the interest rates in each currency in which the institution has interest rate sensitive on- or off-balance sheet positions. The institution shall model the yield curves using one of the generally accepted approaches. For material exposures to interest-rate risk in the major currencies and markets, the yield curve shall be divided into a minimum of six maturity segments, to capture the variations of volatility of rates along the yield curve. The model shall also capture the risk of less than perfectly correlated movements between different yield curves;

▼C2

(b) the model shall incorporate risk factors corresponding to gold and to the individual foreign currencies in which the institution's positions are denominated. For CIUs the actual foreign exchange positions of the CIU shall be taken into account. Institutions may rely on third party reporting of the foreign exchange position of the CIU, where the correctness of that report is adequately ensured. If an institution is not aware of the foreign exchange positions of a CIU, this position shall be carved out and treated in accordance with Article 353(3);

(c) the model shall use a separate risk factor at least for each of the equity markets in which the institution holds significant positions;

(d) the model shall use a separate risk factor at least for each commodity in which the institution holds significant positions. The model shall also capture the risk of less than perfectly correlated movements between similar, but not identical, commodities and the exposure to changes in forward prices arising from maturity mismatches. It shall also take account of market characteristics, notably delivery dates and the scope provided to traders to close out positions;

(e) the institution's internal model shall conservatively assess the risk arising from less liquid positions and positions with limited price transparency under realistic market scenarios. In addition, the internal model shall meet minimum data standards. Proxies shall be appropriately conservative and shall be used only where available data is insufficient or is not reflective of the true volatility of a position or portfolio.

3. Institutions may, in any internal model used for purposes of this Chapter, use empirical correlations within risk categories and across risk categories only if the institution's approach for measuring correlations is sound and implemented with integrity.

Article 368

Qualitative requirements

1. Any internal model used for purposes of this Chapter shall be conceptually sound and implemented with integrity and, in particular, all of the following qualitative requirements shall be met:

(a) any internal model used to calculate capital requirements for position risk, foreign exchange risk or commodities risk shall be closely integrated into the daily risk-management process of the institution and serve as the basis for reporting risk exposures to senior management;

(b) the institution shall have a risk control unit that is independent from business trading units and reports directly to senior management. The unit shall be responsible for designing and implementing any internal model used for purposes of this Chapter. The unit shall conduct the initial and on-going validation of any internal model used for purposes of this Chapter, being responsible for the overall risk management system. The unit shall produce and analyse daily

▼C2

reports on the output of any internal model used for calculating capital requirements for position risk, foreign exchange risk and commodities risk, and on the appropriate measures to be taken in terms of trading limits;

(c) the institution's management body and senior management shall be actively involved in the risk-control process and the daily reports produced by the risk-control unit are reviewed by a level of management with sufficient authority to enforce both reductions of positions taken by individual traders as well as in the institution's overall risk exposure;

(d) the institution shall have sufficient numbers of staff skilled in the use of sophisticated internal models, and including those used for purposes of this Chapter, in the trading, risk-control, audit and back-office areas;

(e) the institution shall have established procedures for monitoring and ensuring compliance with a documented set of internal policies and controls concerning the overall operation of its internal models, and including those used for purposes of this Chapter;

(f) any internal model used for purposes of this Chapter shall have a proven track record of reasonable accuracy in measuring risks;

(g) the institution shall frequently conduct a rigorous programme of stress testing, including reverse stress tests, which encompasses any internal model used for purposes of this Chapter and the results of these stress tests shall be reviewed by senior management and reflected in the policies and limits it sets. This process shall particularly address illiquidity of markets in stressed market conditions, concentration risk, one way markets, event and jump-to-default risks, non-linearity of products, deep out-of-the-money positions, positions subject to the gapping of prices and other risks that may not be captured appropriately in the internal models. The shocks applied shall reflect the nature of the portfolios and the time it could take to hedge out or manage risks under severe market conditions;

(h) the institution shall conduct, as part of its regular internal auditing process, an independent review of its internal models, and including those used for purposes of this Chapter.

2. The review referred to in point (h) of paragraph 1 shall include both the activities of the business trading units and of the independent risk-control unit. At least once a year, the institution shall conduct a review of its overall risk-management process. The review shall consider the following:

(a) the adequacy of the documentation of the risk-management system and process and the organisation of the risk-control unit;

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(b) the integration of risk measures into daily risk management and the integrity of the management information system;

(c) the process the institution employs for approving risk-pricing models and valuation systems that are used by front and back-office personnel;

(d) the scope of risks captured by the risk-measurement model and the validation of any significant changes in the risk-measurement process;

(e) the accuracy and completeness of position data, the accuracy and appropriateness of volatility and correlation assumptions, and the accuracy of valuation and risk sensitivity calculations;

(f) the verification process the institution employs to evaluate the consistency, timeliness and reliability of data sources used to run internal models, including the independence of such data sources;

(g) the verification process the institution uses to evaluate back-testing that is conducted to assess the models' accuracy.

3. As techniques and best practices evolve, institutions shall apply those new techniques and practices in any internal model used for purposes of this Chapter.

Article 369

Internal Validation

1. Institutions shall have processes in place to ensure that all their internal models used for purposes of this Chapter have been adequately validated by suitably qualified parties independent of the development process to ensure that they are conceptually sound and adequately capture all material risks. The validation shall be conducted when the internal model is initially developed and when any significant changes are made to the internal model. The validation shall also be conducted on a periodic basis but especially where there have been any significant structural changes in the market or changes to the composition of the portfolio which might lead to the internal model no longer being adequate. As techniques and best practices for internal validation evolve, institutions shall apply these advances. Internal model validation shall not be limited to back-testing, but shall, at a minimum, also include the following:

(a) tests to demonstrate that any assumptions made within the internal model are appropriate and do not underestimate or overestimate the risk;

(b) in addition to the regulatory back-testing programmes, institutions shall carry out their own internal model validation tests, including back-testing, in relation to the risks and structures of their portfolios;

▼C2

(c) the use of hypothetical portfolios to ensure that the internal model is able to account for particular structural features that may arise, for example material basis risks and concentration risk.

2. The institution shall perform back-testing on both actual and hypothetical changes in the portfolio's value.

Section 3

Requirements particular to specific risk modelling

Article 370

Requirements for modelling specific risk

An internal model used for calculating own funds requirements for specific risk and an internal model for correlation trading shall meet the following additional requirements:

(a) it explains the historical price variation in the portfolio;

(b) it captures concentration in terms of magnitude and changes of composition of the portfolio;

(c) it is robust to an adverse environment;

(d) it is validated through back-testing aimed at assessing whether specific risk is being accurately captured. If the institution performs such back-testing on the basis of relevant sub-portfolios, these shall be chosen in a consistent manner;

(e) it captures name-related basis risk and shall in particular be sensitive to material idiosyncratic differences between similar but not identical positions;

(f) it captures event risk.

Article 371

Exclusions from specific risk models

1. An institution may choose to exclude from the calculation of its specific risk own funds requirement using an internal model those positions for which it fulfils an own funds requirement for specific risk in accordance with Article 332(1)(e) or Article 337 with exception of those positions that are subject to the approach set out in Article 377.

2. An institution may choose not to capture default and migration risks for traded debt instruments in its internal model where it is capturing those risks through the requirements set out in Section 4.

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Section 4

Internal model for incremental default and migration risk

Article 372

Requirement to have an internal IRC model

An institution that uses an internal model for calculating own funds requirements for specific risk of traded debt instruments shall also have an internal incremental default and migration risk (IRC) model in place to capture the default and migration risks of its trading book positions that are incremental to the risks captured by the value-at-risk measure as specified in Article 365(1). The institution shall demonstrate that its internal model meets the following standards under the assumption of a constant level of risk, and adjusted where appropriate to reflect the impact of liquidity, concentrations, hedging and optionality:

(a) the internal model provides a meaningful differentiation of risk and accurate and consistent estimates of incremental default and migration risk;

(b) the internal model's estimates for potential losses play an essential role in the risk management of the institution;

(c) the market and position data used for the internal model are up-to-date and subject to an appropriate quality assessment;

(d) the requirements in Article 367(3), Article 368, Article 369(1) and points (b), (c), (e) and (f) of Article 370 are met.

EBA shall issue guidelines on the requirements in Articles 373 to 376.

Article 373

Scope of the internal IRC model

The internal IRC model shall cover all positions subject to an own funds requirement for specific interest rate risk, including those subject to a 0 % specific risk capital charge under Article 336, but shall not cover securitisation positions and n-th-to-default credit derivatives.

The institution may, subject to permission by the competent authorities, choose to consistently include all listed equity positions and derivatives positions based on listed equities. The permission shall be granted if such inclusion is consistent with how the institution internally measures and manages risk.

▼C2

Article 374

Parameters of the internal IRC model

1. Institutions shall use the internal model to calculate a number which measures losses due to default and internal or external ratings migration at the 99,9 % confidence interval over a time horizon of one year. Institutions shall calculate this number at least weekly.

2. Correlation assumptions shall be supported by analysis of objective data in a conceptually sound framework. The internal model shall appropriately reflect issuer concentrations. Concentrations that can arise within and across product classes under stressed conditions shall also be reflected.

3. The internal IRC model shall reflect the impact of correlations between default and migration events. The impact of diversification between, on the one hand, default and migration events and, on the other hand, other risk factors shall not be reflected.

4. The internal model shall be based on the assumption of a constant level of risk over the one-year time horizon, implying that given individual trading book positions or sets of positions that have experienced default or migration over their liquidity horizon are re-balanced at the end of their liquidity horizon to attain the initial level of risk. Alternatively, an institution may choose to consistently use a one-year constant position assumption.

5. The liquidity horizons shall be set according to the time required to sell the position or to hedge all material relevant price risks in a stressed market, having particular regard to the size of the position. Liquidity horizons shall reflect actual practice and experience during periods of both systematic and idiosyncratic stresses. The liquidity horizon shall be measured under conservative assumptions and shall be sufficiently long that the act of selling or hedging, in itself, would not materially affect the price at which the selling or hedging would be executed.

6. The determination of the appropriate liquidity horizon for a position or set of positions is subject to a floor of three months.

7. The determination of the appropriate liquidity horizon for a position or set of positions shall take into account an institution's internal policies relating to valuation adjustments and the management of stale positions. When an institution determines liquidity horizons for sets of positions rather than for individual positions, the criteria for defining sets of positions shall be defined in a way that meaningfully reflects differences in liquidity. The liquidity horizons shall be greater for positions that are concentrated, reflecting the longer period needed to liquidate such positions. The liquidity horizon for a securitisation warehouse shall reflect the time to build, sell and securitise the assets, or to hedge the material risk factors, under stressed market conditions.

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Article 375

Recognition of hedges in the internal IRC model

1. Hedges may be incorporated into an institution's internal model to capture the incremental default and migration risks. Positions may be netted when long and short positions refer to the same financial instrument. Hedging or diversification effects associated with long and short positions involving different instruments or different securities of the same obligor, as well as long and short positions in different issuers, may only be recognised by explicitly modelling gross long and short positions in the different instruments. Institutions shall reflect the impact of material risks that could occur during the interval between the hedge's maturity and the liquidity horizon as well as the potential for significant basis risks in hedging strategies by product, seniority in the capital structure, internal or external rating, maturity, vintage and other differences in the instruments. An institution shall reflect a hedge only to the extent that it can be maintained even as the obligor approaches a credit or other event.

2. For positions that are hedged via dynamic hedging strategies, a rebalancing of the hedge within the liquidity horizon of the hedged position may be recognised provided that the institution:

(a) chooses to model rebalancing of the hedge consistently over the relevant set of trading book positions;

(b) demonstrates that the inclusion of rebalancing results in a better risk measurement;

(c) demonstrates that the markets for the instruments serving as hedges are liquid enough to allow for such rebalancing even during periods of stress. Any residual risks resulting from dynamic hedging strategies shall be reflected in the own funds requirement.

Article 376

Particular requirements for the internal IRC model

1. The internal model to capture the incremental default and migration risks shall reflect the nonlinear impact of options, structured credit derivatives and other positions with material nonlinear behaviour with respect to price changes. The institution shall also have due regard to the amount of model risk inherent in the valuation and estimation of price risks associated with such products.

2. The internal model shall be based on data that are objective and up-to-date.

▼C2

3. As part of the independent review and validation of their internal models used for purposes of this Chapter, inclusively for purposes of the risk measurement system, an institution shall in particular do all of the following:

(a) validate that its modelling approach for correlations and price changes is appropriate for its portfolio, including the choice and weights of its systematic risk factors;

(b) perform a variety of stress tests, including sensitivity analysis and scenario analysis, to assess the qualitative and quantitative reasonableness of the internal model, particularly with regard to the treatment of concentrations. Such tests shall not be limited to the range of events experienced historically;

(c) apply appropriate quantitative validation including relevant internal modelling benchmarks.

4. The internal model shall be consistent with the institution's internal risk management methodologies for identifying, measuring, and managing trading risks.

5. Institutions shall document their internal models so that its correlation and other modelling assumptions are transparent to the competent authorities.

6. The internal model shall conservatively assess the risk arising from less liquid positions and positions with limited price transparency under realistic market scenarios. In addition, the internal model shall meet minimum data standards. Proxies shall be appropriately conservative and may be used only where available data is insufficient or is not reflective of the true volatility of a position or portfolio.

Section 5

Internal model for correlation trading

Article 377

Requirements for an internal model for correlation trading

1. Competent authorities shall grant permission to use an internal model for the own funds requirement for the correlation trading portfolio instead of the own funds requirement in accordance with Article 338 to institutions that are allowed to use an internal model for specific risk of debt instruments and that meet the requirements in paragraphs 2 to 6 of this Article and in Article 367(1) and (3), Article 368, Article 369(1) and points (a), (b), (c), (e) and (f) of Article 370.

▼C2

2. Institutions shall use this internal model to calculate a number which adequately measures all price risks at the 99,9 % confidence interval over a time horizon of one year under the assumption of a constant level of risk, and adjusted where appropriate to reflect the impact of liquidity, concentrations, hedging and optionality. Institutions shall calculate this number at least weekly.

3. The following risks shall be adequately captured by the model referred to in paragraph 1:

(a) the cumulative risk arising from multiple defaults, including different ordering of defaults, in tranched products;

(b) credit spread risk, including the gamma and cross-gamma effects;

(c) volatility of implied correlations, including the cross effect between spreads and correlations;

(d) basis risk, including both of the following:

(i) the basis between the spread of an index and those of its constituent single names;

(ii) the basis between the implied correlation of an index and that of bespoke portfolios;

(e) recovery rate volatility, as it relates to the propensity for recovery rates to affect tranche prices;

(f) to the extent the comprehensive risk measure incorporates benefits from dynamic hedging, the risk of hedge slippage and the potential costs of rebalancing such hedges;

(g) any other material price risks of positions in the correlation trading portfolio.

4. An institution shall use sufficient market data within the model referred to in paragraph 1 in order to ensure that it fully captures the salient risks of those exposures in its internal approach in accordance with the requirements set out in this Article. It shall be able to demonstrate to the competent authority through back testing or other appropriate means that its model can appropriately explain the historical price variation of those products.

The institution shall have appropriate policies and procedures in place in order to separate the positions for which it holds permission to incorporate them in the own funds requirement in accordance with this Article from other positions for which it does not hold such permission.

▼C2

5. With regard to the portfolio of all the positions incorporated in the model referred to in paragraph 1, the institution shall regularly apply a set of specific, predetermined stress scenarios. Such stress scenarios shall examine the effects of stress to default rates, recovery rates, credit spreads, basis risk, correlations and other relevant risk factors on the correlation trading portfolio. The institution shall apply stress scenarios at least weekly and report at least quarterly to the competent authorities the results, including comparisons with the institution's own funds requirement in accordance with this Article. Any instances where the stress test results materially exceed the own funds requirement for the correlation trading portfolio shall be reported to the competent authorities in a timely manner. EBA shall issue guidelines on the application of stress scenarios for the correlation trading portfolio.

6. The internal model shall conservatively assess the risk arising from less liquid positions and positions with limited price transparency under realistic market scenarios. In addition, the internal model shall meet minimum data standards. Proxies shall be appropriately conservative and may be used only where available data is insufficient or is not reflective of the true volatility of a position or portfolio.

TITLE V

OWN FUNDS REQUIREMENTS FOR SETTLEMENT RISK

Article 378

Settlement/delivery risk

In the case of transactions in which debt instruments, equities, foreign currencies and commodities excluding repurchase transactions and securities or commodities lending and securities or commodities borrowing are unsettled after their due delivery dates, an institution shall calculate the price difference to which it is exposed.

The price difference is calculated as the difference between the agreed settlement price for the debt instrument, equity, foreign currency or commodity in question and its current market value, where the difference could involve a loss for the credit institution.

The institution shall multiply that price difference by the appropriate factor in the right column of the following Table 1 in order to calculate the institution's own funds requirement for settlement risk.

Table 1

Number of working days after due settlement date	(%)
5 — 15	8
16 — 30	50
31 — 45	75
46 or more	100

▼C2

Article 379

Free deliveries

1. An institution shall be required to hold own funds, as set out in Table 2, where the following occurs:

(a) it has paid for securities, foreign currencies or commodities before receiving them or it has delivered securities, foreign currencies or commodities before receiving payment for them;

(b) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

Table 2

Capital treatment for free deliveries

Column 1	Column 2	Column 3	Column 4
Transaction Type	Up to first contractual payment or delivery leg	From first contractual payment or delivery leg up to four days after second contractual payment or delivery leg	From 5 business days post second contractual payment or delivery leg until extinction of the transaction
Free delivery	No capital charge	Treat as an exposure	Treat as an exposure risk weighted at 1 250 %

2. In applying a risk weight to free delivery exposures treated according to Column 3 of Table 2, an institution using the Internal Ratings Based approach set out in Part Three, Title II, Chapter 3 may assign PDs to counterparties, for which it has no other non-trading book exposure, on the basis of the counterparty's external rating. Institutions using own estimates of 'LGDs' may apply the LGD set out in Article 161(1) to free delivery exposures treated according to Column 3 of Table 2 provided that they apply it to all such exposures. Alternatively, an institution using the Internal Ratings Based approach set out in Part Three, Title II, Chapter 3 may apply the risk weights of the Standardised Approach, as set out in Part Three, Title II, Chapter 2 provided that it applies them to all such exposures or may apply a 100 % risk weight to all such exposures.

If the amount of positive exposure resulting from free delivery transactions is not material, institutions may apply a risk weight of 100 % to these exposures, except where a risk weight of 1 250 % in accordance with Column 4 of Table 2 in paragraph 1 is required.

3. As an alternative to applying a risk weight of 1 250 % to free delivery exposures according to Column 4 of Table 2 in paragraph 1, institutions may deduct the value transferred plus the current positive exposure of those exposures from Common Equity Tier 1 items in accordance with point (k) of Article 36(1).

▼C2

Article 380

Waiver

Where a system wide failure of a settlement system, a clearing system or a CCP occurs, competent authorities may waive the own funds requirements calculated as set out in Articles 378 and 379 until the situation is rectified. In this case, the failure of a counterparty to settle a trade shall not be deemed a default for purposes of credit risk.

TITLE VI

OWN FUNDS REQUIREMENTS FOR CREDIT VALUATION ADJUSTMENT RISK

Article 381

Meaning of credit valuation adjustment

For the purposes of this Title and Chapter 6 of Title II, ‘credit valuation adjustment’ or ‘CVA’ means an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty. That adjustment reflects the current market value of the credit risk of the counterparty to the institution, but does not reflect the current market value of the credit risk of the institution to the counterparty.

Article 382

Scope

1. An institution shall calculate the own funds requirements for CVA risk in accordance with this Title for all OTC derivative instruments in respect of all of its business activities, other than credit derivatives recognised to reduce risk-weighted exposure amounts for credit risk.

2. An institution shall include securities financing transactions in the calculation of own funds required by paragraph 1 if the competent authority determines that the institution's CVA risk exposures arising from those transactions are material.

3. Transactions with a qualifying central counterparty and a client's transactions with a clearing member, when the clearing member is acting as an intermediary between the client and a qualifying central counterparty and the transactions give rise to a trade exposure of the clearing member to the qualifying central counterparty, are excluded from the own funds requirements for CVA risk.

4. The following transactions shall be excluded from the own funds requirements for CVA risk:

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(a) transactions with non-financial counterparties as defined in point (9) of Article 2 of Regulation (EU) No 648/2012, or with non-financial counterparties established in a third country, where those transactions do not exceed the clearing threshold as specified in Article 10(3) and (4) of that Regulation;

▼M9

(b) intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, unless Member States adopt national law requiring the structural separation within a banking group, in which case competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;

▼C2

(c) transactions with counterparties referred to in point (10) of Article 2 of Regulation (EU) No 648/2012 and subject to the transitional provisions set out in Article 89(1) of that Regulation until those transitional provisions cease to apply;

(d) transactions with counterparties referred to in Article 1(4) and (5) of Regulation (EU) No 648/2012 and transactions with counterparties for which Article 114(4) and Article 115(2) of this Regulation specifies a risk weight of 0 % for exposures to those counterparties.

The exemption from the CVA risk charge for those transactions referred to in point (c) of this paragraph) which are entered into during the transitional period laid down in Article 89(1) of Regulation (EU) No 648/2012 shall apply for the length of the contract of that transaction.

In regard to point (a), where an institution ceases to be exempt through crossing the exemption threshold or due to a change in the exemption threshold, outstanding contracts shall remain exempt until the date of their maturity.

5. EBA shall conduct a review by 1 January 2015 and every two years thereafter, in the light of international regulatory developments and including on potential methodologies on the calibration and thresholds for application of CVA risk charges to non-financial counterparties established in a third country.

EBA in cooperation with ESMA shall develop draft regulatory technical standards to specify the procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for CVA risk charge.

EBA shall submit those draft regulatory technical standards within six months of the date of the review referred to in the first subparagraph,

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

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Article 383

Advanced method

1. An institution which has permission to use an internal model for the specific risk of debt instruments in accordance with point (d) of Article 363 (1) shall, for all transactions for which it has permission to use the IMM for determining the exposure value for the associated counterparty credit risk exposure in accordance with Article 283, determine the own funds requirements for CVA risk by modelling the impact of changes in the counterparties' credit spreads on the CVAs of all counterparties of those transactions, taking into account CVA hedges that are eligible in accordance with Article 386.

An institution shall use its internal model for determining the own funds requirements for the specific risk associated with traded debt positions and shall apply a 99 % confidence interval and a 10-day equivalent holding period. The internal model shall be used in such way that it simulates changes in the credit spreads of counterparties, but does not model the sensitivity of CVA to changes in other market factors, including changes in the value of the reference asset, commodity, currency or interest rate of a derivative.

The own funds requirements for CVA risk for each counterparty shall be calculated in accordance with the following formula:

$$CVA = LGD_{MKT} \cdot \sum_{i=1}^{T} max\left\{0, exp\left(-\frac{s_{i-1} \cdot t_{i-1}}{LGD_{MKT}}\right) - exp\left(-\frac{s_i \cdot t_i}{LGD_{MKT}}\right)\right\} \cdot \frac{EE_{i-1} \cdot D_{i-1} + EE_i \cdot D_i}{2}$$

where:

t_i = the time of the i-th revaluation, starting from t_0=0;

t_T = the longest contractual maturity across the netting sets with the counterparty;

s_i = is the credit spread of the counterparty at tenor ti, used to calculate the CVA of the counterparty. Where the credit default swap spread of the counterparty is available, an institution shall use that spread. Where such a credit default swap spread is not available, an institution shall use a proxy spread that is appropriate having regard to the rating, industry and region of the counterparty;

LGD_{MKT} = the LGD of the counterparty that shall be based on the spread of a market instrument of the counterparty if a counterparty instrument is available. Where a counterparty instrument is not available, it shall be based on the proxy spread that is appropriate having regard to the rating, industry and region of the counterparty.

▼C2

The first factor within the sum represents an approximation of the market implied marginal probability of a default occurring between times t_{i-1} and t_i;

EE_i = the expected exposure to the counterparty at revaluation time ti, where exposures of different netting sets for such counterparty are added, and where the longest maturity of each netting set is given by the longest contractual maturity inside the netting set; An institution shall apply the treatment set out in paragraph 3 in the case of margined trading, if the institution uses the EPE measure referred to in point (a) or (b) of Article 285(1) for margined trades;

D_i = the default risk-free discount factor at time ti, where D_0 =1.

2. When calculating the own funds requirements for CVA risk for a counterparty, an institution shall base all inputs into its internal model for specific risk of debt instruments on the following formulae (whichever is appropriate):

(a) where the model is based on full repricing, the formula in paragraph 1 shall be used directly;

(b) where the model is based on credit spread sensitivities for specific tenors, an institution shall base each credit spread sensitivity ('Regulatory CS01') on the following formula:

$$Regulatory\ \ CS01_i = 0.0001 \cdot t_i \cdot \exp\left(-\frac{s_i \cdot t_i}{LGD_{MKT}}\right) \cdot \frac{EE_{i-1} \cdot D_{i-1} - EE_{i+1} \cdot D_{i+1}}{2}$$

For the final time bucket i=T, the corresponding formula is

$$Regulatory\ \ CS01_T = 0.0001 \cdot t_T \cdot \exp\left(-\frac{s_T \cdot t_T}{LGD_{MKT}}\right) \cdot \frac{EE_{T-1} \cdot D_{T-1} + EE_T \cdot D_T}{2}$$

(c) where the model uses credit spread sensitivities to parallel shifts in credit spreads, an institution shall use the following formula:

$$Regulatory\ CS01 = 0.0001 \cdot \sum_{i=1}^{T}\left(t_i \cdot \exp\left(-\frac{s_i \cdot t_i}{LGD_{MKT}}\right) - t_{i-1} \cdot \exp\left(-\frac{s_{i-1} \cdot t_{i-1}}{LGD_{MKT}}\right)\right) \cdot \frac{EE_{i-1} \cdot D_{i-1} + EE_i \cdot D_i}{2}$$

▼C2

(d) where the model uses second-order sensitivities to shifts in credit spreads (spread gamma), the gammas shall be calculated based on the formula in paragraph 1.

3. An institution using the EPE measure for collateralised OTC derivatives referred to in point (a) or (b) of Article 285(1) shall, when determining the own funds requirements for CVA risk in accordance with paragraph 1, do both of the following:

(a) assume a constant EE profile;

(b) set EE equal to the effective expected exposure as calculated under Article 285(1)(b) for a maturity equal to the greater of the following:

(i) half of the longest maturity occurring in the netting set;

(ii) the notional weighted average maturity of all transactions inside the netting set.

4. An institution which is permitted by the competent authority in accordance with Article 283 to use IMM to calculate exposure values in relation to the majority of its business, but which uses the methods set out in Section 3, Section 4 or Section 5 of Title II, Chapter 6 for smaller portfolios, and which has permission to use the market risk internal model for the specific risk of debt instruments in accordance with point (d) of Article 363(1) may, subject to permission from the competent authorities, calculate the own funds requirements for CVA risk in accordance with paragraph 1 for the non-IMM netting sets. Competent authorities shall grant this permission only if the institution uses the methods set out in Section 3, Section 4 or Section 5 of Title II, Chapter 6 for a limited number of smaller portfolios.

For the purposes of a calculation under the preceding subparagraph and where the IMM model does not produce an expected exposure profile, an institution shall do both of the following:

(a) assume a constant EE profile;

(b) set EE equal to the exposure value as computed under the methods set out in Section 3, Section 4 or Section 5 of Title II, Chapter 6, or IMM for a maturity equal to the greater of:

(i) half of the longest maturity occurring in the netting set;

(ii) the notional weighted average maturity of all transactions inside the netting set.

▼C2

5. An institution shall determine the own funds requirements for CVA risk in accordance with Article 364(1) and Articles 365 and 367 as the sum of non-stressed and stressed value-at-risk, which shall be calculated as follows:

(a) for the non-stressed value-at-risk, current parameter calibrations for expected exposure as set out in the first subparagraph of Article 292(2), shall be used;

(b) for the stressed value-at-risk, future counterparty EE profiles using a stressed calibration as set out in the second subparagraph of Article 292(2) shall be used. The period of stress for the credit spread parameters shall be the most severe one-year stress period contained within the three-year stress period used for the exposure parameters;

(c) the three-times multiplication factor used in the calculation of own funds requirements based on a value-at-risk and a stressed value-at-risk in accordance with 364(1) will apply to these calculations. EBA shall monitor for consistency any supervisory discretion used to apply a higher multiplication factor than that three-times multiplication factor to the value-at-risk and stressed value-at-risk inputs to the CVA risk charge. Competent authorities applying a multiplication factor higher than three shall provide a written justification to EBA;

(d) the calculation shall be carried out on at least a monthly basis and the EE that is used shall be calculated on the same frequency. If lower than a daily frequency is used, for the purpose of the calculation specified in points (a)(ii) and (b)(ii) of Article 364(1) institutions shall take the average over three months.

6. For exposures to a counterparty, for which the institution's approved internal model for the specific risk of debt instruments does not produce a proxy spread that is appropriate with respect to the criteria of rating, industry and region of the counterparty, the institution shall use the method set out in Article 384 to calculate the own funds requirement for CVA risk.

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

(a) how a proxy spread is to be determined by the institution's approved internal model for the specific risk of debt instruments for the purposes of identifying si and LGDMKT referred to in paragraph 1;

(b) the number and size of portfolios that fulfil the criterion of a limited number of smaller portfolios referred to in paragraph 4.

▼C2

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

Article 384

Standardised method

1. An institution which does not calculate the own funds requirements for CVA risk for its counterparties in accordance with Article 383 shall calculate a portfolio own funds requirements for CVA risk for each counterparty in accordance with the following formula, taking into account CVA hedges that are eligible in accordance with Article 386:

$$K = 2.33 \cdot \sqrt{h} \cdot \sqrt{\left(\sum_i 0.5 \cdot w_i \cdot \left(M_i \cdot EAD_i^{total} - M_i^{hedge} B_i\right) - \sum_{ind} w_{ind} \cdot M_{ind} \cdot B_{ind}\right)^2 + \sum_i 0.75 \cdot w_i^2 \cdot \left(M_i \cdot EAD_i^{total} - M_i^{hedge} B_i\right)^2}$$

where:

h = the one-year risk horizon (in units of a year); h = 1;

w_i = the weight applicable to counterparty ‘i’.

Counterparty ‘i’ shall be mapped to one of the six weights wi based on an external credit assessment by a nominated ECAI, as set out in Table 1. For a counterparty for which a credit assessment by a nominated ECAI is not available:

(a) an institution using the approach in Title II, Chapter 3 shall map the internal rating of the counterparty to one of the external credit assessment;

(b) an institution using the approach in Title II, Chapter 2 shall assign wi=1,0 % to this counterparty. However, if an institution uses Article 128 to risk weight counterparty credit risk exposures to this counterparty, wi=3,0 % shall be assigned;

▼M8

EAD_i^{total} = the total counterparty credit risk exposure value of counterparty ‘i’ (summed across its netting sets) including the effect of collateral in accordance with the methods set out in Sections 3 to 6 of Chapter 6 of Title II as applicable to the calculation of the own funds requirements for counterparty credit risk for that counterparty.

▼C2

For an institution not using the method set out in Section 6 of Title II, Chapter 6, the exposure shall be discounted by applying the following factor:

$$\frac{1 - e^{-0.05 \cdot M_i}}{0.05 \cdot M_i}$$

B_i = the notional of purchased single name credit default swap hedges (summed if more than one position) referencing counterparty ‘i’ and used to hedge CVA risk.

▼C2

That notional amount shall be discounted by applying the following factor:

$$\frac{1 - e^{-0.05 \cdot M_i^{hedge}}}{0.05 \cdot M_i^{hedge}}$$

B_{ind} = is the full notional of one or more index credit default swap of purchased protection used to hedge CVA risk.

That notional amount shall be discounted by applying the following factor:

$$\frac{1 - e^{-0.05 \cdot M_{ind}}}{0.05 \cdot M_{ind}}$$

w_{ind} = is the weight applicable to index hedges.

An institution shall determine w_{ind} by calculating a weighted average of wi that are applicable to the individual constituents of the index;

M_i = the effective maturity of the transactions with counterparty i.

For an institution using the method set out in Section 6 of Title II, Chapter 6, M_i shall be calculated in accordance with Article 162(2)(g). However, for that purpose, M_i shall not be capped at five years but at the longest contractual remaining maturity in the netting set.

For an institution not using the method set out in Section 6 of Title II, Chapter 6, M_i is the average notional weighted maturity as referred to in point (b) of Article 162(2). However, for that purpose, M_i shall not be capped at five years but at the longest contractual remaining maturity in the netting set.

M_i^{hedge} = the maturity of the hedge instrument with notional B_i (the quantities $M_i^{hedge} B_i$ are to be summed if these are several positions);

M_{ind} = the maturity of the index hedge.

In the case of more than one index hedge position, M_{ind} is the notional-weighted maturity.

2. Where a counterparty is included in an index on which a credit default swap used for hedging counterparty credit risk is based, the institution may subtract the notional amount attributable to that counterparty in accordance with its reference entity weight from the index CDS notional amount and treat it as a single name hedge (B_i) of the individual counterparty with maturity based on the maturity of the index.

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Table 1

Credit quality step	Weight w_i
1	0,7 %
2	0,8 %
3	1,0 %
4	2,0 %
5	3,0 %
6	10,0 %

▼M8

Article 385

Alternative to using CVA methods for calculating own funds requirements

As an alternative to Article 384, for instruments referred to in Article 382 and subject to the prior consent of the competent authority, institutions using the Original Exposure Method as laid down in Article 282 may apply a multiplication factor of 10 to the resulting risk-weighted exposure amounts for counterparty credit risk for those exposures instead of calculating the own funds requirements for CVA risk.

▼C2

Article 386

Eligible hedges

1. Hedges shall be ‘eligible hedges’ for the purposes of the calculation of own funds requirements for CVA risk in accordance with Articles 383 and 384 only where they are used for the purpose of mitigating CVA risk and managed as such, and are one of the following:

(a) single-name credit default swaps or other equivalent hedging instruments referencing the counterparty directly;

(b) index credit default swaps, provided that the basis between any individual counterparty spread and the spreads of index credit default swap hedges is reflected, to the satisfaction of the competent authority, in the value-at-risk and the stressed value-at-risk.

The requirement in point (b) that the basis between any individual counterparty spread and the spreads of index credit default swap hedges is reflected in the value-at-risk and the stressed value-at-risk shall also apply to cases where a proxy is used for the spread of a counterparty.

▼C2

For all counterparties for which a proxy is used, an institution shall use reasonable basis time series out of a representative group of similar names for which a spread is available.

If the basis between any individual counterparty spread and the spreads of index credit default swap hedges is not reflected to the satisfaction of the competent authority, then an institution shall reflect only 50 % of the notional amount of index hedges in the value-at-risk and the stressed value-at-risk.

Over-hedging of the exposures with single name credit default swaps under the method laid out in Article 383 is not allowed.

2. An institution shall not reflect other types of counterparty risk hedges in the calculation of the own funds requirements for CVA risk. In particular, tranched or nth-to-default credit default swaps and credit linked notes are not eligible hedges for the purposes the calculation of the own funds requirements for CVA risk.

3. Eligible hedges that are included in the calculation of the own funds requirements for CVA risk shall not be included in the calculation of the own funds requirements for specific risk as set out in Title IV or treated as credit risk mitigation other than for the counterparty credit risk of the same portfolio of transaction.

PART FOUR

LARGE EXPOSURES

Article 387

Subject matter

Institutions shall monitor and control their large exposures in accordance with this Part.

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Article 389

Definition

For the purposes of this Part, ‘exposures’, means any asset or off-balance sheet item referred to in Part Three, Title II, Chapter 2, without applying the risk weights or degrees of risk.

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Article 390

Calculation of the exposure value

1. The total exposures to a group of connected clients shall be calculated by adding together the exposures to individual clients in that group.

2. The overall exposures to individual clients shall be calculated by adding the exposures in the trading book and the exposures in the non-trading book.

▼M8

3. For exposures in the trading book, institutions may:

(a) offset their long positions and short positions in the same financial instruments issued by a given client, with the net position in each of the different instruments being calculated in accordance with the methods laid down in Chapter 2 of Title IV of Part Three;

(b) offset their long positions and short positions in different financial instruments issued by a given client, but only where the financial instrument underlying the short position is junior to the financial instrument underlying the long position or where the underlying instruments are of the same seniority.

For the purposes of points (a) and (b), financial instruments may be allocated into buckets on the basis of different degrees of seniority in order to determine the relative seniority of positions.

4. Institutions shall calculate the exposure values of the derivative contracts listed in Annex II and of credit derivative contracts directly entered into with a client in accordance with one of the methods set out in Sections 3, 4 and 5 of Chapter 6 of Title II of Part Three, as applicable. Exposures resulting from the transactions referred to in Articles 378, 379 and 380 shall be calculated in the manner laid down in those Articles.

When calculating the exposure value for the contracts referred to in the first subparagraph, where those contracts are allocated to the trading book, institutions shall also comply with the principles set out in Article 299.

By way of derogation from the first subparagraph, institutions with permission to use the methods referred to in Section 4 of Chapter 4 of Title II of Part Three and Section 6 of Chapter 6 of Title II of Part Three may use those methods for calculating the exposure value for securities financing transactions.

5. Institutions shall add to the total exposure to a client the exposures arising from derivative contracts listed in Annex II and credit derivative contracts, where the contract was not directly entered into with that client but the underlying debt or equity instrument was issued by that client.

6. Exposures shall not include any of the following:

(a) in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the two business days following payment;

(b) in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five business days following payment or delivery of the securities, whichever is the earlier;

(c) in the case of the provision of money transmission including the execution of payment services, clearing and settlement in any currency and correspondent banking or financial instruments clearing, settlement and custody services to clients, delayed receipts in funding and other exposures arising from client activity which do not last longer than the following business day;

▼M8

(d) in the case of the provision of money transmission including the execution of payment services, clearing and settlement in any currency and correspondent banking, intra-day exposures to institutions providing those services;

(e) exposures deducted from Common Equity Tier 1 items or Additional Tier 1 items in accordance with Articles 36 and 56 or any other deduction from those items that reduces the solvency ratio.

7. To determine the overall exposure to a client or a group of connected clients, in respect of clients to which the institution has exposures through transactions referred to in points (m) and (o) of Article 112 or through other transactions where there is an exposure to underlying assets, an institution shall assess its underlying exposures taking into account the economic substance of the structure of the transaction and the risks inherent in the structure of the transaction itself, in order to determine whether it constitutes an additional exposure.

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

(a) the conditions and methodologies to be used to determine the overall exposure to a client or a group of connected clients for the types of exposures referred to in paragraph 7;

(b) the conditions under which the structure of the transactions referred to in paragraph 7 do not constitute an additional exposure.

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

9. For the purposes of paragraph 5, EBA shall develop draft regulatory technical standards to specify how to determine the exposures arising from derivative contracts listed in Annex II and credit derivative contracts, where the contract was not directly entered into with a client but the underlying debt or equity instrument was issued by that client for their inclusion into the exposures to the client.

EBA shall submit those draft regulatory technical standards to the Commission by 28 March 2020.

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

▼C2

Article 391

Definition of an institution for large exposures purposes

For the purposes of calculating the value of exposures in accordance with this Part the term ‘institution’ shall include a private or public undertaking, including its branches, which, were it established in the Union, would fulfil the definition of the term ‘institution’ and has been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

▼M8

For the purposes of the first paragraph, the Commission may adopt, by means of implementing acts, and subject to the examination procedure referred to in Article 464(2), decisions as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

Article 392

Definition of a large exposure

An institution's exposure to a client or a group of connected clients shall be considered a large exposure where the value of the exposure is equal to or exceeds 10 % of its Tier 1 capital.

▼C2

Article 393

Capacity to identify and manage large exposures

An institution shall have sound administrative and accounting procedures and adequate internal control mechanisms for the purposes of identifying, managing, monitoring, reporting and recording all large exposures and subsequent changes to them, in accordance with this Regulation.

▼M8

Article 394

Reporting requirements

1. Institutions shall report the following information to their competent authorities for each large exposure that they hold, including large exposures exempted from the application of Article 395(1):

(a) the identity of the client or the group of connected clients to which the institution has a large exposure;

(b) the exposure value before taking into account the effect of the credit risk mitigation, where applicable;

(c) where used, the type of funded or unfunded credit protection;

(d) the exposure value, after taking into account the effect of the credit risk mitigation calculated for the purposes of Article 395(1), where applicable.

Institutions that are subject to Chapter 3 of Title II of Part Three shall report their 20 largest exposures to their competent authorities on a consolidated basis, excluding the exposures exempted from the application of Article 395(1).

Institutions shall also report exposures of a value greater than or equal to EUR 300 million but less than 10 % of the institution's Tier 1 capital to their competent authorities on a consolidated basis.

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2. In addition to the information referred to in paragraph 1 of this Article, institutions shall report the following information to their competent authorities in relation to their 10 largest exposures to institutions on a consolidated basis, as well as their 10 largest exposures to shadow banking entities which carry out banking activities outside the regulated framework on a consolidated basis, including large exposures exempted from the application of Article 395(1):

(a) the identity of the client or the group of connected clients to which an institution has a large exposure;

(b) the exposure value before taking into account the effect of the credit risk mitigation, where applicable;

(c) where used, the type of funded or unfunded credit protection;

(d) the exposure value after taking into account the effect of the credit risk mitigation calculated for the purposes of Article 395(1), where applicable.

3. Institutions shall report the information referred to in paragraphs 1 and 2 to their competent authorities on at least a semi-annual basis.

4. EBA shall develop draft regulatory technical standards to specify the criteria for the identification of shadow banking entities referred to in paragraph 2.

In developing those draft regulatory technical standards, EBA shall take into account international developments and internationally agreed standards on shadow banking and shall consider whether:

(a) the relation with an individual entity or a group of entities may carry risks to the institution's solvency or liquidity position;

(b) entities that are subject to solvency or liquidity requirements similar to those imposed by this Regulation and Directive 2013/36/EU should be entirely or partially excluded from the obligation to be reported referred to in paragraph 2 on shadow banking entities.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2020.

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

▼C2

Article 395

Limits to large exposures

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▼C5

1. An institution shall not incur an exposure to a client or group of connected clients the value of which exceeds 25 % of its Tier 1 capital, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403. Where that client is an institution or an investment firm, or where a group of connected clients includes one or more institutions or investment firms, that value shall not exceed

▼C5

25 % of the institution's Tier 1 capital or EUR 150 million, whichever is higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to all connected clients that are not institutions or investment firms, does not exceed 25 % of the institution's Tier 1 capital.

▼M8

Where the amount of EUR 150 million is higher than 25 % of the institution's Tier 1 capital, the value of the exposure, after having taken into account the effect of credit risk mitigation in accordance with Articles 399 to 403 of this Regulation, shall not exceed a reasonable limit in terms of that institution's Tier 1 capital. That limit shall be determined by the institution in accordance with the policies and procedures referred to in Article 81 of Directive 2013/36/EU in order to address and control concentration risk. That limit shall not exceed 100 % of the institution's Tier 1 capital.

Competent authorities may set a lower limit than EUR 150 million, in which case they shall inform EBA and the Commission thereof.

By way of derogation from the first subparagraph of this paragraph, a G-SII shall not incur an exposure to another G-SII or a non-EU G-SII, the value of which, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, exceeds 15 % of its Tier 1 capital. A G-SII shall comply with such limit no later than 12 months from the date on which it came to be identified as a G-SII. Where the G-SII has an exposure to another institution or group which comes to be identified as a G-SII or as a non-EU G-SII, it shall comply with such limit no later than 12 months from the date on which that other institution or group came to be identified as a G-SII or as a non-EU G-SII.

▼C2

2. EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403 as well as the outcomes of developments in the area of shadow banking and large exposures at the Union and international levels, issue guidelines by 31 December 2014 to set appropriate aggregate limits to such exposures or tighter individual limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework.

In developing those guidelines, EBA shall consider whether the introduction of additional limits would have a material detrimental impact on the risk profile of institutions established in the Union, on the provision of credit to the real economy or on the stability and orderly functioning of financial markets.

By 31 December 2015 the Commission shall assess the appropriateness and the impact of imposing limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework, taking into account Union and international developments in the area of shadow banking and large exposures as well as credit risk mitigation in accordance with Articles 399 to 403. The Commission shall submit the report to the European Parliament and the Council, together, if appropriate, with a legislative proposal on exposure limits to shadow banking entities which carry out banking activities outside a regulated framework.

3. Subject to Article 396, an institution shall at all times comply with the relevant limit laid down in paragraph 1.

4. Assets constituting claims and other exposures onto recognised third-country investment firms may be subject to the same treatment as set out in paragraph 1.

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5. The limits laid down in this Article may be exceeded for the exposures in the institution's trading book, provided that all the following conditions are met:

(a) the exposure in the non-trading book to the client or group of connected clients in question does not exceed the limit laid down in paragraph 1, this limit being calculated with reference to Tier 1 capital, so that the excess arises entirely in the trading book;

(b) the institution meets an additional own funds requirement on the part of the exposure in excess of the limit laid down in paragraph 1 of this Article which is calculated in accordance with Articles 397 and 398;

(c) where 10 days or less have elapsed since the excess referred to in point (b) occurred, the trading-book exposure to the client or group of connected clients in question does not exceed 500 % of the institution's Tier 1 capital;

(d) any excesses that have persisted for more than 10 days do not, in aggregate, exceed 600 % of the institution's Tier 1 capital.

Each time the limit has been exceeded, the institution shall report to the competent authorities without delay the amount of the excess and the name of the client concerned and, where applicable, the name of the group of connected clients concerned.

▼C2

6. For the purpose of this paragraph, structural measures mean measures adopted by a Member State and implemented by the relevant competent authorities of that Member State before the entry into force of a legal act explicitly harmonising such measures, that require credit institutions authorised in that Member State to reduce their exposures to different legal entities depending on their activities, irrespective of where those activities are located, with a view to protecting depositors and preserving financial stability.

Notwithstanding paragraph 1 of this Article and Article 400(1)(f), where Member States adopt national laws requiring structural measures to be taken within a banking group, competent authorities may require the institutions of the banking group which hold deposits that are covered by a Deposit Guarantee Scheme in accordance with Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes ([1]) or an equivalent deposit guarantee scheme in a third country to apply a large exposure limit below 25 % but not lower than 15 % between 28 June 2013 and 30 June 2015, and than 10 % from 1 July 2015 on a sub-consolidated basis in accordance with Article 11(5) to intragroup exposures where these exposures consist of exposures to an entity that does not belong to the same subgroup as regards the structural measures.

For the purpose of this paragraph, the following conditions shall be met:

(a) all entities belonging to a same subgroup as regards the structural measures are considered as one client or group of connected clients;

(b) the competent authorities apply a uniform limit to the exposures referred to in the first subparagraph.

Applying this approach shall be without prejudice to effective supervision on a consolidated basis and shall not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole or form or create an obstacle to the functioning of the internal market.

([1]) OJ L 135, 31.5.1994, p. 5.

▼C2

7. Before adopting the specific structural measures as referred to in paragraph 6 relating to large exposures, the competent authorities shall notify the Council, the Commission, the competent authorities concerned and EBA at least two months prior to the publication of the decision to adopt the structural measures, and submit relevant quantitative or qualitative evidence of all of the following:

(a) the scope of the activities that are subject to the structural measures;

(b) an explanation as to why such draft measures are deemed to be suitable, effective and proportionate to protect depositors;

(c) an assessment of the likely positive or negative impact of the measures on the internal market based on information which is available to the Member State.

8. The power to adopt an implementing act to accept or reject the proposed national measures referred to in paragraph 7 is conferred on the Commission acting in accordance with the procedure referred to in Article 464(2).

Within one month of receiving the notification referred to in paragraph 7, EBA shall provide its opinion on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned. Competent authorities concerned may also provide their opinions on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned.

Taking utmost account of the opinions referred to in the second sub-paragraph and if there is robust and strong evidence that the measures have a negative impact on the internal market that outweighs the financial stability benefits, the Commission shall, within two months of receiving the notification, reject the proposed national measures. Otherwise, the Commission shall accept the proposed national measures for an initial period of 2 years and where appropriate the measures may be subject to amendment.

The Commission shall only reject the proposed national measures if it considers the proposed national measures entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole, thus forming or creating an obstacle to the functioning of the internal market or to the free movement of capital in accordance with the provisions of the TFEU.

The assessment of the Commission shall take account of the opinion of EBA and shall take into account the evidence presented in accordance with paragraph 7.

Before the expiry of the measures, the competent authorities may propose new measures for the extension of the period of application for an additional period of 2 years each time. In this case, they shall notify the Commission, the Council, the competent authorities concerned and EBA. Approval of the new measures shall be subject to the process set out in this Article. This Article shall be without prejudice to Article 458.

Article 396

Compliance with large exposures requirements

1. If, in an exceptional case, exposures exceed the limit set out in Article 395(1), the institution shall report the value of the exposure without delay to the competent authorities which may, where the circumstances warrant it, allow the institution a limited period of time in which to comply with the limit.

▼M8

Where the amount of EUR 150 million referred to in Article 395(1) is applicable, the competent authorities may allow the 100 % limit in terms of the institution's Tier 1 capital to be exceeded on a case-by-case basis.

Where, in the exceptional cases referred to in the first and second subparagraph of this paragraph, a competent authority allows an institution to exceed the limit set out in Article 395(1) for a period longer than three months, the institution shall present a plan for a timely return to compliance with that limit to the satisfaction of the competent authority and shall carry out that plan within the period agreed with the competent authority. The competent authority shall monitor the implementation of the plan and shall require a more rapid return to compliance if appropriate.

▼C2

2. Where compliance by an institution on an individual or sub-consolidated basis with the obligations imposed in this Part is waived under Article 7(1), or the provisions of Article 9 are applied in the case of parent institutions in a Member State, measures shall be taken to ensure the satisfactory allocation of risks within the group.

▼M8

3. For the purposes of paragraph 1, EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify how the competent authorities may determine:

(a) the exceptional cases referred to in paragraph 1 of this Article;

(b) the time considered appropriate for returning to compliance;

(c) the measures to be taken to ensure the timely return to compliance of the institution.

▼C2

Article 397

Calculating additional own funds requirements for large exposures in the trading book

1. The excess referred to in Article 395(5)(b) shall be calculated by selecting those components of the total trading exposure to the client or group of connected clients in question which attract the highest specific-risk requirements in Part Three, Title IV, Chapter 2 and/or requirements in Article 299 and Part Three, Title V, the sum of which equals the amount of the excess referred to in point (a) of Article 395(5).

2. Where the excess has not persisted for more than 10 days, the additional capital requirement shall be 200 % of the requirements referred to in paragraph 1, on these components.

▼C2

3. As from 10 days after the excess has occurred, the components of the excess, selected in accordance with paragraph 1, shall be allocated to the appropriate line in Column 1 of Table 1 in ascending order of specific-risk requirements in Part Three, Title IV, Chapter 2 and/or requirements in Article 299 and Part Three, Title V. The additional own funds requirement shall be equal to the sum of the specific-risk requirements in Part Three, Title IV, Chapter 2 and/or the Article 299 and Part Three, Title V requirements on these components, multiplied by the corresponding factor in Column 2 of Table 1.

Table 1

Column 1: Excess over the limits (on the basis of a percentage of ►M8 Tier 1 capital ◄)	Column 2: Factors
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

Article 398

Procedures to prevent institutions from avoiding the additional own funds requirement

Institutions shall not deliberately avoid the additional own funds requirements set out in Article 397 that they would otherwise incur, on exposures exceeding the limit laid down in Article 395(1) once those exposures have been maintained for more than 10 days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and/or by undertaking artificial transactions to close out the exposure during the 10-day period and create a new exposure.

Institutions shall maintain systems which ensure that any transfer which has the effect referred to in the first subparagraph is immediately reported to the competent authorities.

Article 399

Eligible credit mitigation techniques

▼M8

1. An institution shall use a credit risk mitigation technique in the calculation of an exposure where it has used that technique to calculate capital requirements for credit risk in accordance with Title II of Part Three, provided that the credit risk mitigation technique meets the conditions set out in this Article.

For the purposes of Articles 400 to 403, the term ‘guarantee’ shall include credit derivatives recognised under Chapter 4 of Title II of Part Three other than credit linked notes.

▼C2

2. Subject to paragraph 3 of this Article, where, under Articles 400 to 403 the recognition of funded or unfunded credit protection is permitted, this shall be subject to compliance with the eligibility requirements and other requirements set out in Part Three, Title II, Chapter 4.

▼M8

3. Credit risk mitigation techniques which are available only to institutions using one of the IRB approaches shall not be used to reduce exposure values for large exposure purposes, except for exposures secured by immovable properties in accordance with Article 402.

▼C2

4. Institutions shall analyse, to the extent possible, their exposures to collateral issuers, providers of unfunded credit protection and underlying assets pursuant to Article 390(7) for possible concentrations and where appropriate take action and report any significant findings to their competent authority.

Article 400

Exemptions

1. The following exposures shall be exempted from the application of Article 395(1):

(a) asset items constituting claims on central governments, central banks or public sector entities which, unsecured, would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2;

(b) asset items constituting claims on international organisations or multilateral development banks which, unsecured, would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2;

(c) asset items constituting claims carrying the explicit guarantees of central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity providing the guarantee would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2;

(d) other exposures attributable to, or guaranteed by, central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2;

(e) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2;

▼C2

(f) exposures to counterparties referred to in Article 113(6) or (7) if they would be assigned a 0 % risk weight under Part Three, Title II, Chapter 2. Exposures that do not meet those criteria, whether or not exempted from Article 395(1) shall be treated as exposures to a third party;

(g) asset items and other exposures secured by collateral in the form of cash deposits placed with the lending institution or with an institution which is the parent undertaking or a subsidiary of the lending institution;

(h) asset items and other exposures secured by collateral in the form of certificates of deposit issued by the lending institution or by an institution which is the parent undertaking or a subsidiary of the lending institution and lodged with either of them;

(i) exposures arising from undrawn credit facilities that are classified as low-risk off-balance sheet items in Annex I and provided that an agreement has been concluded with the client or group of connected clients under which the facility may be drawn only if it has been ascertained that it will not cause the limit applicable under Article 395(1) to be exceeded;

▼M8

(j) clearing members' trade exposures and default fund contributions to qualified central counterparties;

▼C2

(k) exposures to deposit guarantee schemes under Directive 94/19/EC arising from the funding of those schemes, if the member institutions of the scheme have a legal or contractual obligation to fund the scheme;

▼M8

(l) clients' trade exposures referred to in Article 305(2) or (3);

(m) holdings by resolution entities, or by their subsidiaries which are not themselves resolution entities, of own funds instruments and eligible liabilities referred to in Article 45f(2) of Directive 2014/59/EU that have been issued by any of the following entities:

(i) in respect of resolution entities, other entities belonging to the same resolution group;

(ii) in respect of subsidiaries of a resolution entity that are not themselves resolution entities, the relevant subsidiary's subsidiaries belonging to the same resolution group;

(n) exposures arising from a minimum value commitment that meets all the conditions set out in Article 132c(3).

▼C2

Cash received under a credit linked note issued by the institution and loans and deposits of a counterparty to or with the institution which are subject to an on-balance sheet netting agreement recognised under Part Three, Title II, Chapter 4 shall be deemed to fall under point (g).

▼C2

2. Competent authorities may fully or partially exempt the following exposures:

(a) covered bonds falling within the terms of Article 129(1), (3) and (6);

(b) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20 % risk weight under Part Three, Title II, Chapter 2 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20 % risk weight under Part Three, Title II, Chapter 2;

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(c) exposures incurred by an institution, including through participations or other kinds of holdings, to its parent undertaking, to other subsidiaries of that parent undertaking, or to its own subsidiaries and qualifying holdings, in so far as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country; exposures that do not meet those criteria, whether or not exempted from Article 395(1) of this Regulation, shall be treated as exposures to a third party;

▼C2

(d) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to regional or central credit institutions with which the credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;

(e) asset items constituting claims on and other exposures to credit institutions incurred by credit institutions, one of which operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via credit institutions or from the guarantees of these loans;

(f) asset items constituting claims on and other exposures to institutions, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency;

(g) asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies;

▼C2

(h) asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated ECAI is investment grade;

(i) 50 % of medium/low risk off-balance sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annex I and subject to the competent authorities' agreement, 80 % of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions;

(j) legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided that the guarantee is not used as reducing the risk in calculating the risk -weighted exposure amounts;

▼M8

(k) exposures in the form of a collateral or a guarantee for residential loans, provided by an eligible protection provider referred to in Article 201 qualifying for the credit rating which is at least the lower of the following:

(i) credit quality step 2;

(ii) the credit quality step corresponding to the central government foreign currency rating of the Member State where the protection provider's headquarters are located;

(l) exposures in the form of a guarantee for officially supported export credits, provided by an export credit agency qualifying for the credit rating which is at least the lower of the following:

(i) credit quality step 2;

(ii) the credit quality step corresponding to the central government foreign currency rating of the Member State where the export credit agency's headquarters are located.

▼C2

3. Competent authorities may only make use of the exemption provided for in paragraph 2 where the following conditions are met:

(a) the specific nature of the exposure, the counterparty or the relationship between the institution and the counterparty eliminate or reduce the risk of the exposure; and

(b) any remaining concentration risk can be addressed by other equally effective means such as the arrangements, processes and mechanisms provided for in Article 81 of Directive 2013/36/EU.

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Competent authorities shall inform EBA of whether they intend to use any of the exemptions provided for in paragraph 2 in accordance with points (a) and (b) of this paragraph and provide EBA with the reasons substantiating the use of those exemptions.

4. The simultaneous application of more than one exemption set out in paragraphs 1 and 2 to the same exposure shall not be permitted.

Article 401

Calculating the effect of the use of credit risk mitigation techniques

1. For calculating the value of exposures for the purposes of Article 395(1), an institution may use the fully adjusted exposure value (E*) as calculated under Chapter 4 of Title II of Part Three, taking into account the credit risk mitigation, volatility adjustments and any maturity mismatch referred to in that Chapter.

2. With the exception of institutions using the Financial Collateral Simple Method, for the purposes of the first paragraph, institutions shall use the Financial Collateral Comprehensive Method, regardless of the method used for calculating the own funds requirements for credit risk.

By way of derogation from paragraph 1, institutions with permission to use the methods referred to in Section 4 of Chapter 4 of Title II of Part Three and Section 6 of Chapter 6 of Title II of Part Three, may use those methods for calculating the exposure value of securities financing transactions.

3. In calculating the value of exposures for the purposes of Article 395(1), institutions shall conduct periodic stress tests of their credit-risk concentrations, including in relation to the realisable value of any collateral taken.

The periodic stress tests referred to in the first subparagraph shall address risks arising from potential changes in market conditions that could adversely impact the institutions' adequacy of own funds and risks arising from the realisation of collateral in stressed situations.

The stress tests carried out shall be adequate and appropriate for the assessment of those risks.

Institutions shall include the following in their strategies to address concentration risk:

(a) policies and procedures to address risks arising from maturity mismatches between exposures and any credit protection on those exposures;

(b) policies and procedures relating to concentration risk arising from the application of credit risk mitigation techniques, in particular from large indirect credit exposures, for example, exposures to a single issuer of securities taken as collateral.

▼M8

4. Where an institution reduces an exposure to a client using an eligible credit risk mitigation technique in accordance with Article 399(1), the institution, in the manner set out in Article 403, shall treat the part of the exposure by which the exposure to the client has been reduced as having been incurred for the protection provider rather than for the client.

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Article 402

Exposures arising from mortgage lending

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1. For the calculation of exposure values for the purposes of Article 395, institutions may, except where prohibited by applicable national law, reduce the value of an exposure or any part of an exposure that is fully secured by residential property in accordance with Article 125(1) by the pledged amount of the market value or mortgage lending value of the property concerned, but by not more than 50 % of the market value or 60 % of the mortgage lending value in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, provided that all the following conditions are met:

(a) the competent authorities of the Member States have not set a risk weight higher than 35 % for exposures or parts of exposures secured by residential property in accordance with Article 124(2);

(b) the exposure or part of the exposure is fully secured by any of the following:

(i) one or more mortgages on residential property; or

(ii) a residential property in a leasing transaction under which the lessor retains full ownership of the residential property and the lessee has not yet exercised his or her option to purchase;

(c) the requirements laid down in Article 208 and Article 229(1) are met.

2. For the calculation of exposure values for the purposes of Article 395, an institution may, except where prohibited by applicable national law, reduce the value of an exposure or any part of an exposure that is fully secured by commercial immovable property in accordance with Article 126(1) by the pledged amount of the market value or mortgage lending value of the property concerned, but not by more than 50 % of the market value or 60 % of the mortgage lending value in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, provided that all the following conditions are met:

(a) the competent authorities of the Member States have not set a risk weight higher than 50 % for exposures or parts of exposures secured by commercial immovable property in accordance with Article 124(2);

(b) the exposure is fully secured by any of the following:

(i) one or more mortgages on offices or other commercial premises; or

▼M8

(ii) one or more offices or other commercial premises and the exposures related to property leasing transactions;

(c) the requirements in point (a) of Article 126(2) and in Article 208 and Article 229(1) are met;

(d) the commercial immovable property is fully constructed.

▼C2

3. An institution may treat an exposure to a counterparty that results from a reverse repurchase agreement under which the institution has purchased from the counterparty non-accessory independent mortgage liens on immovable property of third parties as a number of individual exposures to each of those third parties, provided that all of the following conditions are met:

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(a) the counterparty is an institution or an investment firm;

▼C2

(b) the exposure is fully secured by liens on the immovable property of those third parties that have been purchased by the institution and the institution is able to exercise those liens;

(c) the institution has ensured that the requirements in Article 208 and Article 229(1) are met;

(d) the institution becomes beneficiary of the claims that the counterparty has against the third parties in the event of default, insolvency or liquidation of the counterparty;

▼M9

(e) the institution reports to the competent authorities in accordance with Article 394 the total amount of exposures to each other institution or investment firm that are treated in accordance with this paragraph.

▼C2

For these purposes, the institution shall assume that it has an exposure to each of those third parties for the amount of the claim that the counterparty has on the third party instead of the corresponding amount of the exposure to the counterparty. The remainder of the exposure to the counter party, if any, shall continue to be treated as an exposure to the counter party.

▼M8

Article 403

Substitution approach

1. Where an exposure to a client is guaranteed by a third party or is secured by collateral issued by a third party, an institution shall:

(a) treat the portion of the exposure which is guaranteed as exposure to the guarantor rather than to the client, provided that the unsecured exposure to the guarantor would be assigned a risk weight that is equal to or lower than the risk weight of the unsecured exposure to the client under Chapter 2 of Title II of Part Three;

(b) treat the portion of the exposure collateralised by the market value of recognised collateral as exposure to the third party rather than to the client, provided that the exposure is secured by collateral and provided that the collateralised portion of the exposure would be assigned a risk weight that is equal to or lower than the risk weight of the unsecured exposure to the client under Chapter 2 of Title II of Part Three.

▼M8

The approach referred to in point (b) of the first subparagraph shall not be used by an institution where there is a mismatch between the maturity of the exposure and the maturity of the protection.

For the purposes of this Part, an institution may use both the Financial Collateral Comprehensive Method and the treatment set out in point (b) of the first subparagraph of this paragraph only where it is permitted to use both the Financial Collateral Comprehensive Method and the Financial Collateral Simple Method for the purposes of Article 92.

2. Where an institution applies point (a) of paragraph 1, the institution:

(a) where the guarantee is denominated in a currency different from that in which the exposure is denominated, shall calculate the amount of the exposure that is deemed to be covered in accordance with the provisions on the treatment of currency mismatch for unfunded credit protection set out in Part Three;

(b) shall treat any mismatch between the maturity of the exposure and the maturity of the protection in accordance with the provisions on the treatment of maturity mismatch set out in Chapter 4 of Title II of Part Three;

(c) may recognise partial coverage in accordance with the treatment set out in Chapter 4 of Title II of Part Three.

3. For the purposes of point (b) of paragraph 1, an institution may replace the amount in point (a) of this paragraph with the amount in point (b) of this paragraph, provided that the conditions set out in points (c), (d) and (e) of this paragraph are met:

(a) the total amount of the institution's exposure to a collateral issuer due to tri-party repurchase agreements facilitated by a tri-party agent;

(b) the full amount of the limits that the institution has instructed the tri-party agent referred to in point (a) to apply to the securities issued by the collateral issuer referred to in that point;

(c) the institution has verified that the tri-party agent has in place appropriate safeguards to prevent breaches of the limits referred to in point (b);

(d) the competent authority has not expressed to the institution any material concerns;

(e) the sum of the amount of the limit referred to in point (b) of this paragraph and any other exposures of the institution to the collateral issuer does not exceed the limit set out in Article 395(1).

4. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, specifying the conditions for the application of the treatment referred to in paragraph 3 of this Article, including the conditions and frequency for determining, monitoring and revising the limits referred to in point (b) of that paragraph.

EBA shall publish those guidelines by 31 December 2019.

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PART SIX

LIQUIDITY

TITLE I

▼M8

DEFINITIONS AND LIQUIDITY REQUIREMENTS

Article 411

Definitions

For the purposes of this Part, the following definitions apply:

(1) ‘financial customer’ means a customer, including a financial customer belonging to a non-financial corporate group, which performs one or more of the activities listed in Annex I to Directive 2013/36/EU as its main business, or which is one of the following:

(a) a credit institution;

(b) an investment firm;

(c) a securitisation special purpose entity (SSPE);

(d) a collective investment undertaking (CIU);

(e) a non-open ended investment scheme;

(f) an insurance undertaking;

(g) a reinsurance undertaking;

(h) a financial holding company or mixed-financial holding company;

(i) a financial institution;

(j) a pension scheme arrangement as defined in point (10) of Article 2 of Regulation (EU) No 648/2012;

(2) ‘retail deposit’ means a liability to a natural person or to a SME, where the SME would qualify for the retail exposure class under the standardised or IRB approaches for credit risk, or a liability to a company which is eligible for the treatment set out in Article 153(4), and where the aggregate deposits by that SME or company on a group basis do not exceed EUR 1 million;

(3) ‘personal investment company’ or ‘PIC’ means an undertaking or a trust, the owner or beneficial owner of which is either a natural person or a group of closely related natural persons which does not carry out any other commercial, industrial or professional activity and which was set up with the sole purpose of managing the wealth of the owner or owners, including ancillary activities such as segregating the owners' assets from corporate assets, facilitating the transmission of assets within a family or preventing a split of the assets after the death of a member of the family, provided that those ancillary activities are connected to the main purpose of managing the owners' wealth;

▼M8
▼C7

(4) ‘deposit broker’ means a natural person or an undertaking that places deposits from third parties, including retail deposits and corporate deposits but excluding deposits from financial customers, with credit institutions in exchange of a fee;

▼M8

(5) ‘unencumbered assets’ means assets which are not subject to any legal, contractual, regulatory or other restriction preventing the institution from liquidating, selling, transferring, assigning or, generally, disposing of those assets via an outright sale or a repurchase agreement;

(6) ‘non-mandatory overcollateralisation’ means any amount of assets which the institution is not obliged to attach to a covered bond issuance by virtue of legal or regulatory requirements, contractual commitments or for reasons of market discipline, including in particular where the assets are provided in excess of the minimum legal, statutory or regulatory overcollateralisation requirement applicable to the covered bonds under the national law of a Member State or a third country;

(7) ‘asset coverage requirement’ means the ratio of assets to liabilities as determined in accordance with the national law of a Member State or a third country for credit enhancement purposes in relation to covered bonds;

(8) ‘margin loans’ means collateralised loans extended to customers for the purpose of taking leveraged trading positions;

(9) ‘derivative contracts’ means the derivative contracts listed in Annex II and credit derivatives;

(10) ‘stress’ means a sudden or severe deterioration in the solvency or liquidity position of an institution due to changes in market conditions or idiosyncratic factors as a result of which there is a significant risk that the institution becomes unable to meet its commitments as they become due within the next 30 days;

(11) ‘level 1 assets’ means assets of extremely high liquidity and credit quality as referred to in the second subparagraph of Article 416(1);

(12) ‘level 2 assets’ means assets of high liquidity and credit quality as referred to in the second subparagraph of Article 416(1) of this Regulation; level 2 assets are further subdivided into level 2A and 2B assets as set out in the delegated act referred to in Article 460(1);

(13) ‘liquidity buffer’ means the amount of level 1 and level 2 assets that an institution holds in accordance with the delegated act referred to in Article 460(1);

(14) ‘net liquidity outflows’ means the amount which results from deducting an institution's liquidity inflows from its liquidity outflows;

▼M8

(15) ‘reporting currency’ means the currency of the Member State where the head office of the institution is located;

(16) ‘factoring’ means a contractual agreement between a business (the ‘assignor’) and a financial entity (the ‘factor’) in which the assignor assigns or sells its receivables to the factor in exchange for the factor providing the assignor with one or more of the following services with regard to the receivables assigned:

(a) an advance of a percentage of the amount of the assigned receivables, generally short term, uncommitted and without automatic roll-over;

(b) receivables management, collection and credit protection, whereby, in general, the factor administers the assignor's sales ledger and collects the receivables in the factor's own name;

for the purposes of Title IV, factoring shall be treated as trade finance;

(17) ‘committed credit or liquidity facility’ means a credit or liquidity facility that is irrevocable or conditionally revocable.

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Article 412

Liquidity coverage requirement

1. Institutions shall hold liquid assets, the sum of the values of which covers the liquidity outflows less the liquidity inflows under stressed conditions so as to ensure that institutions maintain levels of liquidity buffers which are adequate to face any possible imbalance between liquidity inflows and outflows under gravely stressed conditions over a period of thirty days. During times of stress, institutions may use their liquid assets to cover their net liquidity outflows.

▼M8

2. Institutions shall not double count liquidity outflows, liquidity inflows and liquid assets.

Unless specified otherwise in the delegated act referred to in Article 460(1), where an item can be counted in more than one outflow category, it shall be counted in the outflow category that produces the greatest contractual outflow for that item.

▼C2

3. Institutions may use the liquid assets referred to in paragraph 1 to meet their obligations under stressed circumstances as specified under Article 414.

4. The provisions set out in Title II shall apply exclusively for the purposes of specifying reporting obligations set out in Article 415.

▼M9

4a. The delegated act referred to in Article 460(1) shall apply to institutions.

▼C2

5. Member States may maintain or introduce national provisions in the area of liquidity requirements before binding minimum standards for liquidity coverage requirements are specified and fully introduced in the Union in accordance with Article 460. Member States or competent authorities may require domestically authorised institutions, or a subset of those institutions, to maintain a higher liquidity coverage requirement up to 100 % until the binding minimum standard is fully introduced at a rate of 100 % in accordance with Article 460.

▼M8

Article 413

Stable funding requirement

1. Institutions shall ensure that long term assets and off-balance-sheet items are adequately met with a diverse set of funding instruments that are stable under both normal and stressed conditions.

2. The provisions set out in Title III shall apply exclusively for the purpose of specifying reporting obligations set out in Article 415 until reporting obligations set out in that Article for the net stable funding ratio set out in Title IV have been specified and introduced in Union law.

3. The provisions set out in Title IV shall apply for the purpose of specifying the stable funding requirement set out in paragraph 1 of this Article and reporting obligations for institutions set out in Article 415.

4. Member States may maintain or introduce national provisions in the area of stable funding requirements before binding minimum standards for the net stable funding requirements set out in paragraph 1 become applicable.

Article 414

Compliance with liquidity requirements

An institution that does not meet, or does not expect to meet, the requirements set out in Article 412 or in Article 413(1), including during times of stress, shall immediately notify the competent authorities thereof and shall submit to the competent authorities without undue delay a plan for the timely restoration of compliance with the requirements set out in Article 412 or Article 413(1), as appropriate. Until compliance has been restored, the institution shall report the items referred to in Title III, in Title IV, in the implementing act referred to in Article 415(3) or (3a) or in the delegated act referred to in Article 460(1), as appropriate, daily by the end of each business day, unless the competent authority authorises a lower reporting frequency and a longer reporting delay. Competent authorities shall only grant such authorisations on the basis of the individual situation of the institution, taking into account the scale and complexity of the institution's activities. Competent authorities shall monitor the implementation of such restoration plan and shall require a more rapid restoration of compliance where appropriate.

▼C2

TITLE II

LIQUIDITY REPORTING

Article 415

Reporting obligation and reporting format

▼M8

1. Institutions shall report the items referred to in the implementing technical standards referred to in paragraph 3 or 3a of this Article, in Title IV and in the delegated act referred to in Article 460(1) to the competent authorities in the reporting currency, regardless of the actual denomination of those items. Until such time as the reporting obligation and the reporting format for the net stable funding ratio set out in Title IV have been specified and introduced in Union law, institutions shall report to the competent authorities the items referred to in Title III in the reporting currency, regardless of the actual denomination of those items.

The reporting frequency shall be at least monthly for items referred to in the delegated act referred to in Article 460(1) and at least quarterly for items referred to in Titles III and IV.

2. An institution shall report separately to the competent authorities the items referred to in the implementing technical standards referred to in paragraph 3 or 3a of this Article, in Title III until such time as the reporting obligation and the reporting format for the net stable funding ratio set out in Title IV have been specified and introduced in Union law, in Title IV and in the delegated act referred to in Article 460(1), as appropriate, in accordance with the following:

(a) where items are denominated in a currency other than the reporting currency and the institution has aggregate liabilities denominated in such a currency which amount to or exceed 5 % of the institution's or the single liquidity sub-group's total liabilities, excluding own funds and off-balance-sheet items, reporting shall be done in the currency of denomination;

(b) where items are denominated in the currency of a host Member State where the institution has a significant branch as referred to in Article 51 of Directive 2013/36/EU and that host Member State uses another currency than the reporting currency, the reporting shall be done in the currency of the Member State in which the significant branch is located;

(c) where items are denominated in the reporting currency, and the aggregate amount of liabilities in other currencies than the reporting currency amounts to or exceeds 5 % of the institution's or the single liquidity subgroup's total liabilities, excluding own funds and off-balance-sheet items, the reporting shall be done in the reporting currency.

3. EBA shall develop draft implementing technical standards to specify the following:

▼M8

(a) uniform formats and IT solutions with associated instructions for frequencies and reference and remittance dates; the reporting formats and frequencies shall be proportionate to the nature, scale and complexity of the different activities of the institutions and shall comprise the reporting required in accordance with paragraphs 1 and 2;

(b) additional liquidity monitoring metrics required, to allow competent authorities to obtain a comprehensive view of an institution's liquidity risk profile, proportionate to the nature, scale and complexity of an institution's activities.

EBA shall submit to the Commission those draft implementing technical standards for the items specified in point (a) by 28 July 2013 and for the items specified in point (b) by 1 January 2014.

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

3a. EBA shall develop draft implementing technical standards to specify which additional liquidity monitoring metrics as referred to in paragraph 3 shall apply to small and non-complex institutions.

EBA shall submit those draft implementing technical standards to the Commission by 28 June 2020.

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

▼C2

4. The competent authorities of the home Member State shall upon request provide in a timely manner and by electronic means the competent authorities and the central bank of the host Member States and EBA with the individual reporting in accordance with this Article.

5. Competent authorities that exercise supervision on a consolidated basis in accordance with Article 111 of Directive 2013/36/EU shall upon request provide in a timely manner and by electronic means the following authorities with all reporting submitted by the institution in accordance with the uniform reporting formats referred to in paragraph 3:

(a) the competent authorities and the national central bank of the host Member States in which there are significant branches in accordance with Article 51 of Directive 2013/36/EU of the parent institution or institutions controlled by the same parent financial holding company;

(b) the competent authorities that have authorised subsidiaries of the parent institution or institutions controlled by the same parent financial holding company and the central bank of the same Member State;

(c) EBA;

(d) ECB.

▼C2

6. The competent authorities that have authorised an institution that is a subsidiary of a parent institution or parent financial holding company shall upon request provide in a timely manner and by electronic means the competent authorities that exercise supervision on a consolidated basis in accordance with Article 111 of Directive 2013/36/EU, the central bank of the Member State where the institution is authorised and EBA all reporting submitted by the institution in accordance with the uniform reporting formats referred to in paragraph 3.

Article 416

Reporting on liquid assets

1. Institutions shall report the following as liquid assets unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3:

(a) cash and exposures to central banks to the extent that these exposures can be withdrawn at any time in times of stress. As regards deposits held with central banks, the competent authority and the central bank shall aim at reaching a common understanding regarding the extent to which minimum reserves can be withdrawn in times of stress;

(b) other transferable assets that are of extremely high liquidity and credit quality;

(c) transferable assets representing claims on or guaranteed by:

(i) the central government of a Member State, a region with fiscal autonomy to raise and collect taxes, or of a third country in the domestic currency of the central or regional government, if the institution incurs a liquidity risk in that Member State or third country that it covers by holding those liquid assets;

(ii) central banks and non-central government public sector entities in the domestic currency of the central bank and the public sector entity;

(iii) the Bank for International Settlements, the International Monetary Fund, the Commission and multilateral development banks;

(iv) the European Financial Stability Facility and the European Stability Mechanism;

(d) transferable assets that are of high liquidity and credit quality;

(e) standby credit facilities granted by central banks within the scope of monetary policy to the extent that these facilities are not collateralised by liquid assets and excluding emergency liquidity assistance;

▼C2

(f) if the credit institution belongs to a network in accordance with legal or statutory provisions, the legal or statutory minimum deposits with the central credit institution and other statutory or contractually available liquid funding from the central credit institution or institutions that are members of the network referred to in Article 113(7), or eligible for the waiver provided in Article 10, to the extent that this funding is not collateralised by liquid assets.

Pending specification of a uniform definition in accordance with Article 460 of high and extremely high liquidity and credit quality, institutions shall identify themselves in a given currency transferable assets that are respectively of high or extremely high liquidity and credit quality. Pending specification of a uniform definition, competent authorities may, taking into account the criteria listed in Article 509(3), (4) and (5) provide general guidance that institutions shall follow in identifying assets of high and extremely high liquidity and credit quality. In the absence of such guidance, institutions shall use transparent and objective criteria to this end, including some or all of the criteria listed in Article 509(3), (4) and (5).

2. The following shall not be considered liquid assets:

(a) assets that are issued by a credit institution unless they fulfil one of the following conditions:

(i) they are bonds eligible for the treatment set out in Article 129(4) or (5) or asset backed instruments if demonstrated to be of the highest credit quality as established by EBA pursuant to the criteria in Article 509 (3), (4) and (5);

▼M10

(ii) they are covered bonds as defined in point (1) Article 3 of Directive (EU) 2019/2162 other than those referred to in point (i) of this point;

▼C2

(iii) the credit institution has been set up by a Member State central or regional government and that government has an obligation to protect the economic basis of the institution and maintain its viability throughout its lifetime; or the asset is explicitly guaranteed by that government; or at least 90 % of the loans granted by the institution are directly or indirectly guaranteed by that government and the asset is predominantly used to fund promotional loans granted on a non-competitive, not for profit basis in order to promote that government's public policy objectives;

(b) assets that are provided as collateral to the institution under reverse repo and securities financing transactions and that are held by the institution only as a credit risk mitigant and that are not legally and contractually available for use by the institution;

(c) assets issued by any of the following:

▼C2

(i) an investment firm;

(ii) an insurance undertaking;

(iii) a financial holding company;

(iv) a mixed financial holding company;

(v) any other entity that performs one or more of the activities listed in Annex I to Directive 2013/36/EU as its main business.

▼M8

3. In accordance with paragraph 1, institutions shall report assets that fulfil the following conditions as liquid assets:

(a) the assets are unencumbered or stand available within collateral pools to be used for obtaining additional funding under committed or, where the pool is operated by a central bank, uncommitted but not yet funded credit lines available to the institution;

(b) the assets are not issued by the institution itself, by its parent or subsidiary institutions, or by another subsidiary of its parent institution or parent financial holding company;

(c) the price of the assets is generally agreed upon by market participants and can easily be observed in the market or the price can be determined by a formula that is easy to calculate on the basis of publicly available inputs and that does not depend on strong assumptions, as is typically the case for structured or exotic products;

(d) the assets are listed on a recognised exchange or they are tradable by an outright sale or via a simple repurchase agreement on repurchase markets; those criteria shall be assessed separately for each market.

The conditions referred to in points (c) and (d) of the first subparagraph shall not apply to the assets referred to in points (a), (e) and (f) of paragraph 1.

▼C2

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, pending the specification of a binding liquidity requirement in accordance with Article 460 and in accordance with the second subparagraph of paragraph 1 of this Article, institutions shall report on:

(a) other non-central bank eligible but tradable assets such as equities and gold based on transparent and objective criteria, including some or all of the criteria listed in Article 509(3), (4) and (5);

▼C2

(b) other central bank eligible and tradable assets such as asset backed instruments of the highest credit quality as established by EBA pursuant to the criteria in Article 509(3), (4) and (5);

(c) other central bank eligible but non-tradable assets such as credit claims as established by EBA pursuant to the criteria in Article 509(3), (4) and (5).

▼M8

5. Shares or units in CIUs may be treated as liquid assets, up to an absolute amount of EUR 500 million or the equivalent amount in domestic currency, in the portfolio of liquid assets of each institution, provided that the requirements laid down in Article 132(3) are met and that the CIU only invests in liquid assets as referred to in paragraph 1 of this Article, apart from derivatives to mitigate interest rate or credit or currency risk.

The use or potential use by a CIU of derivative instruments to hedge risks of permitted investments shall not prevent that CIU from being eligible for the treatment referred to in the first subparagraph of this paragraph. Where the value of the shares or units of the CIU is not regularly marked to market by the third parties referred to in points (a) and (b) of Article 418(4) and the competent authority is not satisfied that an institution has developed robust methodologies and processes for such valuation as referred to in Article 418(4), shares or units in that CIU shall not be treated as liquid assets.

6. Where a liquid asset ceases to comply with the requirement for liquid assets as set out in this Article, an institution may nevertheless continue to consider it a liquid asset for an additional period of 30 days. Where a liquid asset in a CIU ceases to be eligible for the treatment set out in paragraph 5, the shares or units in the CIU may nevertheless be considered a liquid asset for an additional period of 30 days, provided that those assets do not exceed 10 % of the CIU's overall assets.

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▼C2

Article 417

Operational requirements for holdings of liquid assets

The institution shall only report as liquid assets those holdings of liquid assets that meet the following conditions:

(a) they are appropriately diversified. Diversification is not required in terms of assets corresponding to points (a), (b) and (c) of Article 416(1);

▼C2

(b) they are legally and practically readily available at any time during the next 30 days to be liquidated via outright sale or via a simple repurchase agreement on approved repurchase markets in order to meet obligations coming due. Liquid assets referred to in point (c) of Article 416(1) which are held in third countries where there are transfer restrictions or which are denominated in non-convertible currencies shall be considered available only to the extent that they correspond to outflows in the third country or currency in question, unless the institution can demonstrate to the competent authorities that it has appropriately hedged the ensuing currency risk;

(c) the liquid assets are controlled by a liquidity management function;

(d) a portion of the liquid assets except those referred to in points (a), (c), (e) and (f) of Article 416(1) is periodically and at least annually liquidated via outright sale or via simple repurchase agreements on an approved repurchase market for the following purposes:

(i) to test the access to the market for these assets;

(ii) to test the effectiveness of its processes for the liquidation of assets;

(iii) to test the usability of the assets;

(iv) to minimise the risk of negative signalling during a period of stress;

(e) price risks associated with the assets may be hedged but the liquid assets are subject to appropriate internal arrangements that ensure that they are readily available to the treasury when needed and especially that they are not used in other ongoing operations, including:

(i) hedging or other trading strategies;

(ii) providing credit enhancements in structured transactions;

(iii) covering operational costs.

(f) the denomination of the liquid assets is consistent with the distribution by currency of liquidity outflows after the deduction of inflows.

Article 418

Valuation of liquid assets

1. The value of a liquid asset to be reported shall be its market value, subject to appropriate haircuts that reflect at least the duration, the credit and liquidity risk and typical repo haircuts in periods of general market stress. The haircuts shall not be less than 15 % for the assets referred to in point (d) of Article 416(1). If the institution hedges the price risk associated with an asset, it shall take into account the cash flow resulting from the potential close-out of the hedge.

▼C2

2. Shares or units in CIUs as referred to in Article 416(6) shall be subject to haircuts, looking through to the underlying assets as follows:

(a) 0 % for the assets referred to in point (a) of Article 416(1);

(b) 5 % for the assets referred to in points (b) and (c) of Article 416(1);

(c) 20 % for the assets referred to in point (d) of Article 416(1).

3. The look-through approach referred to in paragraph 2 shall be applied as follows:

(a) where the institution is aware of the underlying exposures of a CIU, it may look through to those underlying exposures in order to assign them to points (a) to (d) of Article 416(1);

(b) where the institution is not aware of the underlying exposures of a CIU, it shall be assumed that the CIU invests, to the maximum extent allowed under its mandate, in descending order in the asset types referred to in points (a) to (d) of Article 416(1) until the maximum total investment limit is reached.

4. Institutions shall develop robust methodologies and processes to calculate and report the market value and haircuts for shares or units in CIUs. Only where they can demonstrate to the satisfaction of the competent authority that the materiality of the exposure does not justify the development of their own methodologies, institutions may rely on the following third parties to calculate and report the haircuts for shares or units in CIUs, in accordance with the methods set out in points (a) and (b) of paragraph 3:

(a) the depository institution of the CIU provided that the CIU exclusively invests in securities and deposits all securities at this depository institution;

(b) for other CIUs, the CIU management company, provided that the CIU management company meets the criteria set out in Article 132(3)(a).

The correctness of the calculations by the depository institution or the CIU management company shall be confirmed by an external auditor.

Article 419

Currencies with constraints on the availability of liquid assets

1. EBA shall assess the availability for institutions of the liquid assets referred to in point (b) of Article 416(1) in the currencies that are relevant for institutions established in the Union.

▼M8

2. Where the justified needs for liquid assets in light of the requirement in Article 412 exceed the availability of those liquid assets in a currency, one or more of the following derogations shall apply:

(a) by way of derogation from point (f) of Article 417, the denomination of the liquid assets may be inconsistent with the distribution by currency of liquidity outflows after the deduction of inflows;

(b) for currencies of a Member State or third countries, required liquid assets may be substituted by credit lines from the central bank of that Member State or third country which are contractually irrevocably committed for the next 30 days and are fairly priced, independent of the amount currently drawn, provided that the competent authorities of that Member State or third country do the same and provided that that Member State or third country has comparable reporting requirements in place;

(c) where there is a deficit of level 1 assets, additional level 2A assets may be held by the institution, subject to higher haircuts, and any cap applicable to those assets in accordance with the delegated act referred to in Article 460(1) may be amended.

▼C2

3. The derogations applied in accordance with paragraph 2 shall be inversely proportional to the availability of the relevant assets. The justified needs of institutions shall be assessed taking into account their ability to reduce, by sound liquidity management, the need for those liquid assets and the holdings of those assets by other market participants.

4. EBA shall develop draft implementing technical standards listing the currencies which meet the conditions set out in this Article.

EBA shall submit those draft implementing technical standards to the Commission by 31 March 2014.

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

▼M8

5. EBA shall develop draft regulatory technical standards to specify the derogations referred to in paragraph 2, including the conditions of their application.

EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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

▼C2

Article 420

Liquidity outflows

1. Pending the specification of a liquidity requirement in accordance with Article 460, liquidity outflows to be reported shall include:

(a) the current amount outstanding for retail deposits as set out in Article 421;

▼C2

(b) the current amounts outstanding of other liabilities that come due, can be called for payout by the issuing institutions or by the provider of the funding or entail an implicit expectation of the provider of the funding that the institution would repay the liability during the next 30 days as set out in Article 422;

(c) the additional outflows referred to in Article 423;

(d) the maximum amount that can be drawn during the next 30 days from undrawn committed credit and liquidity facilities, as set out in Article 424;

(e) the additional outflows identified in the assessment in accordance with paragraph 2.

2. Institutions shall regularly assess the likelihood and potential volume of liquidity outflows during the next 30 days as far as products or services are concerned, which are not captured in Articles 422, 423 and 424 and which they offer or sponsor or which potential purchasers would consider to be associated with them, including but not limited to liquidity outflows resulting from any contractual arrangements such as other off-balance sheet and contingent funding obligations, including, but not limited to committed funding facilities, un-drawn loans and advances to wholesale counterparties, mortgages that have been agreed but not yet drawn down, credit cards, overdrafts, planned outflows related to renewal or extension of new retail or wholesale loans, planned derivative payables and trade finance off-balance sheet related products, as referred to in Article 429 and in Annex I. These outflows shall be assessed under the assumption of a combined idio-syncratic and market-wide stress scenario.

For this assessment, institutions shall take particular account of material reputational damage that could result from not providing liquidity support to such products or services. Institutions shall report not less than annually to the competent authorities those products and services for which the likelihood and potential volume of the liquidity outflows referred to in the first subparagraph are material and the competent authorities shall determine the outflows to be assigned. The competent authorities may apply an outflow rate up to 5 % for trade finance off-balance sheet related products, as referred to in Article 429 and Annex I.

The competent authorities shall at least annually report to EBA the types of products or services for which they have determined outflows on the basis of the reports from institutions. They shall in that report also explain the methodology applied to determine the outflows.

Article 421

Outflows on retail deposits

1. Institutions shall separately report the amount of retail deposits covered by a Deposit Guarantee Scheme in accordance with Directive 94/19/EC or an equivalent deposit guarantee scheme in a third country, and multiply by at least 5 % where the deposit is either of the following:

(a) part of an established relationship making withdrawal highly unlikely;

▼C2

(b) held in a transactional account, including accounts to which salaries are regularly credited.

2. Institutions shall multiply other retail deposits not referred to in paragraph 1 by at least 10 %.

3. Taking into account the behaviour of local depositors as advised by competent authorities, EBA shall issue guidelines by 1 January 2014 on the criteria to determine the conditions of application of paragraphs 1 and 2 in relation to the identification of retail deposits subject to different outflows and the definitions of those products for purposes of this Title. Those guidelines shall take account of the likelihood of these deposits to lead to outflows of liquidity during the next 30 days. These outflows shall be assessed under the assumption of a combined idiosyncratic and market-wide stress scenario.

4. Notwithstanding paragraphs 1 and 2, institutions shall multiply retail deposits that they have taken in third countries by a higher percentage than provided for in those paragraphs if such percentage is provided by comparable third country reporting requirements.

5. Institutions may exclude from the calculation of outflows certain clearly circumscribed categories of retail deposits as long as in each and every instance the institution rigorously applies the following for the whole category of those deposits, unless in individually justified circumstances of hardship for the depositor:

(a) within 30 days, the depositor is not allowed to withdraw the deposit; or

(b) for early withdrawals within 30 days, the depositor has to pay a penalty that includes the loss of interest between the date of withdrawal and the contractual maturity date plus a material penalty that does not have to exceed the interest due for the time elapsed between the date of deposit and the date of withdrawal.

Article 422

Outflows on other liabilities

1. Institutions shall multiply liabilities resulting from the institution's own operating expenses by 0 %.

2. Institutions shall multiply liabilities resulting from secured lending and capital market-driven transactions as defined in point (3) of Article 192 by:

(a) 0 % up to the value of the liquid assets in accordance with Article 418 if they are collateralised by assets that would qualify as liquid assets in accordance with Article 416;

(b) 100 % over the value of the liquid assets in accordance with Article 418, if they are collateralized by assets that would qualify as liquid assets in accordance with Article 416;

▼C2

(c) 100 % if they are collateralized by assets that would not qualify as liquid assets in accordance with Article 416, with the exception of transactions covered by points (d) and (e) of this paragraph;

(d) 25 % if they are collateralized by assets that would not qualify as liquid assets in accordance with Article 416 and the lender is the central government, a public sector entity of the Member State in which the credit institution has been authorised or has established a branch, or a multilateral development bank. Public sector entities that receive that treatment shall be limited to those that have a risk weight of 20 % or lower in accordance with Chapter 2, Title II of Part Three;

(e) 0 % if the lender is a central bank.

3. Institutions shall multiply liabilities resulting from deposits that have to be maintained:

(a) by the depositor in order to obtain clearing, custody or cash management or other comparable services from the institution;

(b) in the context of common task sharing within an institutional protection scheme meeting the requirements of Article 113(7) or as a legal or statutory minimum deposit by another entity being a Member of the same institutional protection scheme;

(c) by the depositor in the context of an established operational relationship other than that mentioned in point (a);

(d) by the depositor to obtain cash clearing and central credit institution services and where the credit institution belongs to a network in accordance with legal or statutory provisions;

by 5 % in the case of point (a) to the extent to which they are covered by a Deposit Guarantee Scheme in accordance with Directive 94/19/EC or an equivalent deposit guarantee scheme in a third country and by 25 % otherwise.

Deposits from credit institutions placed at central credit institutions that are considered as liquid assets in accordance with Article 416(1)(f) shall be multiplied by 100 % outflow rate.

▼M8

4. Clearing, custody, cash management or other comparable services referred to in points (a) and (d) of paragraph 3 shall only cover those services to the extent that those services are rendered in the context of an established relationship on which the depositor has substantial dependence. Those services shall not merely consist of correspondent banking or prime brokerage services, and institutions shall have evidence that the client is unable to withdraw amounts legally due over a 30-day time horizon without compromising its operational functioning.

▼M8

Pending a uniform definition of an established operational relationship as referred to in point (c) of paragraph 3, institutions shall themselves establish the criteria for identifying an established operational relationship for which they have evidence that the client is unable to withdraw amounts legally due over a 30-day time horizon without compromising its operational functioning and shall report those criteria to the competent authorities. In the absence of a uniform definition, competent authorities may provide general guidance that institutions are to follow in identifying deposits maintained by the depositor in a context of an established operational relationship.

▼C2

5. Institutions shall multiply liabilities resulting from deposits by clients that are not financial customers to the extent they do not fall under paragraphs 3 and 4 by 40 % and shall multiply the amount of these liabilities covered by a Deposit Guarantee Scheme in accordance with Directive 94/19/EC or an equivalent Deposit Guarantee Scheme in a third country by 20 %.

6. Institutions shall take outflows and inflows expected over the 30 day horizon from the contracts listed in Annex II into account on a net basis across counterparties and shall multiply them by 100 % in the case of a net outflow. Net basis shall mean also net of collateral to be received that qualifies as liquid assets under Article 416.

7. Institutions shall separately report other liabilities that do not fall under paragraphs 1 to 5.

▼M8

8. Competent authorities may grant the permission to apply a lower outflow percentage to the liabilities referred to in paragraph 7 on a case-by-case basis, provided that all the following conditions are met:

(a) the counterparty is any of the following:

▼M9

(i) a parent or subsidiary institution of the institution, or a parent or subsidiary investment firm of the institution, or another subsidiary of the same parent institution or parent investment firm;

▼C2
▼M8

(ii) the counterparty is linked to the institution by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU;

(iii) an institution falling within the same institutional protection scheme meeting the requirements of Article 113(7); or

(iv) the central institution or a member of a network compliant with point (d) of Article 400(2);

(b) there are reasons to expect a lower outflow over the next 30 days even under a combined idiosyncratic and market-wide stress scenario;

(c) a corresponding symmetric or more conservative inflow is applied by the counterparty by way of derogation from Article 425;

(d) the institution and the counterparty are established in the same Member State.

▼C2

9. Competent authorities may waive the conditions set out in point (d) of paragraph 8 where point (b) of Article 20(1) is applied. In that case additional objective criteria as set out in the delegated act referred to in Article 460 have to be met. Where such lower outflow is permitted to be applied, the competent authorities shall inform EBA about the result of the process referred to in point (b) of Article 20(1). The fulfilment of the conditions for such lower outflows shall be regularly reviewed by the competent authorities.

10. EBA shall develop draft regulatory technical standards to further specify the additional objective criteria referred to in paragraph 9.

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2015.

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

Article 423

Additional outflows

1. Collateral other than assets referred to in Article 416(1)(a), (b) and (c), which is posted by the institution for contracts listed in Annex II and credit derivatives, shall be subject to an additional outflow of 20 %.

▼M8

2. An institution shall notify the competent authorities of all contracts entered into of which the contractual conditions lead to liquidity outflows or additional collateral needs, within 30 days after a material deterioration of the institution's credit quality. Where the competent authorities consider those contracts to be material in relation to the potential liquidity outflows of the institution, they shall require the institution to add an additional outflow for those contracts, which shall correspond to the additional collateral needs resulting from a material deterioration in its credit quality, such as a downgrade in its external credit assessment by three notches. The institution shall regularly review the extent of that material deterioration in light of what is relevant under the contracts it has entered into, and shall notify the result of its review to the competent authorities.

3. The institution shall add an additional outflow which shall correspond to the collateral needs that would result from the impact of an adverse market scenario on its derivatives transactions if material.

EBA shall develop draft regulatory technical standards to specify the conditions under which the notion of materiality may be applied and specifying methods for the measurement of the additional outflow.

EBA shall submit those draft regulatory technical standards to the Commission by 31 March 2014.

▼M8

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

▼C2

4. The institution shall add an additional outflow corresponding to the market value of securities or other assets sold short and to be delivered within the 30 days horizon unless the institution owns the securities to be delivered or has borrowed them at terms requiring their return only after the 30 day horizon and the securities do not form part of the institutions liquid assets.

5. The institution shall add an additional outflow corresponding to:

(a) the excess collateral the institution holds that can be contractually called at any time by the counterparty;

(b) collateral that is due to be returned to a counterparty;

(c) collateral that corresponds to assets that would qualify as liquid assets for the purposes of Article 416 that can be substituted for assets corresponding to assets that would not qualify as liquid assets for the purposes of Article 416 without the consent of the institution.

6. Deposits received as collateral shall not be considered liabilities for the purposes of Article 422 but will be subject to the provisions of this Article where applicable.

Article 424

Outflows from credit and liquidity facilities

1. Institutions shall report outflows from committed credit facilities and committed liquidity facilities, which shall be determined as a percentage of the maximum amount that can be drawn within the next 30 days. This maximum amount that can be drawn may be assessed net of any liquidity requirement that would be mandated under Article 420(2) for the trade finance off-balance sheet items and net of the value in accordance with Article 418 of collateral to be provided if the institution can reuse the collateral and if the collateral is held in the form of liquid assets in accordance with Article 416. The collateral to be provided shall not be assets issued by the counterparty of the facility or one of its affiliated entities. If the necessary information is available to the institution, the maximum amount that can be drawn for credit and liquidity facilities shall be determined as the maximum amount that could be drawn given the counterparty's own obligations or given the pre-defined contractual drawdown schedule coming due over the next 30 days.

2. The maximum amount that can be drawn of undrawn committed credit facilities and undrawn committed liquidity facilities within the next 30 days shall be multiplied by 5 % if they qualify for the retail exposure class under the Standardised or IRB approaches for credit risk.

▼C2

3. The maximum amount that can be drawn of undrawn committed credit facilities and undrawn committed liquidity facilities within the next 30 days shall be multiplied by 10 % where they meet the following conditions:

(a) they do not qualify for the retail exposure class under the Standardised or IRB approaches for credit risk;

(b) they have been provided to clients that are not financial customers;

(c) they have not been provided for the purpose of replacing funding of the client in situations where he is unable to obtain its funding requirements in the financial markets.

▼M8

4. The committed amount of a liquidity facility that has been provided to an SSPE for the purpose of enabling that SSPE to purchase assets, other than securities, from clients that are not financial customers shall be multiplied by 10 %, provided that the committed amount exceeds the amount of assets currently purchased from clients and that the maximum amount that can be drawn is contractually limited to the amount of assets currently purchased.

▼C2

5. The institutions shall report the maximum amount that can be drawn of other undrawn committed credit facilities and undrawn committed liquidity facilities within the next 30 days. This applies in particular to the following:

(a) liquidity facilities that the institution has granted to SSPEs other than those referred to in point (b) of paragraph 3;

(b) arrangements under which the institution is required to buy or swap assets from an SSPE;

(c) facilities extended to credit institutions;

(d) facilities extended to financial institutions and investment firms.

6. By way of derogation from paragraph 5, institutions which have been set up and are sponsored by at least one Member State's central or regional government may apply the treatments set out in paragraphs 2 and 3 also to credit and liquidity facilities that are provided to institutions for the sole purpose of directly or indirectly funding promotional loans qualifying for the exposure classes referred to in those paragraphs. By way of derogation from point (g) of Article 425(2), where those promotional loans are extended via another institution as intermediary (pass through loans), a symmetric in and outflow may be applied by institutions. Those promotional loans shall be available only to persons who are not financial customers on a non-competitive, not for profit basis in order to promote public policy objectives of the Union and/or that Member State's central or regional government. It shall only be possible to draw on such facilities following the reasonably expected demand for a promotional loan and up to the amount of such demand linked to a subsequent reporting on the use of the funds disbursed.

▼C2

Article 425

Inflows

▼M10

1. Institutions shall report their liquidity inflows. Liquidity inflows shall be capped at 75 % of liquidity outflows. Institutions may exempt liquidity inflows from deposits placed with other institutions that qualify for the treatment set out in Article 113(6) or (7) of this Regulation from that cap.

Institutions may exempt liquidity inflows from monies due from borrowers and bond investors where those inflows are related to mortgage lending funded by bonds eligible for the treatment set out in Article 129(4), (5) or (6) of this Regulation or by covered bonds as defined in point (1) of Article 3 of Directive (EU) 2019/2162 from that cap. Institutions may exempt inflows from promotional loans that the institutions have passed through. Subject to the prior approval of the competent authority responsible for supervision on an individual basis, the institution may fully or partially exempt inflows where the liquidity provider is a parent or subsidiary institution of the institution, a parent or subsidiary investment firm of the institution or another subsidiary of the same parent institution or parent investment firm or is related to the institution as set out in Article 22(7) of Directive 2013/34/EU.

▼C2

2. The liquidity inflows shall be measured over the next 30 days. They shall comprise only contractual inflows from exposures that are not past due and for which the institution has no reason to expect non-performance within the 30-day time horizon. Liquidity inflows shall be reported in full with the following inflows reported separately:

(a) monies due from customers that are not financial customers for the purposes of principal payment shall be reduced by 50 % of their value or by the contractual commitments to those customers to extend funding, whichever is higher. This does not apply to monies due from secured lending and capital market-driven transactions as defined in point (3) of Article 192 that are collateralised by liquid assets in accordance with Article 416 as referred to in point (d) of this paragraph.

By way of derogation from the first subparagraph of this point, institutions that have received a commitment referred to in Article 424(6) in order for them to disburse a promotional loan to a final recipient may take an inflow into account up to the amount of the outflow they apply to the corresponding commitment to extend those promotional loans;

(b) monies due from trade financing transactions referred to in point (b) of the second subparagraph of Article 162(3) with a residual maturity of up to 30 days, shall be taken into account in full as inflows;

▼M8

(c) loans with an undefined contractual end date shall be taken into account with a 20 % inflow, provided that the contract allows the institution to withdraw and request payment within 30 days;

▼C2

(d) monies due from secured lending and capital market-driven transactions as defined in point (3) of Article 192 if they are collateralised by liquid assets as referred to in Article 416(1), shall not be taken into account up to the value net of haircuts of the liquid assets and shall be taken into account in full for the remaining monies due;

(e) monies due that the institution owing those monies treats in accordance with Article 422(3) and (4), shall be multiplied by a corresponding symmetrical inflow;

(f) monies due from positions in major index equity instruments provided that there is no double counting with liquid assets;

(g) any undrawn credit or liquidity facilities and any other commitments received shall not be taken into account.

3. Outflows and inflows expected over the 30 day horizon from the contracts listed in Annex II shall be reflected on a net basis across counterparties and shall be multiplied by 100 % in the event of a net inflow. Net basis shall mean also net of collateral to be received that qualifies as liquid assets under Article 416.

4. By way of derogation from point (g) of paragraph 2, competent authorities may grant the permission to apply a higher inflow on a case by case basis for credit and liquidity facilities when all of the following conditions are fulfilled:

(a) there are reasons to expect a higher inflow even under a combined market and idiosyncratic stress of the provider;

(b) the counterparty is a parent or subsidiary institution of the institution or another subsidiary of the same parent institution or linked to the institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC or a member of the same institutional protection scheme referred to in Article 113(7) of this Regulation or the central institution or a member of a network that is subject to the waiver referred to in Article 10 of this Regulation;

(c) a corresponding symmetric or more conservative outflow is applied by the counterparty by way of derogation from Articles 422, 423 and 424;

(d) the institution and the counterparty are established in the same Member State.

5. Competent authorities may waive the condition set out in point (d) of paragraph 4 where Article 20(1)(b) is applied. In that case additional objective criteria as set out in the delegated act referred to in Article 460 have to be met. Where such higher inflow is permitted to be applied, the competent authorities shall inform EBA about the result of the process referred to in Article 20(1)(b). Fulfilment of the conditions for such higher inflows shall be regularly reviewed by the competent authorities.

▼C2

6. EBA shall develop draft regulatory technical standards to further specify the additional objective criteria referred to in paragraph 5.

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2015.

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

7. Institutions shall not report inflows from any of the liquid assets reported in accordance with Article 416 other than payments due on the assets that are not reflected in the market value of the asset.

8. Institutions shall not report inflows from any new obligations entered into.

9. Institutions shall take liquidity inflows which are to be received in third countries where there are transfer restrictions or which are denominated in non-convertible currencies into account only to the extent that they correspond to outflows respectively in the third country or currency in question.

Article 426

Updating Future liquidity requirements

Following, the adoption by the Commission of a delegated act to specify the liquidity requirement in accordance with Article 460, EBA may develop draft implementing technical standards to specify the conditions set out in Article 421(1), Article 422, with the exception of paragraphs 8, 9 and 10 of that Article, and Article 424 to take account of standards agreed internationally.

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

TITLE III

REPORTING ON STABLE FUNDING

Article 427

Items providing stable funding

1. Institutions shall report to the competent authorities, in accordance with the reporting requirements set out in Article 415(1) and the uniform reporting formats referred to in Article 415(3), the following items and their components in order to allow an assessment of the availability of stable funding:

▼C2

(a) the following own funds, after deductions have been applied, where appropriate:

(i) tier 1 capital instruments;

(ii) tier 2 capital instruments;

(iii) other preferred shares and capital instruments in excess of Tier 2 allowable amount having an effective maturity of one year or greater;

(b) the following liabilities not included in point (a):

(i) retail deposits that qualify for the treatment set out in Article 421(1);

(ii) retail deposits that qualify for the treatment set out in Article 421(2);

(iii) deposits that qualify for the treatment set out in Article 422 (3) and (4);

(iv) of the deposits referred to in point (iii), those that are subject to a deposit guarantee scheme in accordance with Directive 94/19/EC or an equivalent deposit guarantee scheme in a third country deposit guarantees within the terms of Article 421(1);

(v) of the deposits referred to in point (iii), those that fall under point (b) of Article 422(3);

(vi) of the deposits referred to in point (iii), those that fall under point (d) of Article 422(3);

(vii) amounts deposited not falling under point (i), (ii) or (iii) if they are not deposited by financial customers;

(viii) all funding obtained from financial customers;

(ix) separately for amounts falling under points (vii) and (viii) respectively, funding from secured lending and capital market-driven transactions as defined in point (3) of Article 192:

— collateralised by assets that would qualify as liquid assets in accordance with Article 416;

— collateralised by any other assets;

▼M10

(x) liabilities resulting from securities issued that qualify for the treatment set out in Article 129(4) or (5) of this Regulation or from covered bonds as defined in point (1) of Article 3 of Directive (EU) 2019/2162;

▼C2

(xi) the following other liabilities resulting from securities issued that do not fall under point (a):

— liabilities resulting from securities issued with an effective maturity of one year or greater;

— liabilities resulting from securities issued with an effective maturity of less than one year;

(xii) any other liabilities.

2. Where applicable, all items shall be presented in the following five buckets according to the closest of their maturity date and the earliest date at which they can contractually be called:

(a) within three months;

(b) between three and six months;

(c) between six and nine months;

(d) between nine and 12 months;

(e) after 12 months.

Article 428

Items requiring stable funding

1. Unless deducted from own funds, the following items shall be reported to competent authorities separately in order to allow an assessment of the needs for stable funding:

(a) the assets that would qualify as liquid assets in accordance with Article 416, broken down by asset type;

(b) the following securities and money market instruments not included in point (a):

(i) assets qualifying for credit step 1 under Article 122;

(ii) assets qualifying for credit step 2 under Article 122;

(iii) other assets;

(c) equity securities of non-financial entities listed on a major index in a recognised exchange;

(d) other equity securities;

(e) gold;

(f) other precious metals;

▼C2

(g) non-renewable loans and receivables, and separately those non-renewable loans and receivables for which borrowers are:

(i) natural persons other than commercial sole proprietors and partnerships;

(ii) SMEs that qualify for the retail exposure class under the Standardised or IRB approaches for credit risk or to a company which is eligible for the treatment set out in Article 153(4) and where the aggregate deposit placed by that client or group of connected clients is less than EUR 1 million;

(iii) sovereigns, central banks and public sector entities;

(iv) clients not referred to in points (i) and (ii) other than financial customers;

(v) clients not referred to in points (i), (ii) and (iii) that are financial customers, and thereof separately those that are credit institutions and other financial customers;

(h) non-renewable loans and receivables referred to in point (g), and thereof separately those that are:

(i) collateralised by commercial immovable property (CRE);

(ii) collateralised by residential property (RRE);

▼M10

(iii) match funded (pass through) via bonds eligible for the treatment set out in Article 129(4) or (5) of this Regulation or via covered bonds as defined in point (1) of Article 3 of Directive (EU) 2019/2162;

▼C2

(i) derivatives receivables;

(j) any other assets;

(k) undrawn committed credit facilities that qualify as ‘medium risk’ or ‘medium/low risk’ under Annex I.

2. Where applicable, all items shall be presented in the five buckets described in Article 427(2).

▼M8

TITLE IV

THE NET STABLE FUNDING RATIO

CHAPTER 1

The net stable funding ratio

Article 428a

Application on a consolidated basis

Where the net stable funding ratio set out in this Title applies on a consolidated basis in accordance with Article 11(4), the following provisions shall apply:

(a) the assets and off-balance-sheet items of a subsidiary having its head office in a third country which are subject to required stable funding factors under the net stable funding requirement set out in the national law of that third country that are higher than those specified in Chapter 4 shall be subject to consolidation in accordance with the higher factors specified in the national law of that third country;

▼M8

(b) the liabilities and own funds of a subsidiary having its head office in a third country which are subject to available stable funding factors under the net stable funding requirement set out in the national law of that third country that are lower than those specified in Chapter 3 shall be subject to consolidation in accordance with the lower factors specified in the national law of that third country;

(c) third-country assets which meet the requirements laid down in the delegated act referred to in Article 460(1) and which are held by a subsidiary having its head office in a third country shall not be recognised as liquid assets for consolidation purposes where they do not qualify as liquid assets under the national law of that third country which sets out the liquidity coverage requirement.

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▼M8

Article 428b

The net stable funding ratio

1. The net stable funding requirement laid down in Article 413(1) shall be equal to the ratio of the institution's available stable funding as referred to in Chapter 3 to the institution's required stable funding as referred to in Chapter 4, and shall be expressed as a percentage. Institutions shall calculate their net stable funding ratio in accordance with the following formula:

$$\frac{\text{Available stable funding}}{\text{Required stable funding}} = \text{Net stable funding ratio (\%)}$$

2. Institutions shall maintain a net stable funding ratio of at least 100 %, calculated in the reporting currency for all their transactions, irrespective of their actual currency denomination.

3. Where, at any time, the net stable funding ratio of an institution has fallen below 100 %, or can be reasonably expected to fall below 100 %, the requirement laid down in Article 414 shall apply. The institution shall aim to restore its net stable funding ratio to the level referred to in paragraph 2 of this Article. Competent authorities shall assess the reasons for the institution's failure to comply with paragraph 2 of this Article before taking any supervisory measures.

4. Institutions shall calculate and monitor their net stable funding ratio in the reporting currency for all their transactions, irrespective of their actual currency denomination, and separately for their transactions denominated in each of the currencies that is subject to separate reporting in accordance with Article 415(2).

▼M8

5. Institutions shall ensure that the distribution of their funding profile by currency denomination is generally consistent with the distribution of their assets by currency. Where appropriate, competent authorities may require institutions to restrict currency mismatches by setting limits on the proportion of required stable funding in a particular currency that can be met by available stable funding that is not denominated in that currency. That restriction may only be applied for a currency that is subject to separate reporting in accordance with Article 415(2).

In determining the level of any restriction on currency mismatches that may be applied in accordance with this Article, competent authorities shall at least consider:

(a) whether the institution has the ability to transfer available stable funding from one currency to another and across jurisdictions and legal entities within its group and the ability to swap currencies and raise funds in foreign currency markets over the one-year horizon of the net stable funding ratio;

(b) the impact of adverse exchange rate movements on existing mismatched positions and on the effectiveness of any foreign currency exchange hedges that are in place.

Any restriction on currency mismatches imposed in accordance with this Article shall constitute a specific liquidity requirement as referred to in Article 105 of Directive 2013/36/EU.

CHAPTER 2

General rules for the calculation of the net stable funding ratio

Article 428c

Calculation of the net stable funding ratio

1. Unless otherwise specified in this Title, institutions shall take into account assets, liabilities and off-balance-sheet items on a gross basis.

2. For the purpose of calculating their net stable funding ratio, institutions shall apply the appropriate stable funding factors set out in Chapters 3 and 4 to the accounting value of their assets, liabilities and off-balance-sheet items, unless otherwise specified in this Title.

3. Institutions shall not double count required stable funding and available stable funding.

Unless otherwise specified in this Title, where an item can be allocated to more than one required stable funding category, it shall be allocated to the required stable funding category that produces the greatest contractual required stable funding for that item.

Article 428d

Derivative contracts

1. Institutions shall apply this Article to calculate the amount of required stable funding for derivative contracts as referred to in Chapters 3 and 4.

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2. Without prejudice to Article 428ah(2), institutions shall take into account the fair value of derivative positions on a net basis where those positions are included in the same netting set that fulfils the requirements set out in Article 429c(1). Where that is not the case, institutions shall take into account the fair value of derivative positions on a gross basis and shall treat those derivative positions as belonging to their own netting set for the purposes of Chapter 4.

3. For the purposes of this Title, the 'fair value of a netting set' means the sum of the fair values of all the transactions included in a netting set.

4. Without prejudice to Article 428ah(2), all derivative contracts listed in points 2(a) to (e) of Annex II that involve a full exchange of principal amounts on the same date shall be calculated on a net basis across currencies, including for the purpose of reporting in a currency that is subject to separate reporting in accordance with Article 415(2), even where those transactions are not included in the same netting set that fulfils the requirements set out in Article 429c(1).

5. Cash received as collateral to mitigate the exposure of a derivative position shall be treated as such and shall not be treated as deposits to which Chapter 3 applies.

6. Competent authorities may decide, with the approval of the relevant central bank, to waive the impact of derivative contracts on the calculation of the net stable funding ratio, including through the determination of the required stable funding factors and of provisions and losses, provided that all the following conditions are met:

(a) those contracts have a residual maturity of less than six months;

(b) the counterparty is the ECB or the central bank of a Member State;

(c) the derivative contracts serve the monetary policy of the ECB or the central bank of a Member State.

Where a subsidiary having its head office in a third country benefits from the waiver referred to in the first subparagraph under the national law of that third country which sets out the net stable funding requirement, that waiver as specified in the national law of the third country shall be taken into account for consolidation purposes.

Article 428e

Netting of secured lending transactions and capital market-driven transactions

Assets and liabilities resulting from securities financing transactions with a single counterparty shall be calculated on a net basis, provided that those assets and liabilities comply with the netting conditions set out in Article 429b(4).

Article 428f

Interdependent assets and liabilities

1. Subject to prior approval of the competent authorities, an institution may treat an asset and a liability as interdependent, provided that all the following conditions are met:

▼M8

(a) the institution acts solely as a pass-through unit to channel the funding from the liability into the corresponding interdependent asset;

(b) the individual interdependent assets and liabilities are clearly identifiable and have the same principal amount;

(c) the asset and interdependent liability have substantially matched maturities, with a maximum delay of 20 days between the maturity of the asset and the maturity of the liability;

(d) the interdependent liability has been requested pursuant to a legal, regulatory or contractual commitment and is not used to fund other assets;

(e) the principal payment flows from the asset are not used for other purposes than repaying the interdependent liability;

(f) the counterparties for each pair of interdependent assets and liabilities are not the same.

2. Assets and liabilities shall be considered to meet the conditions set out in paragraph 1 and be considered as interdependent where they are directly linked to the following products or services:

(a) centralised regulated savings, provided that institutions are legally required to transfer regulated deposits to a centralised fund which is set up and controlled by the central government of a Member State and which provides loans to promote public interest objectives, and provided that the transfer of deposits to the centralised fund occurs on at least a monthly basis;

(b) promotional loans and credit and liquidity facilities that fulfil the criteria set out in the delegated act referred to in Article 460(1) for institutions acting as simple intermediaries that do not incur any funding risk;

(c) covered bonds that meet all the following conditions:

(i) they are bonds referred to in Article 52(4) of Directive 2009/65/EC or they meet the eligibility requirements for the treatment set out in Article 129(4) or (5) of this Regulation;

(ii) the underlying loans are fully match funded with the covered bonds that were issued or the covered bonds have non-discretionary extendable maturity triggers of one year or more until the term of the underlying loans in the event of refinancing failure at the maturity date of the covered bond;

(d) derivative client clearing activities, provided that the institution does not provide to its clients guarantees of the performance of the CCP and, as a result, does not incur any funding risk.

▼M8

3. EBA shall monitor assets and liabilities, as well as products and services that are treated as interdependent assets and liabilities under paragraphs 1 and 2, to determine whether and to what extent the suitability criteria laid down in paragraph 1 are met. EBA shall report to the Commission on the results of that monitoring and shall advise the Commission on whether an amendment to the conditions set out in paragraph 1 or an amendment to the list of products and services in paragraph 2 would be necessary.

Article 428g

Deposits in institutional protection schemes and cooperative networks

Where an institution belongs to an institutional protection scheme of the type referred to in Article 113(7), to a network that is eligible for the waiver provided for in Article 10, or to a cooperative network in a Member State, the sight deposits that the institution maintains with the central institution and that the depositing institution considers to be liquid assets pursuant to the delegated act referred to in Article 460(1) shall be subject to the following:

(a) the depositing institution shall apply the required stable funding factor under Section 2 of Chapter 4, depending on the treatment of those sight deposits as level 1, level 2A or level 2B assets pursuant to the delegated act referred to in Article 460(1) and depending on the relevant haircut applied to those sight deposits for the calculation of the liquidity coverage ratio;

(b) the central institution receiving the deposit shall apply the corresponding symmetric available stable funding factor.

Article 428h

Preferential treatment within a group or within an institutional protection scheme

1. By way of derogation from Chapters 3 and 4, where Article 428g does not apply, competent authorities may authorise institutions on a case-by-case basis to apply a higher available stable funding factor or a lower required stable funding factor to assets, liabilities and committed credit or liquidity facilities, provided that all the following conditions are met:

(a) the counterparty is one of the following:

(i) the parent or a subsidiary of the institution;

(ii) another subsidiary of the same parent;

(iii) an undertaking that is related to the institution within the meaning of Article 22(7) of Directive 2013/34/EU;

(iv) a member of the same institutional protection scheme referred to in Article 113(7) of this Regulation as the institution;

▼M8

(v) the central body or an affiliated credit institution of a network or a cooperative group as referred to in Article 10 of this Regulation;

(b) there are reasons to expect that the liability or committed credit or liquidity facility received by the institution constitutes a more stable source of funding, or that the asset or committed credit or liquidity facility granted by the institution requires less stable funding over the one-year horizon of the net stable funding ratio than the same liability, asset or committed credit or liquidity facility received or granted by other counterparties;

(c) the counterparty applies a required stable funding factor that is equal to or higher than the higher available stable funding factor or applies an available stable funding factor that is equal to or lower than the lower required stable funding factor;

(d) the institution and the counterparty are established in the same Member State.

2. Where the institution and the counterparty are established in different Member States, competent authorities may waive the condition set out in point (d) of paragraph 1, provided that, in addition to the criteria set out in paragraph 1, the following criteria are met:

(a) there are legally binding agreements and commitments between group entities regarding the liability, asset or committed credit or liquidity facility;

(b) the funding provider presents a low funding risk profile;

(c) the funding risk profile of the recipient of the funding has been adequately taken into account in the liquidity risk management of the funding provider.

The competent authorities shall consult each other in accordance with point (b) of Article 20(1) to determine whether the additional criteria set out in this paragraph are met.

CHAPTER 3

Available stable funding

Section 1

General provisions

Article 428i

Calculation of the amount of available stable funding

Unless otherwise specified in this Chapter, the amount of available stable funding shall be calculated by multiplying the accounting value of various categories or types of liabilities and own funds by the available stable funding factors to be applied under Section 2. The total amount of available stable funding shall be the sum of the weighted amounts of liabilities and own funds.

▼M8

Bonds and other debt securities that are issued by the institution, sold exclusively in the retail market, and held in a retail account, may be treated as belonging to the appropriate retail deposit category. Limitations shall be in place, such that those instruments cannot be bought and held by parties other than retail customers.

Article 428j

Residual maturity of a liability or of own funds

1. Unless otherwise specified in this Chapter, institutions shall take into account the residual contractual maturity of their liabilities and own funds to determine the available stable funding factors to be applied under Section 2.

2. Institutions shall take into account existing options in determining the residual maturity of a liability or of own funds. They shall do so on the assumption that the counterparty will redeem call options at the earliest possible date. For options exercisable at the discretion of the institution, the institution and the competent authorities shall take into account reputational factors that may limit an institution's ability not to exercise the option, in particular market expectations that institutions should redeem certain liabilities before their maturity.

3. Institutions shall treat deposits with fixed notice periods in accordance with their notice period, and shall treat term deposits in accordance with their residual maturity. By way of derogation from paragraph 2 of this Article, institutions shall not take into account options for early withdrawals where the depositor has to pay a material penalty for early withdrawals which occur in less than one year, such penalty being laid down in the delegated act referred to in Article 460(1), to determine the residual maturity of term retail deposits.

4. In order to determine the available stable funding factors to be applied under Section 2, institutions shall treat any portion of liabilities having a residual maturity of one year or more that matures in less than six months and any portion of such liabilities that matures between six months and less than one year as having a residual maturity of less than six months and between six months and less than one year, respectively.

Section 2

Available stable funding factors

Article 428k

0 % available stable funding factor

1. Unless otherwise specified in Articles 428l to 428o, all liabilities without a stated maturity, including short positions and open maturity positions, shall be subject to a 0 % available stable funding factor, with the exception of the following:

▼M8

(a) deferred tax liabilities, which shall be treated in accordance with the nearest possible date on which such liabilities could be realised;

(b) minority interests, which shall be treated in accordance with the term of the instrument.

2. Deferred tax liabilities and minority interests as referred to in paragraph 1 shall be subject to one of the following factors:

(a) 0 %, where the effective residual maturity of the deferred tax liability or minority interest is less than six months;

(b) 50 %, where the effective residual maturity of the deferred tax liability or minority interest is a minimum of six months but less than one year;

(c) 100 %, where the effective residual maturity of the deferred tax liability or minority interest is one year or more.

▼C7

3. The following liabilities and capital items or instruments shall be subject to a 0 % available stable funding factor:

▼M8

(a) trade date payables arising from purchases of financial instruments, of foreign currencies and of commodities, that are expected to settle within the standard settlement cycle or period that is customary for the relevant exchange or type of transactions, or that have failed to settle but are nonetheless expected to settle;

(b) liabilities that are categorised as being interdependent with assets in accordance with Article 428f;

(c) liabilities with a residual maturity of less than six months provided by:

(i) the ECB or the central bank of a Member State;

(ii) the central bank of a third country;

(iii) financial customers;

(d) any other liabilities and capital items or instruments not referred to in Articles 428l to 428o.

4. Institutions shall apply a 0 % available stable funding factor to the absolute value of the difference, if negative, between the sum of fair values across all netting sets with positive fair value and the sum of fair values across all netting sets with negative fair value calculated in accordance with Article 428d.

The following rules shall apply to the calculation referred to in the first subparagraph:

(a) variation margin received by institutions from their counterparties shall be deducted from the fair value of a netting set with positive fair value where the collateral received as variation margin qualifies as a level 1 asset pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified in that delegated act, and where institutions are legally entitled and operationally able to reuse that collateral;

(b) all variation margin posted by institutions with their counterparties shall be deducted from the fair value of a netting set with negative fair value.

▼M8

Article 428l

50 % available stable funding factor

▼C7

The following liabilities and capital items or instruments shall be subject to a 50 % available stable funding factor:

▼M8

(a) deposits received that fulfil the criteria for operational deposits set out in the delegated act referred to in Article 460(1);

(b) liabilities with a residual maturity of less than one year provided by:

(i) the central government of a Member State or of a third country;

(ii) regional governments or local authorities of a Member State or of a third country;

(iii) public sector entities in a Member State or in a third country;

(iv) multilateral development banks referred to in Article 117(2) and international organisations referred to in Article 118;

(v) non-financial corporate customers;

(vi) credit unions authorised by a competent authority, personal investment companies and clients that are deposit brokers to the extent that those liabilities do not fall under point (a) of this paragraph;

(c) liabilities with a residual contractual maturity of a minimum of six months but less than one year that are provided by:

(i) the ECB or the central bank of a Member State;

(ii) the central bank of a third country;

(iii) financial customers;

▼C7

(d) any other liabilities and capital items or instruments with a residual maturity of a minimum of six months but less than one year not referred to in Articles 428m, 428n and 428o.

▼M8

Article 428m

90 % available stable funding factor

Sight retail deposits, retail deposits with a fixed notice period of less than one year and term retail deposits having a residual maturity of less than one year that fulfil the relevant criteria for other retail deposits set out in the delegated act referred to in Article 460(1) shall be subject to a 90 % available stable funding factor.

Article 428n

95 % available stable funding factor

Sight retail deposits, retail deposits with a fixed notice period of less than one year and term retail deposits having a residual maturity of less than one year that fulfil the relevant criteria for stable retail deposits set out in the delegated act referred to in Article 460(1) shall be subject to a 95 % available stable funding factor.

▼M8

Article 428o

100 % available stable funding factor

The following liabilities and capital items and instruments shall be subject to a 100 % available stable funding factor:

(a) the Common Equity Tier 1 items of the institution before the adjustments required pursuant to Articles 32 to 35, the deductions pursuant to Article 36 and the application of the exemptions and alternatives laid down in Articles 48, 49 and 79;

(b) the Additional Tier 1 items of the institution before the deduction of the items referred to in Article 56 and before Article 79 has been applied thereto, excluding any instruments with explicit or embedded options that, if exercised, would reduce the effective residual maturity to less than one year;

(c) the Tier 2 items of the institution before the deductions referred to in Article 66 and before the application of Article 79, having a residual maturity of one year or more, excluding any instruments with explicit or embedded options that, if exercised, would reduce the effective residual maturity to less than one year;

(d) any other capital instruments of the institution with a residual maturity of one year or more, excluding any instruments with explicit or embedded options that, if exercised, would reduce the effective residual maturity to less than one year;

(e) any other secured and unsecured borrowings and liabilities with a residual maturity of one year or more, including term deposits, unless otherwise specified in Articles 428k to 428n.

CHAPTER 4

Required stable funding

Section 1

General provisions

Article 428p

Calculation of the amount of required stable funding

1. Unless otherwise specified in this Chapter, the amount of required stable funding shall be calculated by multiplying the accounting value of various categories or types of assets and off-balance-sheet items by the required stable funding factors to be applied in accordance with Section 2. The total amount of required stable funding shall be the sum of the weighted amounts of assets and off-balance-sheet items.

2. Assets which institutions have borrowed, including in securities financing transactions, shall be excluded from the calculation of the amount of required stable funding where those assets are accounted for on the balance sheet of the institution and the institution does not have beneficial ownership of the asset.

▼M8

Assets that institutions have borrowed, including in securities financing transactions, shall be subject to the required stable funding factors to be applied under Section 2 where those assets are not accounted for on the balance sheet of the institution but the institution does have beneficial ownership of the assets.

3. Assets that institutions have lent, including in securities financing transactions over which the institution retains beneficial ownership, shall be considered as encumbered assets for the purposes of this Chapter and shall be subject to the required stable funding factors to be applied under Section 2, even where the assets do not remain on the balance sheet of the institution. Otherwise, such assets shall be excluded from the calculation of the amount of required stable funding.

4. Assets that are encumbered for a residual maturity of six months or longer shall be assigned either the required stable funding factor that would be applied under Section 2 to those assets if they were held unencumbered or the required stable funding factor that is otherwise applicable to those encumbered assets, whichever factor is higher. The same shall apply where the residual maturity of the encumbered assets is shorter than the residual maturity of the transaction that is the source of encumbrance.

Assets that have less than six months remaining in the encumbrance period shall be subject to the required stable funding factors to be applied under Section 2 to the same assets if they were held unencumbered.

5. Where an institution reuses or repledges an asset that was borrowed, including in securities financing transactions, and that asset is accounted for off-balance-sheet, the transaction in relation to which that asset has been borrowed shall be treated as encumbered, provided that the transaction cannot mature without the institution returning the asset borrowed.

6. The following assets shall be considered to be unencumbered:

(a) assets included in a pool which are available for immediate use as collateral to obtain additional funding under committed or, where the pool is operated by a central bank, uncommitted but not yet funded, credit lines that are available to the institution; those assets shall include assets placed by a credit institution with a central institution in a cooperative network or institutional protection scheme; institutions shall assume that assets in the pool are encumbered in order of increasing liquidity on the basis of the liquidity classification pursuant to the delegated act referred to in Article 460(1), starting with assets ineligible for the liquidity buffer;

(b) assets that the institution has received as collateral for credit risk mitigation purposes in secured lending, secured funding or collateral exchange transactions and that the institution may dispose of;

▼M8

(c) assets attached as non-mandatory overcollateralisation to a covered bond issuance.

7. In the case of non-standard, temporary operations conducted by the ECB or the central bank of a Member State or the central bank of a third country in order to fulfil its mandate in a period of market-wide financial stress or in exceptional macroeconomic circumstances, the following assets may receive a reduced required stable funding factor:

(a) by way of derogation from point (f) of Article 428ad and from point (a) of Article 428ah(1), assets encumbered for the purposes of the operations referred to in this subparagraph;

(b) by way of derogation from points (d)(i) and (d)(ii) of Article 428ad, from point (b) of Article 428af and from point (c) of Article 428ag, monies that result from the operations referred to in this subparagraph.

Competent authorities shall determine, in agreement with the central bank that is the counterparty to the transaction the required stable funding factor to be applied to the assets referred to in points (a) and (b) of the first subparagraph. For encumbered assets as referred to in point (a) of the first subparagraph, the required stable funding factor to be applied shall not be lower than the required stable funding factor that would apply under Section 2 to those assets if they were held unencumbered.

When applying a reduced required stable funding factor in accordance with the second subparagraph, competent authorities shall closely monitor the impact of that reduced factor on institutions' stable funding positions and shall take appropriate supervisory measures where necessary.

8. In order to avoid any double counting, institutions shall exclude assets that are associated with collateral that is recognised as variation margin posted in accordance with point (b) of Article 428k(4) and 428ah(2), recognised as initial margin posted, or recognised as a contribution to the default fund of a CCP in accordance with points (a) and (b) of Article 428ag from other parts of calculation of the amount of required stable funding in accordance with this Chapter.

9. Institutions shall include foreign currencies and commodities for which a purchase order has been executed in the calculation of the amount of required stable funding financial instruments. They shall exclude financial instruments, foreign currencies and commodities for which a sale order has been executed from the calculation of the amount of required stable funding, provided that those transactions are not reflected as derivatives or secured funding transactions on the institutions' balance sheet and that those transactions are to be reflected on the institutions' balance sheet when settled.

10. Competent authorities may determine the required stable funding factors to be applied to off-balance-sheet exposures that are not referred to in this Chapter to ensure that institutions hold an appropriate amount of available stable funding for the portion of those exposures that are expected to require funding over the one-year horizon of the net stable funding ratio. To determine those factors, competent authorities shall, in particular, take into account the material reputational damage to the institution that could result from not providing that funding.

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Competent authorities shall report the types of off-balance-sheet exposures for which they have determined the required stable funding factors to EBA at least once a year. They shall include an explanation of the methodology applied to determine those factors in that report.

Article 428q

Residual maturity of an asset

1. Unless otherwise specified in this Chapter, institutions shall take into account the residual contractual maturity of their assets and off-balance-sheet transactions when determining the required stable funding factors to be applied to their assets and off-balance-sheet items under Section 2.

2. Institutions shall treat assets that have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012 in accordance with the underlying exposure of those assets. Institutions shall, however, subject those assets to higher required stable funding factors, depending on the term of encumbrance to be determined by the competent authorities, who shall consider whether the institution is able to freely dispose of or exchange such assets and shall consider the term of the liabilities to the institutions' customers to whom that segregation requirement relates.

3. When calculating the residual maturity of an asset, institutions shall take options into account, based on the assumption that the issuer or counterparty will exercise any option to extend the maturity of an asset. For options that are exercisable at the discretion of the institution, the institution and competent authorities shall take into account reputational factors that may limit the institution's ability not to exercise the option, in particular markets' and clients' expectations that the institution should extend the maturity of certain assets at their maturity date.

4. In order to determine the required stable funding factors to be applied in accordance with Section 2, for amortising loans with a residual contractual maturity of one year or more, any portion that matures in less than six months and any portion that matures between six months and less than one year shall be treated as having a residual maturity of less than six months and between six months and less than one year, respectively.

Section 2

Required stable funding factors

Article 428r

0 % required stable funding factor

1. The following assets shall be subject to a 0 % required stable funding factor:

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(a) unencumbered assets that are eligible as level 1 high quality liquid assets pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified in that delegated act, regardless of whether they comply with the operational requirements as set out in that delegated act;

(b) unencumbered shares or units in CIUs that are eligible for a 0 % haircut for the calculation of the liquidity coverage ratio pursuant to the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer set out in that delegated act;

(c) all reserves held by the institution in the ECB or in the central bank of a Member State or the central bank of a third country, including required reserves and excess reserves;

(d) all claims on the ECB, the central bank of a Member State or the central bank of a third country that have a residual maturity of less than six months;

(e) trade date receivables arising from sales of financial instruments, foreign currencies or commodities that are expected to settle within the standard settlement cycle or period that is customary for the relevant exchange or type of transaction, or that have failed to settle but are nonetheless expected to settle;

(f) assets that are categorised as being interdependent with liabilities in accordance with Article 428f;

(g) monies due from securities financing transactions with financial customers, where those transactions have a residual maturity of less than six months, where those monies due are collateralised by assets that qualify as level 1 assets pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified therein, and where the institution would be legally entitled and operationally able to reuse those assets for the duration of the transaction.

Institutions shall take the monies due referred to in point (g) of the first subparagraph of this paragraph into account on a net basis where Article 428e applies.

2. By way of derogation from point (c) of paragraph 1, competent authorities may decide, with the agreement of the relevant central bank, to apply a higher required stable funding factor to required reserves, taking into account, in particular, the extent to which reserve requirements exist over a one-year horizon and therefore require associated stable funding.

For subsidiaries having their head office in a third country, where the required central bank reserves are subject to a higher required stable funding factor under the net stable funding requirement set out in the national law of that third country, that higher required stable funding factor shall be taken into account for consolidation purposes.

▼M8

Article 428s

5 % required stable funding factor

1. The following assets and off-balance-sheet items shall be subject to a 5 % required stable funding factor:

(a) unencumbered shares or units in CIUs that are eligible for a 5 % haircut for the calculation of the liquidity coverage ratio in accordance with the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act;

(b) monies due from securities financing transactions with financial customers, where those transactions have a residual maturity of less than six months, other than those referred to in point (g) of Article 428r(1);

(c) the undrawn portion of committed credit and liquidity facilities pursuant to the delegated act referred to in Article 460(1);

(d) trade finance off-balance-sheet related products as referred to in Annex I with a residual maturity of less than six months.

Institutions shall take the monies due referred to in point (b) of the first subparagraph of this paragraph into account on a net basis where Article 428e applies.

2. For all netting sets of derivative contracts, institutions shall apply a 5 % required stable funding factor to the absolute fair value of those netting sets of derivative contracts, gross of any collateral posted, where those netting sets have a negative fair value. For the purposes of this paragraph, institutions shall determine the fair value as gross of any collateral posted or settlement payments and receipts related to market valuation changes of such contracts.

Article 428t

7 % required stable funding factor

Unencumbered assets that are eligible as level 1 extremely high quality covered bonds pursuant to the delegated act referred to in Article 460(1) shall be subject to a 7 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428u

7,5 % required stable funding factor

Trade finance off-balance-sheet related products as referred to in Annex I with a residual maturity of at least six months but less than one year shall be subject to a 7,5 % required stable funding factor.

▼M8

Article 428v

10 % required stable funding factor

The following assets and off-balance-sheet items shall be subject to a 10 % required stable funding factor:

(a) monies due from transactions with financial customers that have a residual maturity of less than six months other than those referred to in point (g) of Article 428r(1) and in point (b) of Article 428s(1);

(b) trade finance on-balance-sheet related products with a residual maturity of less than six months;

(c) trade finance off-balance-sheet related products as referred to in Annex I with a residual maturity of one year or more.

Article 428w

12 % required stable funding factor

Unencumbered shares or units in CIUs that are eligible for a 12 % haircut for the calculation of the liquidity coverage ratio in accordance with the delegated act referred to in Article 460(1) shall be subject to a 12 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428x

15 % required stable funding factor

Unencumbered assets that are eligible as level 2A assets pursuant to the delegated act referred to in Article 460(1) shall be subject to a 15 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428y

20 % required stable funding factor

Unencumbered shares or units in CIUs that are eligible for a 20 % haircut for the calculation of the liquidity coverage ratio in accordance with the delegated act referred to in Article 460(1) shall be subject to a 20 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

▼M8

Article 428z

25 % required stable funding factor

Unencumbered level 2B securitisations pursuant to the delegated act referred to in Article 460(1) shall be subject to a 25 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428aa

30 % required stable funding factor

The following assets shall be subject to a 30 % required stable funding factor:

(a) unencumbered high quality covered bonds pursuant to the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act;

(b) unencumbered shares or units in CIUs that are eligible for a 30 % haircut for the calculation of the liquidity coverage ratio in accordance with the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428ab

35 % required stable funding factor

The following assets shall be subject to a 35 % required stable funding factor:

(a) unencumbered level 2B securitisations pursuant to the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act;

(b) unencumbered shares or units in CIUs that are eligible for a 35 % haircut for the calculation of the liquidity coverage ratio pursuant to the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428ac

40 % required stable funding factor

Unencumbered shares or units in CIUs that are eligible for a 40 % haircut for the calculation of the liquidity coverage ratio pursuant to the delegated act referred to in Article 460(1) shall be subject to a 40 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

▼M8

Article 428ad

50 % required stable funding factor

The following assets shall be subject to a 50 % required stable funding factor:

(a) unencumbered assets that are eligible as level 2B assets pursuant to the delegated act referred to in Article 460(1), excluding level 2B securitisations and high quality covered bonds pursuant to that delegated act, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act;

(b) deposits held by the institution in another financial institution that fulfil the criteria for operational deposits as set out in the delegated act referred to in Article 460(1);

(c) monies due from transactions with a residual maturity of less than one year with:

(i) the central government of a Member State or of a third country;

(ii) regional governments or local authorities in a Member State or in a third country;

(iii) public sector entities of a Member State or of a third country;

(iv) multilateral development banks referred to in Article 117(2) and international organisations referred to in Article 118;

(v) non-financial corporates, retail customers and SMEs;

(vi) credit unions authorised by a competent authority, personal investment companies and clients that are deposit brokers to the extent that those assets do not fall under point (b) of this paragraph;

(d) monies due from transactions with a residual maturity of at least six months but less than one year with:

(i) the European Central Bank or the central bank of a Member State;

(ii) the central bank of a third country;

(iii) financial customers;

(e) trade finance on-balance-sheet related products with a residual maturity of at least six months but less than one year;

(f) assets encumbered for a residual maturity of at least six months but less than one year, except where those assets would be assigned a higher required stable funding factor in accordance with Articles 428ae to 428ah if they were held unencumbered, in which case the higher required stable funding factor that would apply to those assets if they were held unencumbered shall apply;

(g) any other assets with a residual maturity of less than one year, unless otherwise specified in Articles 428r to 428ac.

▼M8

Article 428ae

55 % required stable funding factor

Unencumbered shares or units in CIUs that are eligible for a 55 % haircut for the calculation of the liquidity coverage ratio in accordance with the delegated act referred to in Article 460(1) shall be subject to a 55 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428af

65 % required stable funding factor

The following assets shall be subject to a 65 % required stable funding factor:

(a) unencumbered loans secured by mortgages on residential property or unencumbered residential loans fully guaranteed by an eligible protection provider as referred to in point (e) of Article 129(1) with a residual maturity of one year or more, provided that those loans are assigned a risk weight of 35 % or less in accordance with Chapter 2 of Title II of Part Three;

(b) unencumbered loans with a residual maturity of one year or more, excluding loans to financial customers and loans referred to in Articles 428r to 428ad, provided that those loans are assigned a risk weight of 35 % or less in accordance with Chapter 2 of Title II of Part Three.

Article 428ag

85 % required stable funding factor

The following assets and off-balance-sheet items shall be subject to a 85 % required stable funding factor:

(a) any assets and off-balance-sheet items, including cash, posted as initial margin for derivative contracts, unless those assets would be assigned a higher required stable funding factor in accordance with Article 428ah if held unencumbered, in which case the higher required stable funding factor that would apply to those assets if they were held unencumbered shall apply;

(b) any assets and off-balance-sheet items, including cash, posted as contribution to the default fund of a CCP, unless those would be assigned a higher required stable funding factor in accordance with Article 428ah if held unencumbered, in which case the higher required stable funding factor to be applied to the unencumbered asset shall apply;

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(c) unencumbered loans with a residual maturity of one year or more, excluding loans to financial customers and loans referred to in Articles 428r to 428af, which are not past due for more than 90 days and which are assigned a risk weight of more than 35 % in accordance with Chapter 2 of Title II of Part Three;

(d) trade finance on-balance-sheet related products, with a residual maturity of one year or more;

(e) unencumbered securities with a residual maturity of one year or more that are not in default in accordance with Article 178 and that are not eligible as liquid assets pursuant to the delegated act referred to in Article 460(1);

(f) unencumbered exchange-traded equities that are not eligible as level 2B assets pursuant to the delegated act referred to in Article 460(1);

(g) physically traded commodities, including gold but excluding commodity derivatives;

(h) assets encumbered for a residual maturity of one year or more in a cover pool funded by covered bonds as referred to in Article 52(4) of Directive 2009/65/EC or covered bonds which meet the eligibility requirements for the treatment as set out in Article 129(4) or (5) of this Regulation.

Article 428ah

100 % required stable funding factor

1. The following assets shall be subject to a 100 % required stable funding factor:

(a) unless otherwise specified in this Chapter, any assets encumbered for a residual maturity of one year or more;

(b) any assets other than those referred to in Articles 428r to 428ag, including loans to financial customers having a residual contractual maturity of one year or more, non-performing exposures, items deducted from own funds, fixed assets, non-exchange-traded equities, retained interest, insurance assets, defaulted securities.

2. Institutions shall apply a 100 % required stable funding factor to the difference, if positive, between the sum of fair values across all netting sets with positive fair value and the sum of fair values across all netting sets with negative fair value calculated in accordance with Article 428d.

The following rules shall apply to the calculation referred to in the first subparagraph:

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(a) variation margin received by institutions from their counterparties shall be deducted from the fair value of a netting set with positive fair value where the collateral received as variation margin qualifies as a level 1 asset pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified in that delegated act, and where institutions are legally entitled and operationally able to reuse that collateral;

(b) all variation margin posted by institutions with their counterparties shall be deducted from the fair value of a netting set with negative fair value.

CHAPTER 5

Derogation for small and non-complex institutions

Article 428ai

Derogation for small and non-complex institutions

By way of derogation from Chapters 3 and 4, small and non-complex institutions may choose, with the prior permission of their competent authority, to calculate the ratio between an institution's available stable funding as referred to in Chapter 6, and the institution's required stable funding as referred to in Chapter 7, expressed as a percentage.

A competent authority may require a small and non-complex institution to comply with the net stable funding requirement based on an institution's available stable funding as referred to in Chapter 3 and the required stable funding as referred to in Chapter 4 where it considers that the simplified methodology is not adequate to capture the funding risks of that institution.

CHAPTER 6

Available stable funding for the simplified calculation of the net stable funding ratio

Section 1

General provisions

Article 428aj

Simplified calculation of the amount of available stable funding

1. Unless otherwise specified in this Chapter, the amount of available stable funding shall be calculated by multiplying the accounting value of various categories or types of liabilities and own funds by the available stable funding factors to be applied under Section 2. The total amount of available stable funding shall be the sum of the weighted amounts of liabilities and own funds.

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2. Bonds and other debt securities that are issued by the institution, sold exclusively in the retail market, and held in a retail account, may be treated as belonging to the appropriate retail deposit category. Limitations shall be in place, such that those instruments cannot be bought and held by parties other than retail customers.

Article 428ak

Residual maturity of a liability or own funds

1. Unless otherwise specified in this Chapter, institutions shall take into account the residual contractual maturity of their liabilities and own funds to determine the available stable funding factors to be applied under Section 2.

2. Institutions shall take into account existing options in determining the residual maturity of a liability or of own funds. They shall do so on the assumption that the counterparty will redeem call options at the earliest possible date. For options exercisable at the discretion of the institution, the institution and the competent authorities shall take into account reputational factors that may limit an institution's ability not to exercise the option, in particular market expectations that institutions should redeem certain liabilities before their maturity.

3. Institutions shall treat deposits with fixed notice periods in accordance with their notice period, and shall treat term deposits in accordance with their residual maturity. By way of derogation from paragraph 2 of this Article, institutions shall not take into account options for early withdrawals where the depositor has to pay a material penalty for early withdrawals which occur in less than one year, such penalty being laid down in the delegated act referred to in Article 460(1), to determine the residual maturity of term retail deposits.

4. In order to determine the available stable funding factors to be applied under Section 2, for liabilities with a residual contractual maturity of one year or more, any portion that matures in less than six months and any portion that matures between six months and less than one year, shall be treated as having a residual maturity of less than six months and between six months and less than one year, respectively.

Section 2

Available stable funding factors

Article 428al

0 % available stable funding factor

1. Unless otherwise specified in this Section, all liabilities without a stated maturity, including short positions and open maturity positions, shall be subject to a 0 % available stable funding factor, with the exception of the following:

▼M8

(a) deferred tax liabilities, which shall be treated in accordance with the nearest possible date on which such liabilities could be realised;

(b) minority interests, which shall be treated in accordance with the term of the instrument concerned.

2. Deferred tax liabilities and minority interests as referred to in paragraph 1 shall be subject to one of the following factors:

(a) 0 %, where the effective residual maturity of the deferred tax liability or minority interest is less than one year;

(b) 100 %, where the effective residual maturity of the deferred tax liability or minority interest is one year or more.

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3. The following liabilities, and capital items or instruments shall be subject to a 0 % available stable funding factor:

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(a) trade date payables arising from purchases of financial instruments, of foreign currencies and of commodities, that are expected to settle within the standard settlement cycle or period that is customary for the relevant exchange or type of transaction, or that have failed to settle but are nonetheless expected to settle;

(b) liabilities that are categorised as being interdependent with assets in accordance with Article 428f;

(c) liabilities with a residual maturity of less than one year provided by:

(i) the ECB or the central bank of a Member State;

(ii) the central bank of a third country;

(iii) financial customers;

(d) any other liabilities and capital items or instruments not referred to in this Article and Articles 428am to 428ap.

4. Institutions shall apply a 0 % available stable funding factor to the absolute value of the difference, if negative, between the sum of fair values across all netting sets with positive fair value and the sum of fair values across all netting sets with negative fair value calculated in accordance with Article 428d.

The following rules shall apply to the calculation referred to in the first subparagraph:

(a) variation margin received by institutions from their counterparties shall be deducted from the fair value of a netting set with positive fair value where the collateral received as variation margin qualifies as a level 1 asset pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified in that delegated act, and where institutions are legally entitled and operationally able to reuse that collateral;

(b) all variation margin posted by institutions with their counterparties shall be deducted from the fair value of a netting set with negative fair value.

▼M8

Article 428am

50 % available stable funding factor

▼C7

The following liabilities and capital items or instruments shall be subject to a 50 % available stable funding factor:

▼M8

(a) deposits received that fulfil the criteria for operational deposits set out in the delegated act referred to in Article 460(1);

▼C7

(b) liabilities and capital items or instruments with a residual maturity of less than one year provided by:

▼M8

(i) the central government of a Member State or of a third country;

(ii) regional governments or local authorities in a Member State or in a third country;

(iii) public sector entities of a Member State or of a third country;

(iv) multilateral development banks referred to in Article 117(2) and international organisations referred to in Article 118;

(v) non-financial corporate customers;

(vi) credit unions authorised by a competent authority, personal investment companies and clients that are deposit brokers, with the exception of deposits received, that fulfil the criteria for operational deposits as set out in the delegated act referred to in Article 460(1).

Article 428an

90 % available stable funding factor

Sight retail deposits, retail deposits with a fixed notice period of less than one year and term retail deposits having a residual maturity of less than one year that fulfil the relevant criteria for other retail deposits set out in the delegated act referred to in Article 460(1) shall be subject to a 90 % available stable funding factor.

Article 428ao

95 % available stable funding factor

Sight retail deposits, retail deposits with a fixed notice period of less than one year and term retail deposits having a residual maturity of less than one year that fulfil the relevant criteria for stable retail deposits set out in the delegated act referred to in Article 460(1) shall be subject to a 95 % available stable funding factor.

Article 428ap

100 % available stable funding factor

The following liabilities and capital items and instruments shall be subject to a 100 % available stable funding factor:

(a) the Common Equity Tier 1 items of the institution before the adjustments required pursuant to Articles 32 to 35, the deductions pursuant to Article 36 and the application of the exemptions and alternatives laid down in Articles 48, 49 and 79;

▼M8

(b) the Additional Tier 1 items of the institution before the deduction of the items referred to in Article 56 and before Article 79 has been applied thereto, excluding any instruments with explicit or embedded options that, if exercised, would reduce the effective residual maturity to less than one year;

(c) the Tier 2 items of the institution before the deductions referred to in Article 66 and before the application of Article 79, having a residual maturity of one year or more, excluding any instruments with explicit or embedded options that, if exercised, would reduce the effective residual maturity to less than one year;

(d) any other capital instruments of the institution with a residual maturity of one year or more, excluding any instruments with explicit or embedded options that, if exercised, would reduce the effective residual maturity to less than one year;

(e) any other secured and unsecured borrowings and liabilities with a residual maturity of one year or more, including term deposits, unless otherwise specified in Articles 428al to 428ao.

CHAPTER 7

Required stable funding for the simplified calculation of the net stable funding ratio

Section 1

General provisions

Article 428aq

Simplified calculation of the amount of required stable funding

1. Unless otherwise specified in this Chapter, for small and non-complex institutions the amount of required stable funding shall be calculated by multiplying the accounting value of various categories or types of assets and off-balance-sheet items by the required stable funding factors to be applied in accordance with Section 2. The total amount of required stable funding shall be the sum of the weighted amounts of assets and off-balance-sheet items.

2. Assets that institutions have borrowed, including in securities financing transactions, that are accounted for in their balance sheet and on which they do not have beneficial ownership shall be excluded from the calculation of the amount of required stable funding.

Assets that institutions have borrowed, including in securities financing transactions, that are not accounted for in their balance sheet but on which they have beneficial ownership shall be subject to the required stable funding factors to be applied under Section 2.

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3. Assets that institutions have lent, including in securities financing transactions, over which they retain beneficial ownership, even where they do not remain on their balance sheet, shall be considered as encumbered assets for the purposes of this Chapter and shall be subject to required stable funding factors to be applied under Section 2. Otherwise, such assets shall be excluded from the calculation of the amount of required stable funding.

4. Assets that are encumbered for a residual maturity of six months or longer shall be assigned either the required stable funding factor that would be applied under Section 2 to those assets if they were held unencumbered or the required stable funding factor that is otherwise applicable to those encumbered assets, whichever factor is higher. The same shall apply where the residual maturity of the encumbered assets is shorter than the residual maturity of the transaction that is the source of encumbrance.

Assets that have less than six months remaining in the encumbrance period shall be subject to the required stable funding factors to be applied under Section 2 to the same assets if they were held unencumbered.

5. Where an institution reuses or repledges an asset that was borrowed, including in securities financing transactions, and that is accounted for off-balance-sheet, the transaction through which that asset has been borrowed shall be treated as encumbered to the extent that the transaction cannot mature without the institution returning the asset borrowed.

6. The following assets shall be considered to be unencumbered:

(a) assets included in a pool which are available for immediate use as collateral to obtain additional funding under committed or, where the pool is operated by a central bank, uncommitted but not yet funded credit lines available to the institution, including assets placed by a credit institution with the central institution in a cooperative network or institutional protection scheme;

(b) assets that the institution has received as collateral for credit risk mitigation purposes in secured lending, secured funding or collateral exchange transactions and that the institution may dispose of;

(c) assets attached as non-mandatory over-collateralisation to a covered bond issuance.

For the purposes of point (a) of the first subparagraph of this paragraph, institutions shall assume that assets in the pool are encumbered in order of increasing liquidity on the basis of the liquidity classification set out in the delegated act referred to in Article 460(1), starting with assets ineligible for the liquidity buffer.

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7. In the case of non-standard, temporary operations conducted by the ECB or the central bank of a Member State or the central bank of a third country in order to fulfil its mandate in a period of market-wide financial stress or exceptional macroeconomic circumstances, the following assets may receive a reduced required stable funding factor:

(a) by way of derogation from Article 428aw and from point (a) of Article 428az(1), assets encumbered for the operations referred to in this subparagraph;

(b) by way of derogation from Article 428aw and from point (b) of Article 428ay, monies resulting from the operations referred to in this subparagraph.

Competent authorities shall determine, in agreement with the central bank that is the counterparty to the transaction the required stable funding factor to be applied to the assets referred to in points (a) and (b) of the first subparagraph. For encumbered assets referred to in point (a) of the first subparagraph, the required stable funding factor to be applied shall not be lower than the required stable funding factor that would apply under Section 2 to those assets if they were held unencumbered.

When applying a reduced required stable funding factor in accordance with the second subparagraph, competent authorities shall closely monitor the impact of that reduced factor on institutions' stable funding positions and take appropriate supervisory measures where necessary.

8. Institutions shall exclude assets associated with collateral recognised as variation margin posted in accordance with point (b) of Article 428k(4) and Article 428ah(2) or as initial margin posted or as contribution to the default fund of a CCP in accordance with points (a) and (b) of Article 428ag from other parts of calculation of the amount of required stable funding in accordance with this Chapter in order to avoid any double counting.

9. Institutions shall include in the calculation of the amount of required stable funding financial instruments, foreign currencies and commodities for which a purchase order has been executed. They shall exclude from the calculation of the amount of required stable funding financial instruments, foreign currencies and commodities for which a sale order has been executed, provided that those transactions are not reflected as derivatives or secured funding transactions on the institutions' balance sheet and that those transactions are to be reflected on the institutions' balance sheet when settled.

10. Competent authorities may determine the required stable funding factors to be applied to off-balance-sheet exposures that are not referred to in this Chapter to ensure that institutions hold an appropriate amount of available stable funding for the portion of those exposures that are expected to require funding over the one-year horizon of the net stable funding ratio. To determine those factors, competent authorities shall, in particular, take into account the material reputational damage to the institution that could result from not providing that funding.

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Competent authorities shall report to EBA the types of off-balance-sheet exposures for which they have determined the required stable funding factors at least once a year. They shall include in that report an explanation of the methodology applied to determine those factors.

Article 428ar

Residual maturity of an asset

1. Unless otherwise specified in this Chapter, institutions shall take into account the residual contractual maturity of their assets and off-balance-sheet transactions when determining the required stable funding factors to be applied to their assets and off-balance-sheet items under Section 2.

2. Institutions shall treat assets that have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012 in accordance with the underlying exposure of those assets. Institutions shall, however, subject those assets to higher required stable funding factors, depending on the term of encumbrance to be determined by the competent authorities, who shall consider whether the institution is able to freely dispose of or exchange such assets and shall consider the term of the liabilities to the institutions' customers to whom that segregation requirement relates.

3. When calculating the residual maturity of an asset, institutions shall take options into account, based on the assumption that the issuer or counterparty will exercise any option to extend the maturity of an asset. For options that are exercisable at the discretion of the institution, the institution and competent authorities shall take into account reputational factors that may limit the institution's ability not to exercise the option, in particular markets' and clients' expectations that the institution should extend the maturity of certain assets at their maturity date.

4. In order to determine the required stable funding factors to be applied in accordance with Section 2, for amortising loans with a residual contractual maturity of one year or more, the portions that mature in less than six months and between six months and less than one year shall be treated as having a residual maturity of less than six months and between six months and less than one year respectively.

Section 2

Required stable funding factors

Article 428as

0 % required stable funding factor

1. The following assets shall be subject to a 0 % required stable funding factor:

(a) unencumbered assets that are eligible as level 1 high quality liquid assets pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified in that delegated act, regardless of whether they comply with the operational requirements as set out in that delegated act;

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(b) all reserves held by the institution in the ECB or in the central bank of a Member State or the central bank of a third country, including required reserves and excess reserves;

(c) all claims on the ECB, the central bank of a Member State or the central bank of a third country that have a residual maturity of less than six months;

(d) assets that are categorised as being interdependent with liabilities in accordance with Article 428f.

2. By way of derogation from point (b) of paragraph 1, competent authorities may decide, with the agreement of the relevant central bank, to apply a higher required stable funding factor to required reserves, taking into account, in particular, the extent to which reserve requirements exist over a one-year horizon and therefore require associated stable funding.

For subsidiaries having their head office in a third country, where the required central bank reserves are subject to a higher required stable funding factor under the net stable funding requirement set out in the national law of that third country, that higher required stable funding factor shall be taken into account for consolidation purposes.

Article 428at

5 % required stable funding factor

1. The undrawn portion of committed credit and liquidity facilities specified in the delegated act referred to in Article 460(1) shall be subject to a 5 % required stable funding factor.

2. For all netting sets of derivative contracts, institutions shall apply a 5 % required stable funding factor to the absolute fair value of those netting sets of derivative contracts, gross of any collateral posted, where those netting sets have a negative fair value. For the purposes of this paragraph, institutions shall determine the fair value as gross of any collateral posted or settlement payments and receipts related to market valuation changes of such contracts.

Article 428au

10 % required stable funding factor

The following assets and off-balance-sheet items shall be subject to a 10 % required stable funding factor:

(a) unencumbered assets that are eligible as level 1 extremely high quality covered bonds pursuant to the delegated act referred to in Article 460(1), regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act;

(b) trade finance off-balance-sheet related products as referred to in Annex I.

▼M8

Article 428av

20 % required stable funding factor

Unencumbered assets that are eligible as level 2A assets pursuant to the delegated act referred to in Article 460(1), and unencumbered shares or units in CIUs pursuant to that delegated act shall be subject to a 20 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act.

Article 428aw

50 % required stable funding factor

The following assets shall be subject to a 50 % required stable funding factor:

(a) secured and unsecured loans with a residual maturity of less than one year and provided that they are encumbered less than one year;

(b) any other assets with a residual maturity of less than one year, unless otherwise specified in Articles 428as to 428av;

(c) assets encumbered for a residual maturity of at least six months but less than one year, except where those assets would be assigned a higher required stable funding factor in accordance with Articles 428ax, 428ay and 428az if they were held unencumbered, in which case the higher required stable funding factor that would apply to those assets if they were held unencumbered shall apply.

Article 428ax

55 % required stable funding factor

Assets that are eligible as level 2B assets pursuant to the delegated act referred to in Article 460(1), and shares or units in CIUs pursuant to that delegated act shall be subject to a 55 % required stable funding factor, regardless of whether they comply with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in that delegated act, provided that they are encumbered less than one year.

Article 428ay

85 % required stable funding factor

The following assets and off-balance-sheet items shall be subject to a 85 % required stable funding factor:

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(a) any assets and off-balance-sheet items, including cash, posted as initial margin for derivative contracts or posted as contribution to the default fund of a CCP, unless those assets would be assigned a higher required stable funding factor in accordance with Article 428az if held unencumbered, in which case the higher required stable funding factor that would apply to those assets if they were held unencumbered shall apply;

(b) unencumbered loans with a residual maturity of one year or more, excluding loans to financial customers, which are not past due for more than 90 days;

(c) trade finance on-balance-sheet related products, with a residual maturity of one year or more;

(d) unencumbered securities with a residual maturity of one year or more that are not in default in accordance with Article 178 and that are not eligible as liquid assets pursuant to the delegated act referred to in Article 460(1);

(e) unencumbered exchange-traded equities that are not eligible as level 2B assets pursuant to the delegated act referred to in Article 460(1);

(f) physically traded commodities, including gold but excluding commodity derivatives.

Article 428az

100 % required stable funding factor

1. The following assets shall be subject to a 100 % required stable funding factor:

(a) any assets encumbered for a residual maturity of one year or more;

(b) any assets other than those referred to in Articles 428as to 428ay, including loans to financial customers having a residual contractual maturity of one year or more, non-performing exposures, items deducted from own funds, fixed assets, non-exchange traded equities, retained interest, insurance assets, defaulted securities.

2. Institutions shall apply a 100 % required stable funding factor to the difference, if positive, between the sum of fair values across all netting sets with positive fair value and the sum of fair values across all netting sets with negative fair value calculated in accordance with Article 428d.

The following rules shall apply to the calculation referred to in the first subparagraph:

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(a) variation margin received by institutions from their counterparties shall be deducted from the fair value of a netting set with positive fair value where the collateral received as variation margin qualifies as a level 1 asset pursuant to the delegated act referred to in Article 460(1), excluding extremely high quality covered bonds specified in that delegated act, and where institutions are legally entitled and operationally able to reuse that collateral;

(b) all variation margin posted by institutions with their counterparties shall be deducted from the fair value of a netting set with negative fair value.

PART SEVEN

LEVERAGE

Article 429

Calculation of the leverage ratio

1. Institutions shall calculate their leverage ratio in accordance with the methodology set out in paragraphs 2, 3 and 4.

2. The leverage ratio shall be calculated as an institution's capital measure divided by that institution's total exposure measure and shall be expressed as a percentage.

Institutions shall calculate the leverage ratio at the reporting reference date.

3. For the purposes of paragraph 2, the capital measure shall be the Tier 1 capital.

4. For the purposes of paragraph 2, the total exposure measure shall be the sum of the exposure values of:

(a) assets, excluding derivative contracts listed in Annex II, credit derivatives and the positions referred to in Article 429e, calculated in accordance with Article 429b(1);

(b) derivative contracts listed in Annex II and credit derivatives, including those contracts and credit derivatives that are off-balance-sheet, calculated in accordance with Articles 429c and 429d;

(c) add-ons for counterparty credit risk of securities financing transactions, including those that are off-balance-sheet, calculated in accordance with Article 429e;

(d) off-balance-sheet items, excluding derivative contracts listed in Annex II, credit derivatives, securities financing transactions and positions referred to in Articles 429d and 429g, calculated in accordance with Article 429f;

(e) regular-way purchases or sales awaiting settlement, calculated in accordance with Article 429g.

Institutions shall treat long settlement transactions in accordance with points (a) to (d) of the first subparagraph, as applicable.

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Institutions may reduce the exposure values referred to in points (a) and (d) of the first subparagraph by the corresponding amount of general credit risk adjustments to on- and off-balance-sheet items, respectively, subject to a floor of 0 where the credit risk adjustments have reduced the Tier 1 capital.

5. By way of derogation from point (d) of paragraph 4, the following provisions shall apply:

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(a) an off-balance-sheet item in accordance with point (d) of paragraph 4 that is treated as a derivative in accordance with the applicable accounting framework shall be subject to the treatment set out in point (b) of that paragraph;

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(b) where a client of an institution acting as a clearing member enters directly into a derivative transaction with a CCP and the institution guarantees the performance of its client's trade exposures to the CCP arising from that transaction, the institution shall calculate its exposure resulting from the guarantee in accordance with point (b) of paragraph 4, as if that institution had entered directly into the transaction with the client, including with regard to the receipt or provision of cash variation margin.

The treatment set out in point (b) of the first subparagraph shall also apply to an institution acting as a higher-level client that guarantees the performance of its client's trade exposures.

For the purposes of point (b) of the first subparagraph and of the second subparagraph of this paragraph, institutions may consider an affiliated entity as a client only where that entity is outside the regulatory scope of consolidation at the level at which the requirement set out in point (d) of Article 92(3) is applied.

6. For the purposes of point (e) of paragraph 4 of this Article and Article 429g, ‘regular-way purchase or sale’ means a purchase or a sale of a security under contracts for which the terms require delivery of the security within the period established generally by law or convention in the marketplace concerned.

7. Unless otherwise expressly provided for in this Part, institutions shall calculate the total exposure measure in accordance with the following principles:

(a) physical or financial collateral, guarantees or credit risk mitigation purchased shall not be used to reduce the total exposure measure;

(b) assets shall not be netted with liabilities.

8. By way of derogation from point (b) of paragraph 7, institutions may reduce the exposure value of a pre-financing loan or an intermediate loan by the positive balance on the savings account of the debtor to which the loan was granted and only include the resulting amount in the total exposure measure, provided that all the following conditions are met:

(a) the granting of the loan is conditional upon the opening of the savings account at the institution granting the loan and both the loan and the savings account are regulated by the same sectoral law;

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(b) the balance on the savings account cannot be withdrawn, in part or in full, by the debtor for the entire duration of the loan;

(c) the institution can unconditionally and irrevocably use the balance on the savings account to settle any claim originating under the loan agreement in cases regulated by the sectoral law referred to in point (a), including the case of non-payment by or the insolvency of the debtor.

'Pre-financing loan' or 'intermediate loan' means a loan that is granted to the borrower for a limited period of time in order to bridge the borrower's financing gaps until the final loan is granted in accordance with the criteria laid down in the sectoral law regulating such transactions.

Article 429a

Exposures excluded from the total exposure measure

1. By way of derogation from Article 429(4), an institution may exclude any of the following exposures from its total exposure measure:

(a) the amounts deducted from Common Equity Tier 1 items in accordance with point (d) of Article 36(1);

(b) the assets deducted in the calculation of the capital measure referred to in Article 429(3);

(c) exposures that are assigned a risk weight of 0 % in accordance with Article 113(6) or (7);

▼C7

(d) where the institution is a public development credit institution, the exposures arising from assets that constitute claims on central governments, regional governments, local authorities or public sector entities in relation to public sector investments, and promotional loans;

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(e) where the institution is not a public development credit institution, the parts of exposures arising from passing-through promotional loans to other credit institutions;

(f) the guaranteed parts of exposures arising from export credits that meet both of the following conditions:

(i) the guarantee is provided by an eligible provider of unfunded credit protection in accordance with Articles 201 and 202, including by export credit agencies or by central governments;

(ii) a 0 % risk weight applies to the guaranteed part of the exposure in accordance with Article 114(2) or (4) or Article 116(4);

(g) where the institution is a clearing member of a QCCP, the trade exposures of that institution, provided that they are cleared with that QCCP and meet the conditions set out in point (c) of Article 306(1);

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(h) where the institution is a higher-level client within a multi-level client structure, the trade exposures to the clearing member or to an entity that serves as a higher-level client to that institution, provided that the conditions set out in Article 305(2) are met and provided that the institution is not obligated to reimburse its client for any losses suffered in the event of default of either the clearing member or the QCCP;

(i) fiduciary assets which meet all the following conditions:

(i) they are recognised on the institution's balance sheet by national generally accepted accounting principles, in accordance with Article 10 of Directive 86/635/EEC;

(ii) they meet the criteria for non-recognition set out in International Financial Reporting Standard (IFRS) 9, as applied in accordance with Regulation (EC) No 1606/2002;

(iii) they meet the criteria for non-consolidation set out in IFRS 10, as applied in accordance with Regulation (EC) No 1606/2002, where applicable;

(j) exposures that meet all the following conditions:

(i) they are exposures to a public sector entity;

(ii) they are treated in accordance with Article 116(4);

(iii) they arise from deposits that the institution is legally obliged to transfer to the public sector entity referred to in point (i) for the purpose of funding general interest investments;

(k) the excess collateral deposited at tri-party agents that has not been lent out;

(l) where under the applicable accounting framework an institution recognises the variation margin paid in cash to its counterparty as a receivable asset, the receivable asset, provided that the conditions set out in points (a) to (e) of Article 429c(3) are met;

(m) the securitised exposures from traditional securitisations that meet the conditions for significant risk transfer set out in Article 244(2);

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(n) the following exposures to the institution’s central bank, subject to the conditions set out in paragraphs 5 and 6:

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(i) coins and banknotes constituting legal currency in the jurisdiction of the central bank;

(ii) assets representing claims on the central bank, including reserves held at the central bank;

(o) where the institution is authorised in accordance with Article 16 and point (a) of Article 54(2) of Regulation (EU) No 909/2014, the institution's exposures due to banking-type ancillary services listed in point (a) of Section C of the Annex to that Regulation which are directly related to the core or ancillary services listed in Sections A and B of that Annex;

▼M8

(p) where the institution is designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, the institution's exposures due to banking-type ancillary services listed in point (a) of Section C of the Annex to that Regulation which are directly related to the core or ancillary services of a central securities depository, authorised in accordance with Article 16 of that Regulation, listed in Sections A and B of that Annex.

For the purposes of point (m) of the first subparagraph, institutions shall include any retained exposure in the total exposure measure.

2. For the purposes of points (d) and (e) of paragraph 1, 'public development credit institution' means a credit institution that meets all the following conditions:

(a) it has been established by a Member State's central government, regional government or local authority;

(b) its activity is limited to advancing specified objectives of financial, social or economic public policy in accordance with the laws and provisions governing that institution, including articles of association, on a non-competitive basis;

(c) its goal is not to maximise profit or market share;

(d) subject to Union State aid rules, the central government, regional government or local authority has an obligation to protect the credit institution's viability or directly or indirectly guarantees at least 90 % of the credit institution's own funds requirements, funding requirements or promotional loans granted;

(e) it does not take covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU or in national law implementing that Directive that may be classified as fixed term or savings deposits from consumers as defined in point (a) of Article 3 of Directive 2008/48/EC of the European Parliament and of the Council [1].

For the purposes of point (b) of the first subparagraph, public policy objectives may include the provision of financing for promotional or development purposes to specified economic sectors or geographical areas of the relevant Member State.

▼C7

For the purposes of points (d) and (e) of paragraph 1, and without prejudice to the Union State aid rules and the obligations of the Member States thereunder, competent authorities may, upon request of an institution, treat an organisationally, structurally and financially independent and autonomous unit of that institution as a public development credit institution, provided that the unit fulfils all the conditions listed in the first subparagraph and that such treatment does not affect the effectiveness of the supervision of that institution. Competent authorities shall without delay notify the Commission and EBA of any decision to treat, for the purposes of this subparagraph, a unit of an institution as a public development credit institution. The competent authority shall annually review such decision.

[1] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

▼M8

3. For the purposes of points (d) and (e) of paragraph 1 and point (d) of paragraph 2, ‘promotional loan’ means a loan granted by a public development credit institution or an entity set up by the central government, regional government or local authority of a Member State, directly or through an intermediate credit institution on a non-competitive, not-for-profit basis, in order to promote the public policy objectives of the central government, regional government or local authority in a Member State.

4. Institutions shall not exclude the trade exposures referred to in points (g) and (h) of paragraph 1 of this Article, where the condition set out in the third subparagraph of Article 429(5) is not met.

5. ►M11 Institutions may exclude the exposures listed in point (n) of paragraph 1 where all of the following conditions are met: ◄

(a) the institution's competent authority has determined, after consultation with the relevant central bank, and publicly declared that exceptional circumstances exist that warrant the exclusion in order to facilitate the implementation of monetary policies;

(b) the exemption is granted for a limited period of time not exceeding one year;

▼M11

(c) the institution’s competent authority has determined, after consultation with the relevant central bank, the date when the exceptional circumstances are deemed to have started and publicly announced that date; that date shall be set at the end of a quarter.

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6. The exposures to be excluded under point (n) of paragraph 1 shall meet both of the following conditions:

(a) they are denominated in the same currency as the deposits taken by the institution;

(b) their average maturity does not significantly exceed the average maturity of the deposits taken by the institution.

7. By way of derogation from point (d) of Article 92(1), where an institution excludes the exposures referred to in point (n) of paragraph 1 of this Article, it shall at all times satisfy the following adjusted leverage ratio requirement for the duration of the exclusion:

$$aLR = 3\% \cdot \frac{EM_{LR}}{EM_{LR} - CB}$$

where:

aLR = the adjusted leverage ratio;

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EM_{LR} = the institution’s total exposure measure as calculated in accordance with Article 429(4), including the exposures excluded in accordance with point (n) of paragraph 1 of this Article, on the date referred to in point (c) of paragraph 5 of this Article; and

▼M11

CB = the daily average total value of the institution's exposures to its central bank, calculated over the full reserve maintenance period of the central bank immediately preceding the date referred to in point (c) of paragraph 5, that are eligible to be excluded in accordance with point (n) of paragraph 1.

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Article 429b

Calculation of the exposure value of assets

1. Institutions shall calculate the exposure value of assets, excluding derivative contracts listed in Annex II, credit derivatives and the positions referred to in Article 429e in accordance with the following principles:

(a) the exposure values of assets means an exposure value as referred to in the first sentence of Article 111(1);

(b) securities financing transactions shall not be netted.

2. A cash pooling arrangement offered by an institution does not violate the condition set out in point (b) of Article 429(7) only where the arrangement meets both of the following conditions:

(a) the institution offering the cash pooling arrangement transfers the credit and debit balances of several individual accounts of entities of a group included in the arrangement ('original accounts') into a separate, single account and thereby sets the balances of the original accounts to zero;

(b) the institution carries out the actions referred to in point (a) of this subparagraph on a daily basis.

For the purposes of this paragraph and paragraph 3, cash pooling arrangement means an arrangement whereby the credit or debit balances of several individual accounts are combined for the purposes of cash or liquidity management.

3. By way of derogation from paragraph 2 of this Article, a cash pooling arrangement that does not meet the condition set out in point (b) of that paragraph, but meets the condition set out in point (a) of that paragraph, does not violate the condition set out in point (b) of Article 429(7), provided that the arrangement meets all the following conditions:

(a) the institution has a legally enforceable right to set off the balances of the original accounts through the transfer into a single account at any point in time;

(b) there are no maturity mismatches between the balances of the original accounts;

(c) the institution charges or pays interest based on the combined balance of the original accounts;

(d) the competent authority of the institution considers that the frequency by which the balances of all original accounts are transferred is adequate for the purpose of including only the combined balance of the cash pooling arrangement in the total exposure measure.

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4. By way of derogation from point (b) of paragraph 1, institutions may calculate the exposure value of cash receivable and cash payable under securities financing transactions with the same counterparty on a net basis only where all the following conditions are met:

(a) the transactions have the same explicit final settlement date;

(b) the right to set off the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of default, insolvency and bankruptcy;

(c) the counterparties intend to settle on a net basis or to settle simultaneously, or the transactions are subject to a settlement mechanism that results in the functional equivalent of net settlement.

5. For the purposes of point (c) of paragraph 4, institutions may consider that a settlement mechanism results in the functional equivalent of net settlement only where, on the settlement date, the net result of the cash flows of the transactions under that mechanism is equal to the single net amount under net settlement and all the following conditions are met:

(a) the transactions are settled through the same settlement system or settlement systems using a common settlement infrastructure;

(b) the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that the settlement of the transactions will occur by the end of the business day;

(c) any issues arising from the securities legs of the securities financing transactions do not interfere with the completion of the net settlement of the cash receivables and payables.

The condition set out in point (c) of the first subparagraph is met only where the failure of any securities financing transaction in the settlement mechanism may delay settlement of only the matching cash leg or may create an obligation to the settlement mechanism, supported by an associated credit facility.

Where there is a failure of the securities leg of a securities financing transaction in the settlement mechanism at the end of the window for settlement in the settlement mechanism, institutions shall split out this transaction and its matching cash leg from the netting set and treat them on a gross basis.

Article 429c

Calculation of the exposure value of derivatives

1. Institutions shall calculate the exposure value of derivative contracts listed in Annex II and of credit derivatives, including those that are off-balance-sheet, in accordance with the method set out in Section 3 of Chapter 6 of Title II of Part Three.

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When calculating the exposure value, institutions may take into account the effects of contracts for novation and other netting agreements in accordance with Article 295. Institutions shall not take into account cross-product netting, but may net within the product category as referred to in point (25)(c) of Article 272 and credit derivatives where they are subject to a contractual cross-product netting agreement as referred to in point (c) of Article 295.

Institutions shall include in the total exposure measure sold options even where their exposure value can be set to zero in accordance with the treatment laid down in Article 274(5).

2. Where the provision of collateral related to derivative contracts reduces the amount of assets under the applicable accounting framework, institutions shall reverse that reduction.

3. For the purposes of paragraph 1 of this Article, institutions calculating the replacement cost of derivative contracts in accordance with Article 275 may recognise only collateral received in cash from their counterparties as the variation margin referred to in Article 275, where the applicable accounting framework has not already recognised the variation margin as a reduction of the exposure value and where all the following conditions are met:

(a) for trades not cleared through a QCCP, the cash received by the recipient counterparty is not segregated;

(b) the variation margin is calculated and exchanged at least daily based on a mark-to-market valuation of derivatives positions;

(c) the variation margin received is in a currency specified in the derivative contract, governing master netting agreement, credit support annex to the qualifying master netting agreement or as defined by any netting agreement with a QCCP;

(d) the variation margin received is the full amount that would be necessary to extinguish the mark-to-market exposure of the derivative contract subject to the threshold and minimum transfer amounts that are applicable to the counterparty;

(e) the derivative contract and the variation margin between the institution and the counterparty to that contract are covered by a single netting agreement that the institution may treat as risk-reducing in accordance with Article 295.

Where an institution provides cash collateral to a counterparty and that collateral meets the conditions set out in points (a) to (e) of the first subparagraph, the institution shall consider that collateral as the variation margin posted with the counterparty and shall include it in the calculation of the replacement cost.

For the purposes of point (b) of the first subparagraph, an institution shall be considered to have met the condition set out therein where the variation margin is exchanged on the morning of the trading day following the trading day on which the derivative contract was stipulated, provided that the exchange is based on the value of the contract at the end of the trading day on which the contract was stipulated.

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For the purposes of point (d) of the first subparagraph, where a margin dispute arises, institutions may recognise the amount of non-disputed collateral that has been exchanged.

4. For the purposes of paragraph 1 of this Article, institutions shall not include collateral received in the calculation of NICA as defined in point (12a) of Article 272, except in the case of derivative contracts with clients where those contracts are cleared by a QCCP.

5. For the purposes of paragraph 1 of this Article, institutions shall set the value of the multiplier used in the calculation of the potential future exposure in accordance with Article 278(1) to one, except in the case of derivative contracts with clients where those contracts are cleared by a QCCP.

6. By way of derogation from paragraph 1 of this Article, institutions may use the method set out in Section 4 or 5 of Chapter 6 of Title II of Part Three to determine the exposure value of derivative contracts listed in points 1 and 2 of Annex II, but only where they also use that method for determining the exposure value of those contracts for the purpose of meeting the own funds requirements set out in Article 92.

Where institutions apply one of the methods referred to in the first subparagraph, they shall not reduce the total exposure measure by the amount of margin they have received.

Article 429d

Additional provisions on the calculation of the exposure value of written credit derivatives

1. For the purposes of this Article, ‘written credit derivative’ means any financial instrument through which an institution effectively provides credit protection including credit default swaps, total return swaps and options where the institution has the obligation to provide credit protection under conditions specified in the options contract.

2. In addition to the calculation laid down in Article 429c, institutions shall include in the calculation of the exposure value of written credit derivatives the effective notional amounts referenced in the written credit derivatives reduced by any negative fair value changes that have been incorporated in Tier 1 capital with respect to those written credit derivatives.

Institutions shall calculate the effective notional amount of written credit derivatives by adjusting the notional amount of those derivatives to reflect the true exposure of the contracts that are leveraged or otherwise enhanced by the structure of the transaction.

3. Institutions may fully or partly reduce the exposure value calculated in accordance with paragraph 2 by the effective notional amount of purchased credit derivatives, provided that all the following conditions are met:

(a) the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the written credit derivative;

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(b) the purchased credit derivative is otherwise subject to the same or more conservative material terms as those in the corresponding written credit derivative;

(c) the purchased credit derivative is not purchased from a counterparty that would expose the institution to Specific Wrong-Way risk, as defined in point (b) of Article 291(1);

(d) where the effective notional amount of the written credit derivative is reduced by any negative change in fair value incorporated in the institution's Tier 1 capital, the effective notional amount of the purchased credit derivative is reduced by any positive fair value change that has been incorporated in Tier 1 capital;

(e) the purchased credit derivative is not included in a transaction that has been cleared by the institution on behalf of a client or that has been cleared by the institution in its role as a higher-level client in a multi-level client structure and for which the effective notional amount referenced by the corresponding written credit derivative is excluded from the total exposure measure in accordance with point (g) or (h) of the first subparagraph of Article 429a(1), as applicable.

For the purpose of calculating the potential future exposure in accordance with Article 429c(1), institutions may exclude from the netting set the portion of a written credit derivative which is not offset in accordance with the first subparagraph of this paragraph and for which the effective notional amount is included in the total exposure measure.

4. For the purposes of point (b) of paragraph 3, ‘material term’ means any characteristic of the credit derivative that is relevant to the valuation thereof, including the level of subordination, the optionality, the credit events, the underlying reference entity or pool of entities, and the underlying reference obligation or pool of obligations, with the exception of the notional amount and the residual maturity of the credit derivative. Two reference names shall be the same only where they refer to the same legal entity.

5. By way of derogation from point (b) of paragraph 3, institutions may use purchased credit derivatives on a pool of reference names to offset written credit derivatives on individual reference names within that pool where the pool of reference entities and the level of subordination in both transactions are the same.

6. Institutions shall not reduce the effective notional amount of written credit derivatives where they buy credit protection through a total return swap and record the net payments received as net income, but do not record any offsetting deterioration in the value of the written credit derivative in Tier 1 capital.

7. In the case of purchased credit derivatives on a pool of reference obligations, institutions may reduce the effective notional amount of written credit derivatives on individual reference obligations by the effective notional amount of purchased credit derivatives in accordance with paragraph 3 only where the protection purchased is economically equivalent to buying protection separately on each of the individual obligations in the pool.

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Article 429e

Counterparty credit risk add-on for securities financing transactions

1. In addition to the calculation of the exposure value of securities financing transactions, including those that are off-balance-sheet in accordance with Article 429b(1), institutions shall include in the total exposure measure an add-on for counterparty credit risk calculated in accordance with paragraph 2 or 3 of this Article, as applicable.

2. Institutions shall calculate the add-on for transactions with a counterparty that are not subject to a master netting agreement that meets the conditions set out in Article 206 on a transaction-by-transaction basis in accordance with the following formula:

$$E_i^* = \max\{0,\ E_i - C_i\}$$

where:

E_i^* = the add-on;

i = the index that denotes the transaction;

E_i = the fair value of securities or cash lent to the counterparty under transaction i; and

C_i = the fair value of securities or cash received from the counterparty under transaction i.

Institutions may set E_i^* equal to zero where E_i is the cash lent to a counterparty and the associated cash receivable is not eligible for the netting treatment set out in Article 429b(4).

3. Institutions shall calculate the add-on for transactions with a counterparty that are subject to a master netting agreement that meets the conditions set out in Article 206 on an agreement-by-agreement basis in accordance with the following formula:

$$E_i^* = \max\left\{0, \sum_i E_i - \sum_i C_i\right\}$$

where:

E_i^* = the add-on;

i = the index that denotes the netting agreement;

E_i = the fair value of securities or cash lent to the counterparty for the transactions that are subject to master netting agreement i; and

C_i = the fair value of securities or cash received from the counterparty that is subject to master netting agreement i.

4. For the purposes of paragraphs 2 and 3, the term counterparty includes also tri-party agents that receive collateral in deposit and manage the collateral in the case of tri-party transactions.

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5. By way of derogation from paragraph 1 of this Article, institutions may use the method set out in Article 222, subject to a 20 % floor for the applicable risk weight, to determine the add-on for securities financing transactions including those that are off-balance-sheet. Institutions may use that method only where they also use it for calculating the exposure value of those transactions for the purpose of meeting the own funds requirements as set out in points (a), (b) and (c) of Article 92(1).

6. Where sale accounting is achieved for a repurchase transaction under the applicable accounting framework, the institution shall reverse all sales-related accounting entries.

7. Where an institution acts as an agent between two parties in a securities financing transaction, including an off-balance-sheet transaction, the following provisions shall apply to the calculation of the institution's total exposure measure:

(a) where the institution provides an indemnity or guarantee to one of the parties in the securities financing transaction and the indemnity or guarantee is limited to any difference between the value of the security or cash the party has lent and the value of collateral the borrower has provided, the institution shall only include the add-on calculated in accordance with paragraph 2 or 3, as applicable, in the total exposure measure;

(b) where the institution does not provide an indemnity or guarantee to any of the involved parties, the transaction shall not be included in the total exposure measure;

(c) where the institution is economically exposed to the underlying security or the cash in the transaction to an amount greater than the exposure covered by the add-on, it shall include in the total exposure measure also the full amount of the security or the cash to which it is exposed;

(d) where the institution acting as agent provides an indemnity or guarantee to both parties involved in a securities financing transaction, the institution shall calculate its total exposure measure in accordance with points (a), (b) and (c) separately for each party involved in the transaction.

Article 429f

Calculation of the exposure value of off-balance-sheet items

1. Institutions shall calculate, in accordance with Article 111(1), the exposure value of off-balance-sheet items, excluding derivative contracts listed in Annex II, credit derivatives, securities financing transactions and positions referred to in Article 429d.

Where a commitment refers to the extension of another commitment, Article 166(9) shall apply.

2. By way of derogation from paragraph 1, institutions may reduce the credit exposure equivalent amount of an off-balance-sheet item by the corresponding amount of specific credit risk adjustments. The calculation shall be subject to a floor of zero.

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3. By way of derogation from paragraph 1 of this Article, institutions shall apply a conversion factor of 10 % to low-risk off-balance-sheet items referred to in point (d) of Article 111(1).

Article 429g

Calculation of the exposure value of regular-way purchases and sales awaiting settlement

1. Institutions shall treat cash related to regular-way sales and securities related to regular-way purchases which remain on the balance sheet until the settlement date as assets in accordance with point (a) of Article 429(4).

2. Institutions that, in accordance with the applicable accounting framework, apply trade date accounting to regular-way purchases and sales which are awaiting settlement shall reverse out any offsetting between cash receivables for regular-way sales awaiting settlement and cash payables for regular-way purchase awaiting settlement allowed under that framework. After institutions have reversed out the accounting offsetting, they may offset between those cash receivables and cash payables where both the related regular-way sales and purchases are settled on a delivery-versus-payment basis.

3. Institutions that, in accordance with the applicable accounting framework, apply settlement date accounting to regular-way purchases and sales which are awaiting settlement shall include in the total exposure measure the full nominal value of commitments to pay related to regular-way purchases.

Institutions may offset the full nominal value of the commitments to pay related to regular-way purchases by the full nominal value of cash receivables related to regular-way sales awaiting settlement only where both of the following conditions are met:

(a) both the regular-way purchases and sales are settled on a delivery-versus-payment basis;

(b) the financial assets bought and sold that are associated with cash payables and receivables are fair valued through profit and loss and included in the institution's trading book.

PART SEVEN A

REPORTING REQUIREMENTS

Article 430

Reporting on prudential requirements and financial information

1. Institutions shall report to their competent authorities on:

(a) own funds requirements, including the leverage ratio, as set out in Article 92 and Part Seven;

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(b) the requirements laid down in Articles 92a and 92b, for institutions that are subject to those requirements;

(c) large exposures as set out in Article 394;

(d) liquidity requirements as set out in Article 415;

(e) the aggregate data for each national immovable property market as set out in Article 430a(1);

(f) the requirements and guidance set out in Directive 2013/36/EU qualified for standardised reporting, except for any additional reporting requirement under point (j) of Article 104(1) of that Directive;

(g) the level of asset encumbrance, including a breakdown by the type of asset encumbrance, such as repurchase agreements, securities lending, securitised exposures or loans.

Institutions exempted in accordance with Article 6(5) shall not be subject to the reporting requirement on the leverage ratio set out in point (a) of the first subparagraph of this paragraph on an individual basis.

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1a. For the purposes of point (a) of paragraph 1 of this Article, when institutions report on own funds requirements on securitisations, the information they report shall include information on NPE securitisations benefitting from the treatment set out in Article 269a, on STS on-balance sheet securitisations that they originate, and on the breakdown of the assets underlying those STS on-balance sheet securitisations by asset class.

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2. In addition to the reporting on the leverage ratio referred to in point (a) of the first subparagraph of paragraph 1 and in order to enable the competent authorities to monitor leverage ratio volatility, in particular around reporting reference dates, large institutions shall report specific components of the leverage ratio to their competent authorities based on averages over the reporting period and the data used to calculate those averages.

3. In addition to the reporting on prudential requirements referred to in paragraph 1 of this Article, institutions shall report financial information to their competent authorities where they are one of the following:

(a) an institution that is subject to Article 4 of Regulation (EC) No 1606/2002;

(b) a credit institution that prepares its consolidated accounts in accordance with the international accounting standards pursuant to point (b) of Article 5 of Regulation (EC) No 1606/2002.

4. Competent authorities may require credit institutions that determine their own funds on a consolidated basis in accordance with international accounting standards pursuant to Article 24(2) to report financial information in accordance with this Article.

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5. The reporting on financial information referred to in paragraphs 3 and 4 shall only comprise information that is needed to provide a comprehensive view of the institution's risk profile and the systemic risks posed by the institution to the financial sector or the real economy as set out in Regulation (EU) No 1093/2010.

6. The reporting requirements laid down in this Article shall be applied to institutions in a proportionate manner taking into account the report referred to in paragraph 8, having regard to their size, complexity and the nature and level of risk of their activities.

7. EBA shall develop draft implementing technical standards to specify the uniform reporting formats and templates, the instructions and methodology on how to use those templates, the frequency and dates of reporting, the definitions and the IT solutions for the reporting referred to in paragraphs 1 to 4.

Any new reporting requirements set out in such implementing technical standards shall not be applicable earlier than six months from the date of their entry into force.

For the purposes of paragraph 2, the draft implementing technical standards shall specify which components of the leverage ratio shall be reported using day-end or month-end values. For that purpose, EBA shall take into account both of the following:

(a) how susceptible a component is to significant temporary reductions in transaction volumes that could result in an underrepresentation of the risk of excessive leverage at the reporting reference date;

(b) developments and findings at international level.

EBA shall submit to the Commission the draft implementing technical standards referred to in this paragraph by 28 June 2021, except in relation to the following:

(a) the leverage ratio, which shall be submitted by 28 June 2020;

(b) the obligations laid down in Articles 92a and 92b, which shall be submitted by 28 June 2020.

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

8. EBA shall assess the costs and benefits of the reporting requirements laid down in Commission Implementing Regulation (EU) No 680/2014 ([1]) in accordance with this paragraph and report its findings to the Commission by 28 June 2020. That assessment shall be carried out in particular in relation to small and non-complex institutions. For those purposes, the report shall:

(a) classify institutions into categories based on their size, complexity and the nature and level of risk of their activities;

(b) measure the reporting costs incurred by each category of institutions during the relevant period to meet the reporting requirements set out in Implementing Regulation (EU) No 680/2014, taking into account the following principles:

([1]) Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

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(i) the reporting costs shall be measured as the ratio of the reporting costs relative to the institution's total costs during the relevant period;

(ii) the reporting costs shall comprise all expenditure related to the implementation and operation on an on-going basis of the reporting systems, including expenditure on staff, IT systems, legal, accounting, auditing and consultancy services;

(iii) the relevant period shall refer to each annual period during which institutions have incurred reporting costs to prepare for the implementation of the reporting requirements laid down in Implementing Regulation (EU) No 680/2014 and to continue operating the reporting systems on an on-going basis;

(c) assess whether the reporting costs incurred by each category of institutions were proportionate with regard to the benefits delivered by the reporting requirements for the purposes of prudential supervision;

(d) assess the effects of a reduction of reporting requirement on costs and supervisory effectiveness; and

(e) make recommendations on how to reduce reporting requirements at least for small and non-complex institutions, to which end EBA shall target an expected average cost reduction of at least 10 % but ideally a 20 % cost reduction. EBA shall, in particular, assess whether:

(i) the reporting requirements referred to in point (g) of paragraph 1 could be waived for small and non-complex institutions where asset encumbrance was below a certain threshold;

(ii) the reporting frequency required in accordance with points (a), (c), and (g) of paragraph 1 could be reduced for small and non-complex institutions.

EBA shall accompany that report by draft implementing technical standards referred to in paragraph 7.

9. Competent authorities shall consult EBA on whether institutions, other than those referred to in paragraphs 3 and 4, should report on financial information on a consolidated basis in accordance with paragraph 3, provided that all the following conditions are met:

(a) the relevant institutions are not already reporting on a consolidated basis;

(b) the relevant institutions are subject to an accounting framework in accordance with Directive 86/635/EEC;

(c) financial reporting is considered necessary to provide a comprehensive view of the risk profile of those institutions' activities and of the systemic risks they pose to the financial sector or the real economy as set out in Regulation (EU) No 1093/2010.

EBA shall develop draft implementing technical standards to specify the formats and templates that institutions referred to in the first subparagraph shall use for the purposes set out therein.

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

10. Where a competent authority considers information not covered by the implementing technical standards referred to in paragraph 7 as necessary for the purposes set out in paragraph 5, it shall notify EBA and the ESRB of the additional information it considers necessary to include in the implementing technical standards referred to in that paragraph.

11. Competent authorities may waive the requirement to submit any of the data points set out in the reporting templates specified in the implementing technical standards referred to in this Article where those data points are duplicative. For those purposes, duplicative data points shall refer to any data points which are already available to the competent authorities by means other than by collecting those reporting templates, including where those data points can be obtained from data that is already available to the competent authorities in different formats or levels of granularity; the competent authority may only grant the waivers referred to in this paragraph if data received, collated or aggregated through such alternative methods are identical to those data points which would otherwise have to be reported in accordance with the respective implementing technical standards.

Competent authorities, resolution authorities and designated authorities shall make use of data exchange wherever possible to reduce reporting requirements. The provisions on the exchange of information and professional secrecy as laid down in Section II of Chapter I of Title VII of Directive 2013/36/EU shall apply.

Article 430a

Specific reporting obligations

1. Institutions shall report to their competent authorities on an annual basis the following aggregate data for each national immovable property market to which they are exposed:

(a) losses stemming from exposures for which an institution has recognised residential property as collateral, up to the lower of the pledged amount and 80 % of the market value or 80 % of the mortgage lending value, unless otherwise decided under Article 124(2);

(b) overall losses stemming from exposures for which an institution has recognised residential property as collateral, up to the part of the exposure treated as fully secured by residential property in accordance with Article 124(1);

(c) the exposure value of all outstanding exposures for which an institution has recognised residential property as collateral limited to the part treated as fully secured by residential property in accordance with Article 124(1);

(d) losses stemming from exposures for which an institution has recognised immovable commercial property as collateral, up to the lower of the pledged amount and 50 % of the market value or 60 % of the mortgage lending value, unless otherwise decided under Article 124(2);

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(e) overall losses stemming from exposures for which an institution has recognised immovable commercial property as collateral, up to the part of the exposure treated as fully secured by immovable commercial property in accordance with Article 124(1);

(f) the exposure value of all outstanding exposures for which an institution has recognised immovable commercial property as collateral limited to the part treated as fully secured by immovable commercial property in accordance with Article 124(1).

2. The data referred to in paragraph 1 shall be reported to the competent authority of the home Member State of the relevant institution. Where an institution has a branch in another Member State, the data relating to that branch shall also be reported to the competent authorities of the host Member State. The data shall be reported separately for each immovable property market within the Union to which the relevant institution is exposed.

3. The competent authorities shall publish annually on an aggregated basis the data specified in points (a) to (f) of paragraph 1, together with historical data, where available. A competent authority shall, upon the request of another competent authority in a Member State or EBA provide to that competent authority or EBA more detailed information on the condition of the residential property or commercial immovable property markets in that Member State.

Article 430b

Specific reporting requirements for market risk

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1. From the date of application of the delegated act referred to in Article 461a, credit institutions that do not meet the conditions set out in Article 94(1) nor the conditions set out in Article 325a(1) shall report, for all their trading book positions and all their non-trading book positions that are subject to foreign exchange or commodity risks, the results of the calculations based on using the alternative standardised approach set out in Chapter 1a of Title IV of Part Three on the same basis as such institutions report the obligations laid down in points (b)(i) and (c) of Article 92(3).

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2. Institutions referred to in paragraph 1 of this Article shall report separately the calculations set out in points (a), (b) and (c) of Article 325c(2) for the portfolio of all trading book positions or non-trading book positions that are subject to foreign exchange and commodity risks.

3. In addition to the requirement set out in paragraph 1 of this Article, from the end of a three-year-period following the date of entry into force of the latest regulatory technical standards referred to in Articles 325bd(7), 325be(3), 325bf(9), 325bg(4), institutions shall report, for those positions assigned to trading desks for which they have been granted permission by the competent authorities to use the alternative internal model approach in accordance with Article 325az(2), the results of the calculations based on using that approach set out in Chapter 1b of Title IV of Part Three on the same basis as such institutions report the obligations laid down in points (b)(i) and (c) of Article 92(3).

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4. For the purposes of the reporting requirement in paragraph 3 of this Article, institutions shall report separately the calculations set out in points (a)(i), (a)(ii), (b)(i) and (b)(ii) of Article 325ba(1) and for the portfolio of all trading book positions or non-trading book positions that are subject to foreign exchange and commodity risks assigned to trading desks for which the institution has been granted permission by the competent authorities to use the alternative internal model approach in accordance with Article 325az(2).

5. Institutions may use in combination the approaches referred to in paragraphs 1 and 3 within a group, provided that the calculation under the approach referred to in paragraph 1 does not exceed 90 % of the total calculation. Otherwise, the institution shall use the approach referred to in paragraph 1 for all its trading book positions and all its non-trading book positions that are subject to foreign exchange or commodity risk.

6. EBA shall develop draft implementing technical standards, to specify the uniform reporting templates, the instructions and methodology on how to use the templates, the frequency and dates of reporting, the definitions and the IT solutions for the reporting referred to in this Article.

Any new reporting requirements set out in such implementing technical standards shall not be applicable earlier than six months from the date of their entry into force.

EBA shall submit those draft implementing technical standards to the Commission by 30 June 2020.

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

Article 430c

Feasibility report on the integrated reporting system

1. EBA shall prepare a report on feasibility regarding the development of a consistent and integrated system for collecting statistical data, resolution data and prudential data and report its findings to the Commission by 28 June 2020.

2. When drafting the feasibility report, EBA shall involve competent authorities, as well as authorities that are responsible for deposit guarantee schemes, resolution and in particular the ESCB. The report shall take into account the previous work of the ESCB regarding integrated data collections and shall be based on an overall cost and benefit analysis including as a minimum:

(a) an overview of the quantity and scope of the current data collected by the competent authorities in their jurisdiction and of its origins and granularity;

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(b) the establishment of a standard dictionary of the data to be collected, in order to increase the convergence of reporting requirements as regards regular reporting obligations, and to avoid unnecessary queries;

(c) the establishment of a joint committee, including as a minimum EBA and the ESCB, for the development and implementation of the integrated reporting system;

(d) the feasibility and possible design of a central data collection point for the integrated reporting system, including requirements to ensure strict confidentiality of the data collected, strong authentication and management of access rights to the system and cybersecurity, which:

(i) contains a central data register with all statistical data, resolution data and prudential data in the necessary granularity and frequency for the particular institution and is updated at necessary intervals;

(ii) serves as a point of contact for the competent authorities, where they receive, process and pool all data queries, where queries can be matched with existing collected reported data and which allows the competent authorities quick access to the requested information;

(iii) provides additional support to the competent authorities for the transmission of data queries to the institutions and enters the requested data into the central data register;

(iv) holds a coordinating role for the exchange of information and data between competent authorities; and

(v) takes into account the proceedings and processes of competent authorities and transfers them into a standardised system.

3. By one year after the presentation of the report referred to in this Article, the Commission shall, if appropriate and taking into account the feasibility report by EBA, submit to the European Parliament and to the Council a legislative proposal for the establishment of a standardised and integrated reporting system for reporting requirements.

PART EIGHT

DISCLOSURE BY INSTITUTIONS

TITLE I

GENERAL PRINCIPLES

Article 431

Disclosure requirements and policies

1. Institutions shall publicly disclose the information referred to in Titles II and III in accordance with the provisions laid down in this Title, subject to the exceptions referred to in Article 432.

2. Institutions that have been granted permission by the competent authorities under Part Three for the instruments and methodologies referred to in Title III of this Part shall publicly disclose the information laid down therein.

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3. The management body or senior management shall adopt formal policies to comply with the disclosure requirements laid down in this Part and put in place and maintain internal processes, systems and controls to verify that the institutions' disclosures are appropriate and in compliance with the requirements laid down in this Part. At least one member of the management body or senior management shall attest in writing that the relevant institution has made the disclosures required under this Part in accordance with the formal policies and internal processes, systems and controls. The written attestation and the key elements of the institution's formal policies to comply with the disclosure requirements shall be included in institutions' disclosures.

Information to be disclosed in accordance with this Part shall be subject to the same level of internal verification as that applicable to the management report included in the institution's financial report.

Institutions shall also have policies in place to verify that their disclosures convey their risk profile comprehensively to market participants. Where institutions find that the disclosures required under this Part do not convey the risk profile comprehensively to market participants, they shall publicly disclose information in addition to the information required to be disclosed under this Part. Nonetheless, institutions shall only be required to disclose information that is material and not proprietary or confidential as referred to in Article 432.

4. All quantitative disclosures shall be accompanied by a qualitative narrative and any other supplementary information that may be necessary in order for the users of that information to understand the quantitative disclosures, noting in particular any significant change in any given disclosure compared to the information contained in the previous disclosures.

5. Institutions shall, if requested, explain their rating decisions to SMEs and other corporate applicants for loans, providing an explanation in writing when asked. The administrative costs of that explanation shall be proportionate to the size of the loan.

Article 432

Non-material, proprietary or confidential information

1. With the exception of the disclosures laid down in point (c) of Article 435(2) and in Articles 437 and 450, institutions may omit one or more of the disclosures listed in Titles II and III where the information provided by those disclosures is not regarded as material.

Information in disclosures shall be regarded as material where its omission or misstatement could change or influence the assessment or decision of a user of that information relying on it for the purpose of making economic decisions.

EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on how institutions have to apply materiality in relation to the disclosure requirements of Titles II and III.

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2. Institutions may also omit one or more items of information referred to in Titles II and III where those items include information that is regarded as proprietary or confidential in accordance with this paragraph, except for the disclosures laid down in Articles 437 and 450.

Information shall be regarded as proprietary to institutions where disclosing it publicly would undermine their competitive position. Proprietary information may include information on products or systems that would render the investments of institutions therein less valuable, if shared with competitors.

Information shall be regarded as confidential where the institutions are obliged by customers or other counterparty relationships to keep that information confidential.

EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on how institutions have to apply proprietary and confidentiality in relation to the disclosure requirements of Titles II and III.

3. In the exceptional cases referred to in paragraph 2, the institution concerned shall state in its disclosures the fact that specific items of information are not being disclosed and the reason for not disclosing those items, and publish more general information about the subject matter of the disclosure requirement, except where that subject matter is, in itself, proprietary or confidential.

Article 433

Frequency and scope of disclosures

Institutions shall publish the disclosures required under Titles II and III in the manner set out in Articles 433a, 433b and 433c.

Annual disclosures shall be published on the same date as the date on which institutions publish their financial statements or as soon as possible thereafter.

Semi-annual and quarterly disclosures shall be published on the same date as the date on which the institutions publish their financial reports for the corresponding period where applicable or as soon as possible thereafter.

Any delay between the date of publication of the disclosures required under this Part and the relevant financial statements shall be reasonable and, in any event, shall not exceed the timeframe set by competent authorities pursuant to Article 106 of Directive 2013/36/EU.

Article 433a

Disclosures by large institutions

1. Large institutions shall disclose the information outlined below with the following frequency:

(a) all the information required under this Part on an annual basis;

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(b) on a semi-annual basis the information referred to in:

(i) point (a) of Article 437;

(ii) point (e) of Article 438;

(iii) points (e) to (l) of Article 439;

(iv) Article 440;

(v) points (c), (e), (f) and (g) of Article 442;

(vi) point (e) of Article 444;

(vii) Article 445;

(viii) point (a) and (b) of Article 448(1);

(ix) point (j) to (l) of Article 449;

(x) points (a) and (b) of Article 451(1);

(xi) Article 451a(3);

(xii) point (g) of Article 452;

(xiii) points (f) to (j) of Article 453;

(xiv) points (d), (e) and (g) of Article 455;

(c) on a quarterly basis the information referred to in:

(i) points (d) and (h) of Article 438;

(ii) the key metrics referred to in Article 447;

(iii) Article 451a(2).

2. By way of derogation from paragraph 1, large institutions other than G-SIIs that are non-listed institutions shall disclose the information outlined below with the following frequency:

(a) all the information required under this Part on an annual basis;

(b) the key metrics referred to in Article 447 on a semi-annual basis.

3. Large institutions that are subject to Article 92a or 92b shall disclose the information required under Article 437a on a semi-annual basis, except for the key metrics referred to in point (h) of Article 447, which are to be disclosed on a quarterly basis.

Article 433b

Disclosures by small and non-complex institutions

1. Small and non-complex institutions shall disclose the information outlined below with the following frequency:

(a) on an annual basis the information referred to in:

(i) points (a), (e) and (f) of Article 435(1);

(ii) point (d) of Article 438;

(iii) points (a) to (d), (h), (i), (j) of Article 450(1);

(b) on a semi-annual basis the key metrics referred to in Article 447.

2. By way of derogation from paragraph 1 of this Article, small and non-complex institutions that are non-listed institutions shall disclose the key metrics referred to in Article 447 on an annual basis.

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Article 433c

Disclosures by other institutions

1. Institutions that are not subject to Article 433a or 433b shall disclose the information outlined below with the following frequency:

(a) all the information required under this Part on an annual basis;

(b) the key metrics referred to in Article 447 on a semi-annual basis.

2. By way of derogation from paragraph 1 of this Article, other institutions that are non-listed institutions shall disclose the following information on an annual basis:

(a) points (a), (e) and (f) of Article 435(1);

(b) points (a, (b) and (c) of Article 435(2);

(c) point (a) of Article 437;

(d) points (c) and (d) of Article 438;

(e) the key metrics referred to in Article 447;

(f) points (a) to (d), (h) to (k) of Article 450(1).

Article 434

Means of disclosures

1. Institutions shall disclose all the information required under Titles II and III in electronic format and in a single medium or location. The single medium or location shall be a standalone document that provides a readily accessible source of prudential information for users of that information or a distinctive section included in or appended to the institutions' financial statements or financial reports containing the required disclosures and being easily identifiable to those users.

2. Institutions shall make available on their website or, in the absence of a website, in any other appropriate location an archive of the information required to be disclosed in accordance with this Part. That archive shall be kept accessible for a period of time that shall be no less than the storage period set by national law for information included in the institutions' financial reports.

Article 434a

Uniform disclosure formats

EBA shall develop draft implementing technical standards specifying uniform disclosure formats, and associated instructions in accordance with which the disclosures required under Titles II and III shall be made.

Those uniform disclosure formats shall convey sufficiently comprehensive and comparable information for users of that information to assess the risk profiles of institutions and their degree of compliance with the requirements laid down in Parts One to Seven. To facilitate the comparability of information, the implementing technical standards shall seek to maintain consistency of disclosure formats with international standards on disclosures.

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Uniform disclosure formats shall be tabular where appropriate.

EBA shall submit those draft implementing technical standards to the Commission by 28 June 2020.

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

TITLE II

TECHNICAL CRITERIA ON TRANSPARENCY AND DISCLOSURE

Article 435

Disclosure of risk management objectives and policies

1. Institutions shall disclose their risk management objectives and policies for each separate category of risk, including the risks referred to in this Title. Those disclosures shall include:

(a) the strategies and processes to manage those categories of risks;

(b) the structure and organisation of the relevant risk management function including information on the basis of its authority, its powers and accountability in accordance with the institution's incorporation and governing documents;

(c) the scope and nature of risk reporting and measurement systems;

(d) the policies for hedging and mitigating risk, and the strategies and processes for monitoring the continuing effectiveness of hedges and mitigants;

(e) a declaration approved by the management body on the adequacy of the risk management arrangements of the relevant institution providing assurance that the risk management systems put in place are adequate with regard to the institution's profile and strategy;

(f) a concise risk statement approved by the management body succinctly describing the relevant institution's overall risk profile associated with the business strategy; that statement shall include:

(i) key ratios and figures providing external stakeholders a comprehensive view of the institution's management of risk, including how the risk profile of the institution interacts with the risk tolerance set by the management body;

(ii) information on intragroup transactions and transactions with related parties that may have a material impact of the risk profile of the consolidated group.

2. Institutions shall disclose the following information regarding governance arrangements:

(a) the number of directorships held by members of the management body;

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(b) the recruitment policy for the selection of members of the management body and their actual knowledge, skills and expertise;

(c) the policy on diversity with regard to selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which those objectives and targets have been achieved;

(d) whether or not the institution has set up a separate risk committee and the number of times the risk committee has met;

(e) the description of the information flow on risk to the management body.

Article 436

Disclosure of the scope of application

Institutions shall disclose the following information regarding the scope of application of this Regulation as follows:

(a) the name of the institution to which this Regulation applies;

(b) a reconciliation between the consolidated financial statements prepared in accordance with the applicable accounting framework and the consolidated financial statements prepared in accordance with the requirements on regulatory consolidation pursuant to Sections 2 and 3 of Title II of Part One; that reconciliation shall outline the differences between the accounting and regulatory scopes of consolidation and the legal entities included within the regulatory scope of consolidation where it differs from the accounting scope of consolidation; the outline of the legal entities included within the regulatory scope of consolidation shall describe the method of regulatory consolidation where it is different from the accounting consolidation method, whether those entities are fully or proportionally consolidated and whether the holdings in those legal entities are deducted from own funds;

(c) a breakdown of assets and liabilities of the consolidated financial statements prepared in accordance with the requirements on regulatory consolidation pursuant to Sections 2 and 3 of Title II of Part One, broken down by type of risks as referred to under this Part;

(d) a reconciliation identifying the main sources of differences between the carrying value amounts in the financial statements under the regulatory scope of consolidation as defined in Sections 2 and 3 of Title II of Part One, and the exposure amount used for regulatory purposes; that reconciliation shall be supplemented by qualitative information on those main sources of differences;

(e) for exposures from the trading book and the non-trading book that are adjusted in accordance with Article 34 and Article 105, a breakdown of the amounts of the constituent elements of an institution's prudent valuation adjustment, by type of risks, and the total of constituent elements separately for the trading book and non-trading book positions;

(f) any current or expected material practical or legal impediment to the prompt transfer of own funds or to the repayment of liabilities between the parent undertaking and its subsidiaries;

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(g) the aggregate amount by which the actual own funds are less than required in all subsidiaries that are not included in the consolidation, and the name or names of those subsidiaries;

(h) where applicable, the circumstances under which use is made of the derogation referred to in Article 7 or the individual consolidation method laid down in Article 9.

Article 437

Disclosure of own funds

Institutions shall disclose the following information regarding their own funds:

(a) a full reconciliation of Common Equity Tier 1 items, Additional Tier 1 items, Tier 2 items and the filters and deductions applied to own funds of the institution pursuant to Articles 32 to 36, 56, 66 and 79 with the balance sheet in the audited financial statements of the institution;

(b) a description of the main features of the Common Equity Tier 1 and Additional Tier 1 instruments and Tier 2 instruments issued by the institution;

(c) the full terms and conditions of all Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments;

(d) a separate disclosure of the nature and amounts of the following:

(i) each prudential filter applied pursuant to Articles 32 to 35;

(ii) items deducted pursuant to Articles 36, 56 and 66;

(iii) items not deducted pursuant to Articles 47, 48, 56, 66 and 79;

(e) a description of all restrictions applied to the calculation of own funds in accordance with this Regulation and the instruments, prudential filters and deductions to which those restrictions apply;

(f) a comprehensive explanation of the basis on which capital ratios are calculated where those capital ratios are calculated by using elements of own funds determined on a basis other than the basis laid down in this Regulation.

Article 437a

Disclosure of own funds and eligible liabilities

Institutions that are subject to Article 92a or 92b shall disclose the following information regarding their own funds and eligible liabilities:

(a) the composition of their own funds and eligible liabilities, their maturity and their main features;

(b) the ranking of eligible liabilities in the creditor hierarchy;

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(c) the total amount of each issuance of eligible liabilities instruments referred to in Article 72b and the amount of those issuances that is included in eligible liabilities items within the limits specified in Article 72b(3) and (4);

(d) the total amount of excluded liabilities referred to in Article 72a(2).

Article 438

Disclosure of own funds requirements and risk-weighted exposure amounts

Institutions shall disclose the following information regarding their compliance with Article 92 of this Regulation and with the requirements laid down in Article 73 and in point (a) of Article 104(1) of Directive 2013/36/EU:

(a) a summary of their approach to assessing the adequacy of their internal capital to support current and future activities;

(b) the amount of the additional own funds requirements based on the supervisory review process as referred to in point (a) of Article 104(1) of Directive 2013/36/EU and its composition in terms of Common Equity Tier 1, additional Tier 1 and Tier 2 instruments;

(c) upon demand from the relevant competent authority, the result of the institution's internal capital adequacy assessment process;

(d) the total risk-weighted exposure amount and the corresponding total own funds requirement determined in accordance with Article 92, to be broken down by the different risk categories set out in Part Three and, where applicable, an explanation of the effect on the calculation of own funds and risk-weighted exposure amounts that results from applying capital floors and not deducting items from own funds;

(e) the on- and off-balance-sheet exposures, the risk-weighted exposure amounts and associated expected losses for each category of specialised lending referred to in Table 1 of Article 153(5) and the on- and off-balance-sheet exposures and risk-weighted exposure amounts for the categories of equity exposures set out in Article 155(2);

(f) the exposure value and the risk-weighted exposure amount of own funds instruments held in any insurance undertaking, reinsurance undertaking or insurance holding company that the institutions do not deduct from their own funds in accordance with Article 49 when calculating their capital requirements on an individual, sub-consolidated and consolidated basis;

(g) the supplementary own funds requirement and the capital adequacy ratio of the financial conglomerate calculated in accordance with Article 6 of Directive 2002/87/EC and Annex I to that Directive where method 1 or 2 set out in that Annex is applied;

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(h) the variations in the risk-weighted exposure amounts of the current disclosure period compared to the immediately preceding disclosure period that result from the use of internal models, including an outline of the key drivers explaining those variations.

Article 439

Disclosure of exposures to counterparty credit risk

Institutions shall disclose the following information regarding their exposure to counterparty credit risk as referred to in Chapter 6 of Title II of Part Three:

(a) a description of the methodology used to assign internal capital and credit limits for counterparty credit exposures, including the methods to assign those limits to exposures to central counterparties;

(b) a description of policies related to guarantees and other credit risk mitigants, such as the policies for securing collateral and establishing credit reserves;

(c) a description of policies with respect to General Wrong-Way risk and Specific Wrong-Way risk as defined in Article 291;

(d) the amount of collateral the institution would have to provide if its credit rating was downgraded;

(e) the amount of segregated and unsegregated collateral received and posted per type of collateral, further broken down between collateral used for derivatives and securities financing transactions;

(f) for derivative transactions, the exposure values before and after the effect of the credit risk mitigation as determined under the methods set out in Sections 3 to 6 of Chapter 6 of Title II of Part Three, whichever method is applicable, and the associated risk exposure amounts broken down by applicable method;

(g) for securities financing transactions, the exposure values before and after the effect of the credit risk mitigation as determined under the methods set out in Chapters 4 and 6 of Title II of Part Three, whichever method is used, and the associated risk exposure amounts broken down by applicable method;

(h) the exposure values after credit risk mitigation effects and the associated risk exposures for credit valuation adjustment capital charge, separately for each method as set out in Title VI of Part Three;

(i) the exposure value to central counterparties and the associated risk exposures within the scope of Section 9 of Chapter 6 of Title II of Part Three, separately for qualifying and non-qualifying central counterparties, and broken down by types of exposures;

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(j) the notional amounts and fair value of credit derivative transactions; credit derivative transactions shall be broken down by product type; within each product type, credit derivative transactions shall be broken down further by credit protection bought and credit protection sold;

(k) the estimate of alpha where the institution has received the permission of the competent authorities to use its own estimate of alpha in accordance with Article 284(9);

(l) separately, the disclosures included in point (e) of Article 444 and point (g) of Article 452;

(m) for institutions using the methods set out in Sections 4 to 5 of Chapter 6 of Title II Part Three, the size of their on- and off-balance-sheet derivative business as calculated in accordance with Article 273a(1) or (2), as applicable.

Where the central bank of a Member State provides liquidity assistance in the form of collateral swap transactions, the competent authority may exempt institutions from the requirements in points (d) and (e) of the first subparagraph where that competent authority considers that the disclosure of the information referred to therein could reveal that emergency liquidity assistance has been provided. For those purposes, the competent authority shall set out appropriate thresholds and objective criteria.

Article 440

Disclosure of countercyclical capital buffers

Institutions shall disclose the following information in relation to their compliance with the requirement for a countercyclical capital buffer as referred to in Chapter 4 of Title VII of Directive 2013/36/EU:

(a) the geographical distribution of the exposure amounts and risk-weighted exposure amounts of its credit exposures used as a basis for the calculation of their countercyclical capital buffer;

(b) the amount of their institution-specific countercyclical capital buffer.

Article 441

Disclosure of indicators of global systemic importance

G-SIIs shall disclose, on an annual basis, the values of the indicators used for determining their score in accordance with the identification methodology referred to in Article 131 of Directive 2013/36/EU.

Article 442

Disclosure of exposures to credit risk and dilution risk

Institutions shall disclose the following information regarding their exposures to credit risk and dilution risk:

(a) the scope and definitions that they use for accounting purposes of ‘past due’ and ‘impaired’ and the differences, if any, between the definitions of ‘past due’ and ‘default’ for accounting and regulatory purposes;

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(b) a description of the approaches and methods adopted for determining specific and general credit risk adjustments;

(c) information on the amount and quality of performing, non-performing and forborne exposures for loans, debt securities and off-balance-sheet exposures, including their related accumulated impairment, provisions and negative fair value changes due to credit risk and amounts of collateral and financial guarantees received;

(d) an ageing analysis of accounting past due exposures;

(e) the gross carrying amounts of both defaulted and non-defaulted exposures, the accumulated specific and general credit risk adjustments, the accumulated write-offs taken against those exposures and the net carrying amounts and their distribution by geographical area and industry type and for loans, debt securities and off-balance-sheet exposures;

(f) any changes in the gross amount of defaulted on- and off-balance-sheet exposures, including, as a minimum, information on the opening and closing balances of those exposures, the gross amount of any of those exposures reverted to non-defaulted status or subject to a write-off;

(g) the breakdown of loans and debt securities by residual maturity.

Article 443

Disclosure of encumbered and unencumbered assets

Institutions shall disclose information concerning their encumbered and unencumbered assets. For those purposes, institutions shall use the carrying amount per exposure class broken down by asset quality and the total amount of the carrying amount that is encumbered and unencumbered. Disclosure of information on encumbered and unencumbered assets shall not reveal emergency liquidity assistance provided by central banks.

Article 444

Disclosure of the use of the Standardised Approach

Institutions calculating their risk-weighted exposure amounts in accordance with Chapter 2 of Title II of Part Three shall disclose the following information for each of the exposure classes set out in Article 112:

(a) the names of the nominated ECAIs and ECAs and the reasons for any changes in those nominations over the disclosure period;

(b) the exposure classes for which each ECAI or ECA is used;

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(c) a description of the process used to transfer the issuer and issue credit ratings onto items not included in the trading book;

(d) the association of the external rating of each nominated ECAI or ECA with the risk weights that correspond to the credit quality steps as set out in Chapter 2 of Title II of Part Three, taking into account that it is not necessary to disclose that information where the institutions comply with the standard association published by EBA;

(e) the exposure values and the exposure values after credit risk mitigation associated with each credit quality step as set out in Chapter 2 of Title II of Part Three, by exposure class, as well as the exposure values deducted from own funds.

Article 445

Disclosure of exposure to market risk

Institutions calculating their own funds requirements in accordance with points (b) and (c) of Article 92(3) shall disclose those requirements separately for each risk referred to in those points. In addition, own funds requirements for the specific interest rate risk of securitisation positions shall be disclosed separately.

Article 446

Disclosure of operational risk management

Institutions shall disclose the following information about their operational risk management:

(a) the approaches for the assessment of own funds requirements for operation risk that the institution qualifies for;

(b) where the institution makes use of it, a description of the methodology set out in Article 312(2), which shall include a discussion of the relevant internal and external factors being considered in the institution's advanced measurement approach;

(c) in the case of partial use, the scope and coverage of the different methodologies used.

Article 447

Disclosure of key metrics

Institutions shall disclose the following key metrics in a tabular format:

(a) the composition of their own funds and their own funds requirements as calculated in accordance with Article 92;

(b) the total risk exposure amount as calculated in accordance with Article 92(3);

(c) where applicable, the amount and composition of additional own funds which the institutions are required to hold in accordance with point (a) of Article 104(1) of Directive 2013/36/EU;

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(d) their combined buffer requirement which the institutions are required to hold in accordance with Chapter 4 of Title VII of Directive 2013/36/EU;

(e) their leverage ratio and the total exposure measure as calculated in accordance with Article 429;

(f) the following information in relation to their liquidity coverage ratio as calculated in accordance with the delegated act referred to in Article 460(1):

(i) the average or averages, as applicable, of their liquidity coverage ratio based on end-of-the-month observations over the preceding 12 months for each quarter of the relevant disclosure period;

(ii) the average or averages, as applicable, of total liquid assets, after applying the relevant haircuts, included in the liquidity buffer pursuant to the delegated act referred to in Article 460(1), based on end-of-the-month observations over the preceding 12 months for each quarter of the relevant disclosure period;

(iii) the averages of their liquidity outflows, inflows and net liquidity outflows as calculated pursuant to the delegated act referred to in Article 460(1), based on end-of-the-month observations over the preceding 12 months for each quarter of the relevant disclosure period;

(g) the following information in relation to their net stable funding requirement as calculated in accordance with Title IV of Part Six:

(i) the net stable funding ratio at the end of each quarter of the relevant disclosure period;

(ii) the available stable funding at the end of each quarter of the relevant disclosure period;

(iii) the required stable funding at the end of each quarter of the relevant disclosure period;

(h) their own funds and eligible liabilities ratios and their components, numerator and denominator, as calculated in accordance with Articles 92a and 92b and broken down at the level of each resolution group, where applicable.

Article 448

Disclosure of exposures to interest rate risk on positions not held in the trading book

1. As from 28 June 2021, institutions shall disclose the following quantitative and qualitative information on the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of their non-trading book activities referred to in Article 84 and Article 98(5) of Directive 2013/36/EU:

(a) the changes in the economic value of equity calculated under the six supervisory shock scenarios referred to in Article 98(5) of Directive 2013/36/EU for the current and previous disclosure periods;

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(b) the changes in the net interest income calculated under the two supervisory shock scenarios referred to in Article 98(5) of Directive 2013/36/EU for the current and previous disclosure periods;

(c) a description of key modelling and parametric assumptions, other than those referred to in points (b) and (c) of Article 98(5a) of Directive 2013/36/EU used to calculate changes in the economic value of equity and in the net interest income required under points (a) and (b) of this paragraph;

(d) an explanation of the significance of the risk measures disclosed under points (a) and (b) of this paragraph and of any significant variations of those risk measures since the previous disclosure reference date;

(e) the description of how institutions define, measure, mitigate and control the interest rate risk of their non-trading book activities for the purposes of the competent authorities' review in accordance with Article 84 of Directive 2013/36/EU, including:

(i) a description of the specific risk measures that the institutions use to evaluate changes in their economic value of equity and in their net interest income;

(ii) a description of the key modelling and parametric assumptions used in the institutions' internal measurement systems that would differ from the common modelling and parametric assumptions referred to in Article 98(5a) of Directive 2013/36/EU for the purpose of calculating changes to the economic value of equity and to the net interest income, including the rationale for those differences;

(iii) a description of the interest rate shock scenarios that institutions use to estimate the interest rate risk;

(iv) the recognition of the effect of hedges against those interest rate risks, including internal hedges that meet the requirements laid down in Article 106(3);

(v) an outline of how often the evaluation of the interest rate risk occurs;

(f) the description of the overall risk management and mitigation strategies for those risks;

(g) average and longest repricing maturity assigned to non-maturity deposits.

2. By way of derogation from paragraph 1 of this Article, the requirements set out in points (c) and (e)(i) to (e)(iv) of paragraph 1 of this Article shall not apply to institutions that use the standardised methodology or the simplified standardised methodology referred to in Article 84(1) of Directive 2013/36/EU.

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Article 449

Disclosure of exposures to securitisation positions

Institutions calculating risk-weighted exposure amounts in accordance with Chapter 5 of Title II of Part Three or own funds requirements in accordance with Article 337 or 338 shall disclose the following information separately for their trading book and non-trading book activities:

(a) a description of their securitisation and re-securitisation activities, including their risk management and investment objectives in connection with those activities, their role in securitisation and re-securitisation transactions, whether they use the simple, transparent and standardised securitisation (STS) as defined in point (10) of Article 242, and the extent to which they use securitisation transactions to transfer the credit risk of the securitised exposures to third parties with, where applicable, a separate description of their synthetic securitisation risk transfer policy;

(b) the type of risks they are exposed to in their securitisation and re-securitisation activities by level of seniority of the relevant securitisation positions providing a distinction between STS and non-STS positions and:

(i) the risk retained in own-originated transactions;

(ii) the risk incurred in relation to transactions originated by third parties;

(c) their approaches for calculating the risk-weighted exposure amounts that they apply to their securitisation activities, including the types of securitisation positions to which each approach applies and with a distinction between STS and non-STS positions;

(d) a list of SSPEs falling into any of the following categories, with a description of their types of exposures to those SSPEs, including derivative contracts:

(i) SSPEs which acquire exposures originated by the institutions;

(ii) SSPEs sponsored by the institutions;

(iii) SSPEs and other legal entities for which the institutions provide securitisation-related services, such as advisory, asset servicing or management services;

(iv) SSPEs included in the institutions' regulatory scope of consolidation;

(e) a list of any legal entities in relation to which the institutions have disclosed that they have provided support in accordance with Chapter 5 of Title II of Part Three;

(f) a list of legal entities affiliated with the institutions and that invest in securitisations originated by the institutions or in securitisation positions issued by SSPEs sponsored by the institutions;

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(g) a summary of their accounting policies for securitisation activity, including where relevant a distinction between securitisation and re-securitisation positions;

(h) the names of the ECAIs used for securitisations and the types of exposure for which each agency is used;

(i) where applicable, a description of the Internal Assessment Approach as set out in Chapter 5 of Title II of Part Three, including the structure of the internal assessment process and the relation between internal assessment and external ratings of the relevant ECAI disclosed in accordance with point (h), the control mechanisms for the internal assessment process including discussion of independence, accountability, and internal assessment process review, the exposure types to which the internal assessment process is applied and the stress factors used for determining credit enhancement levels;

(j) separately for the trading book and the non-trading book, the carrying amount of securitisation exposures, including information on whether institutions have transferred significant credit risk in accordance with Articles 244 and 245, for which institutions act as originator, sponsor or investor, separately for traditional and synthetic securitisations, and for STS and non-STS transactions and broken down by type of securitisation exposures;

(k) for the non-trading book activities, the following information:

(i) the aggregate amount of securitisation positions where institutions act as originator or sponsor and the associated risk-weighted assets and capital requirements by regulatory approaches, including exposures deducted from own funds or risk weighted at 1 250 %, broken down between traditional and synthetic securitisations and between securitisation and re-securitisation exposures, separately for STS and non-STS positions, and further broken down into a meaningful number of risk-weight or capital requirement bands and by approach used to calculate the capital requirements;

(ii) the aggregate amount of securitisation positions where institutions act as investor and the associated risk-weighted assets and capital requirements by regulatory approaches, including exposures deducted from own funds or risk weighted at 1 250 %, broken down between traditional and synthetic securitisations, securitisation and re-securitisation positions, and STS and non-STS positions, and further broken down into a meaningful number of risk weight or capital requirement bands and by approach used to calculate the capital requirements;

(l) for exposures securitised by the institution, the amount of exposures in default and the amount of the specific credit risk adjustments made by the institution during the current period, both broken down by exposure type.

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Article 449a

Disclosure of environmental, social and governance risks (ESG risks)

From 28 June 2022, large institutions which have issued securities that are admitted to trading on a regulated market of any Member State, as defined in point (21) of Article 4(1) of Directive 2014/65/EU, shall disclose information on ESG risks, including physical risks and transition risks, as defined in the report referred to in Article 98(8) of Directive 2013/36/EU.

The information referred to in the first paragraph shall be disclosed on an annual basis for the first year and biannually thereafter.

Article 450

Disclosure of remuneration policy

1. Institutions shall disclose the following information regarding their remuneration policy and practices for those categories of staff whose professional activities have a material impact on the risk profile of the institutions:

(a) information concerning the decision-making process used for determining the remuneration policy, as well as the number of meetings held by the main body overseeing remuneration during the financial year, including, where applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders;

(b) information about the link between pay of the staff and their performance;

(c) the most important design characteristics of the remuneration system, including information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria;

(d) the ratios between fixed and variable remuneration set in accordance with point (g) of Article 94(1) of Directive 2013/36/EU;

(e) information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based;

(f) the main parameters and rationale for any variable component scheme and any other non-cash benefits;

(g) aggregate quantitative information on remuneration, broken down by business area;

(h) aggregate quantitative information on remuneration, broken down by senior management and members of staff whose professional activities have a material impact on the risk profile of the institutions, indicating the following:

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(i) the amounts of remuneration awarded for the financial year, split into fixed remuneration including a description of the fixed components, and variable remuneration, and the number of beneficiaries;

(ii) the amounts and forms of awarded variable remuneration, split into cash, shares, share-linked instruments and other types separately for the part paid upfront and the deferred part;

(iii) the amounts of deferred remuneration awarded for previous performance periods, split into the amount due to vest in the financial year and the amount due to vest in subsequent years;

(iv) the amount of deferred remuneration due to vest in the financial year that is paid out during the financial year, and that is reduced through performance adjustments;

(v) the guaranteed variable remuneration awards during the financial year, and the number of beneficiaries of those awards;

(vi) the severance payments awarded in previous periods, that have been paid out during the financial year;

(vii) the amounts of severance payments awarded during the financial year, split into paid upfront and deferred, the number of beneficiaries of those payments and highest payment that has been awarded to a single person;

(i) the number of individuals that have been remunerated EUR 1 million or more per financial year, with the remuneration between EUR 1 million and EUR 5 million broken down into pay bands of EUR 500 000 and with the remuneration of EUR 5 million and above broken down into pay bands of EUR 1 million;

(j) upon demand from the relevant Member State or competent authority, the total remuneration for each member of the management body or senior management;

(k) information on whether the institution benefits from a derogation laid down in Article 94(3) of Directive 2013/36/EU.

For the purposes of point (k) of the first subparagraph of this paragraph, institutions that benefit from such a derogation shall indicate whether they benefit from that derogation on the basis of point (a) or (b) of Article 94(3) of Directive 2013/36/EU. They shall also indicate for which of the remuneration principles they apply the derogation(s), the number of staff members that benefit from the derogation(s) and their total remuneration, split into fixed and variable remuneration.

2. For large institutions, the quantitative information on the remuneration of institutions' collective management body referred to in this Article shall also be made available to the public, differentiating between executive and non-executive members.

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Institutions shall comply with the requirements set out in this Article in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities and without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council ([1]).

Article 451

Disclosure of the leverage ratio

1. Institutions that are subject to Part Seven shall disclose the following information regarding their leverage ratio as calculated in accordance with Article 429 and their management of the risk of excessive leverage:

(a) the leverage ratio and how the institutions apply Article 499(2);

(b) a breakdown of the total exposure measure referred to in Article 429(4), as well as a reconciliation of the total exposure measure with the relevant information disclosed in published financial statements;

(c) where applicable, the amount of exposures calculated in accordance with Articles 429(8) and 429a(1) and the adjusted leverage ratio calculated in accordance with Article 429a(7);

(d) a description of the processes used to manage the risk of excessive leverage;

(e) a description of the factors that had an impact on the leverage ratio during the period to which the disclosed leverage ratio refers.

2. Public development credit institutions as defined in Article 429a(2) shall disclose the leverage ratio without the adjustment to the total exposure measure determined in accordance with point (d) of the first subparagraph of Article 429a(1).

3. In addition to points (a) and (b) of paragraph 1 of this Article, large institutions shall disclose the leverage ratio and the breakdown of the total exposure measure referred to in Article 429(4) based on averages calculated in accordance with the implementing act referred to in Article 430(7).

Article 451a

Disclosure of liquidity requirements

1. Institutions that are subject to Part Six shall disclose information on their liquidity coverage ratio, net stable funding ratio and liquidity risk management in accordance with this Article.

2. Institutions shall disclose the following information in relation to their liquidity coverage ratio as calculated in accordance with the delegated act referred to in Article 460(1):

([1]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

▼M8

(a) the average or averages, as applicable, of their liquidity coverage ratio based on end-of-the-month observations over the preceding 12 months for each quarter of the relevant disclosure period;

(b) the average or averages, as applicable, of total liquid assets, after applying the relevant haircuts, included in the liquidity buffer pursuant to the delegated act referred to in Article 460(1), based on end-of-the-month observations over the preceding 12 months for each quarter of the relevant disclosure period, and a description of the composition of that liquidity buffer;

(c) the averages of their liquidity outflows, inflows and net liquidity outflows as calculated in accordance with the delegated act referred to in Article 460(1), based on end-of-the-month observations over the preceding 12 months for each quarter of the relevant disclosure period and the description of their composition.

3. Institutions shall disclose the following information in relation to their net stable funding ratio as calculated in accordance with Title IV of Part Six:

(a) quarter-end figures of their net stable funding ratio calculated in accordance with Chapter 2 of Title IV of Part Six for each quarter of the relevant disclosure period;

(b) an overview of the amount of available stable funding calculated in accordance with Chapter 3 of Title IV of Part Six;

(c) an overview of the amount of required stable funding calculated in accordance with Chapter 4 of Title IV of Part Six.

4. Institutions shall disclose the arrangements, systems, processes and strategies put in place to identify, measure, manage and monitor their liquidity risk in accordance with Article 86 of Directive 2013/36/EU.

TITLE III

QUALIFYING REQUIREMENTS FOR THE USE OF PARTICULAR INSTRUMENTS OR METHODOLOGIES

Article 452

Disclosure of the use of the IRB Approach to credit risk

Institutions calculating the risk-weighted exposure amounts under the IRB Approach to credit risk shall disclose the following information:

(a) the competent authority's permission of the approach or approved transition;

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(b) for each exposure class referred to in Article 147, the percentage of the total exposure value of each exposure class subject to the Standardised Approach laid down in Chapter 2 of Title II of Part Three or to the IRB Approach laid down in Chapter 3 of Title II of Part Three, as well as the part of each exposure class subject to a roll-out plan; where institutions have received permission to use own LGDs and conversion factors for the calculation of risk-weighted exposure amounts, they shall disclose separately the percentage of the total exposure value of each exposure class subject to that permission;

(c) the control mechanisms for rating systems at the different stages of model development, controls and changes, which shall include information on:

(i) the relationship between the risk management function and the internal audit function;

(ii) the rating system review;

(iii) the procedure to ensure the independence of the function in charge of reviewing the models from the functions responsible for the development of the models;

(iv) the procedure to ensure the accountability of the functions in charge of developing and reviewing the models;

(d) the role of the functions involved in the development, approval and subsequent changes of the credit risk models;

(e) the scope and main content of the reporting related to credit risk models;

(f) a description of the internal ratings process by exposure class, including the number of key models used with respect to each portfolio and a brief discussion of the main differences between the models within the same portfolio, covering:

(i) the definitions, methods and data for estimation and validation of PD, which shall include information on how PDs are estimated for low default portfolios, whether there are regulatory floors and the drivers for differences observed between PD and actual default rates at least for the last three periods;

(ii) where applicable, the definitions, methods and data for estimation and validation of LGD, such as methods to calculate downturn LGD, how LGDs are estimated for low default portfolio and the time lapse between the default event and the closure of the exposure;

(iii) where applicable, the definitions, methods and data for estimation and validation of conversion factors, including assumptions employed in the derivation of those variables;

▼M8

(g) as applicable, the following information in relation to each exposure class referred to in Article 147:

(i) their gross on-balance-sheet exposure;

(ii) their off-balance-sheet exposure values prior to the relevant conversion factor;

(iii) their exposure after applying the relevant conversion factor and credit risk mitigation;

(iv) any model, parameter or input relevant for the understanding of the risk weighting and the resulting risk exposure amounts disclosed across a sufficient number of obligor grades (including default) to allow for a meaningful differentiation of credit risk;

(v) separately for those exposure classes in relation to which institutions have received permission to use own LGDs and conversion factors for the calculation of risk-weighted exposure amounts, and for exposures for which the institutions do not use such estimates, the values referred to in points (i) to (iv) subject to that permission;

(h) institutions' estimates of PDs against the actual default rate for each exposure class over a longer period, with separate disclosure of the PD range, the external rating equivalent, the weighted average and arithmetic average PD, the number of obligors at the end of the previous year and of the year under review, the number of defaulted obligors, including the new defaulted obligors, and the annual average historical default rate.

For the purposes of point (b) of this Article, institutions shall use the exposure value as defined in Article 166.

Article 453

Disclosure of the use of credit risk mitigation techniques

Institutions using credit risk mitigation techniques shall disclose the following information:

(a) the core features of the policies and processes for on- and off-balance-sheet netting and an indication of the extent to which institutions make use of balance sheet netting;

(b) the core features of the policies and processes for eligible collateral evaluation and management;

(c) a description of the main types of collateral taken by the institution to mitigate credit risk;

▼M8

(d) for guarantees and credit derivatives used as credit protection, the main types of guarantor and credit derivative counterparty and their creditworthiness used for the purpose of reducing capital requirements, excluding those used as part of synthetic securitisation structures;

(e) information about market or credit risk concentrations within the credit risk mitigation taken;

(f) for institutions calculating risk-weighted exposure amounts under the Standardised Approach or the IRB Approach, the total exposure value not covered by any eligible credit protection and the total exposure value covered by eligible credit protection after applying volatility adjustments; the disclosure set out in this point shall be made separately for loans and debt securities and including a breakdown of defaulted exposures;

(g) the corresponding conversion factor and the credit risk mitigation associated with the exposure and the incidence of credit risk mitigation techniques with and without substitution effect;

(h) for institutions calculating risk-weighted exposure amounts under the Standardised Approach, the on- and off-balance-sheet exposure value by exposure class before and after the application of conversion factors and any associated credit risk mitigation;

(i) for institutions calculating risk-weighted exposure amounts under the Standardised Approach, the risk-weighted exposure amount and the ratio between that risk-weighted exposure amount and the exposure value after applying the corresponding conversion factor and the credit risk mitigation associated with the exposure; the disclosure set out in this point shall be made separately for each exposure class;

(j) for institutions calculating risk-weighted exposure amounts under the IRB Approach, the risk-weighted exposure amount before and after recognition of the credit risk mitigation impact of credit derivatives; where institutions have received permission to use own LGDs and conversion factors for the calculation of risk-weighted exposure amounts, they shall make the disclosure set out in this point separately for the exposure classes subject to that permission.

Article 454

Disclosure of the use of the Advanced Measurement Approaches to operational risk

The institutions using the Advanced Measurement Approaches set out in Articles 321 to 324 for the calculation of their own funds requirements for operational risk shall disclose a description of their use of insurance and other risk-transfer mechanisms for the purpose of mitigating that risk.

▼M8

Article 455

Use of internal market risk models

Institutions calculating their capital requirements in accordance with Article 363 shall disclose the following information:

(a) for each sub-portfolio covered:

(i) the characteristics of the models used;

(ii) where applicable, for the internal models for incremental default and migration risk and for correlation trading, the methodologies used and the risks measured through the use of an internal model including a description of the approach used by the institution to determine liquidity horizons, the methodologies used to achieve a capital assessment that is consistent with the required soundness standard and the approaches used in the validation of the model;

(iii) a description of stress testing applied to the sub-portfolio;

(iv) a description of the approaches used for back-testing and validating the accuracy and consistency of the internal models and modelling processes;

(b) the scope of permission by the competent authority;

(c) a description of the extent and methodologies for compliance with the requirements set out in Articles 104 and 105;

(d) the highest, the lowest and the mean of the following:

(i) the daily value-at-risk measures over the reporting period and at the end of the reporting period;

(ii) the stressed value-at-risk measures over the reporting period and at the end of the reporting period;

(iii) the risk numbers for incremental default and migration risk and for the specific risk of the correlation trading portfolio over the reporting period and at the end of the reporting period;

(e) the elements of the own funds requirement as specified in Article 364;

(f) the weighted average liquidity horizon for each sub-portfolio covered by the internal models for incremental default and migration risk and for correlation trading;

▼M8

(g) a comparison of the daily end-of-day value-at-risk measures to the one-day changes of the portfolio's value by the end of the subsequent business day together with an analysis of any important overshooting during the reporting period.

▼C2

PART NINE

DELEGATED AND IMPLEMENTING ACTS

Article 456

Delegated acts

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 462, concerning the following matters:

(a) clarification of the definitions set out in Articles 4, 5, 142, 153, 192, 242, 272, 300, 381 and 411 to ensure uniform application of this Regulation;

(b) clarification of the definitions set out in Articles 4, 5, 142, 153, 192, 242, 272, 300, 381 and 411 in order to take account, in the application of this Regulation, of developments on financial markets;

(c) amendment of the list of exposure classes in Articles 112 and 147 in order to take account of developments on financial markets;

(d) the amount specified in point (c) of Article 123, Article 147(5)(a), Article 153(4) and Article 162(4), to take into account the effects of inflation;

(e) the list and classification of the off-balance sheet items in Annexes I and II, in order to take account of developments on financial markets;

▼M9

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▼C2

(h) amendment of the own funds requirements as set out in Articles 301 to 311 of this Regulation and Articles 50a to 50d of Regulation (EU) No 648/2012 to take account of developments or amendments of the international standards for exposures to a central counterparty;

(i) clarification of the terms referred to in the exemptions provided for in Article 400;

▼C2

(j) amendment of the capital measure and the total exposure measure of the leverage ratio referred to in Article 429(2) in order to correct any shortcomings discovered on the basis of the reporting referred to in Article 430(1) before the leverage ratio has to be published by institutions as set out in Article 451(1)(a);

▼M8

(k) amendments to the disclosure requirements laid down in Titles II and III of Part Eight to take account of developments or amendments of the international standards on disclosure.

▼C2

2. EBA shall monitor the own funds requirements for credit valuation adjustment risk and by 1 January 2015 submit a report to the Commission. In particular, the report shall assess:

(a) the treatment of CVA risk as a stand-alone charge versus an integrated component of the market risk framework;

(b) the scope of the CVA risk charge including the exemption in Article 482;

(c) eligible hedges;

(d) calculation of capital requirements of CVA risk.

On the basis of that report and where the findings are that such action is necessary the Commission shall also be empowered to adopt a delegated act in accordance with Article 462 to amend Article 381, Article 382(1) to (3) and Articles 383 to 386 concerning those items.

Article 457

Technical adjustments and corrections

The Commission shall be empowered to adopt delegated acts in accordance with Article 462, to make technical adjustment and corrections of non-essential elements in the following provisions in order to take account of developments in new financial products or activities, to make adjustments taking into account developments after the adoption of this Regulation in other legislative acts of the Union on financial services and accounting including accounting standards based on Regulation (EC) No 1606/2002:

(a) the own funds requirements for credit risk laid down in Articles 111 to 134, and in Articles 143 to 191;

(b) the effects of credit risk mitigation in accordance with Articles 193 to 241;

▼M5

(c) the own funds requirements for securitisation laid down in Articles 242 to 270a;

▼C2

(d) the own funds requirements for counterparty credit risks in accordance with Articles 272 to 311;

(e) the own funds requirements for operational risk laid down in Articles 315 to 324;

(f) the own funds requirements for market risk laid down in Articles 325 to 377;

(g) the own funds requirements for settlement risk laid down in Articles 378 and 379;

(h) the own funds requirements for credit valuation adjustment risk laid down in Articles 383, 384 and 386;

▼M8

(i) Part Two and Article 430 only as a result of developments in accounting standards or requirements which take account of Union legislative acts.

▼C2

Article 458

Macroprudential or systemic risk identified at the level of a Member State

1. Member States shall designate the authority in charge of the application of this Article. This authority shall be the competent authority or the designated authority.

▼M8

2. Where the authority designated in accordance with paragraph 1 of this Article identifies changes in the intensity of macroprudential or systemic risk in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State and which that authority considers that cannot be addressed by means of other macroprudential tools set out in this Regulation and in Directive 2013/36/EU as effectively as by implementing stricter national measures, it shall notify the Commission and the ESRB accordingly. The ESRB shall forward the notification to the European Parliament, to the Council and to EBA without delay.

The notification shall be accompanied by the following documents and include, where appropriate, relevant quantitative or qualitative evidence on:

(a) the changes in the intensity of macroprudential or systemic risk;

(b) the reasons why such changes could pose a threat to financial stability at national level or to the real economy;

(c) an explanation as to why the authority considers that the macroprudential tools set out in Articles 124 and 164 of this Regulation and Articles 133 and 136 of Directive 2013/36/EU would be less suitable and effective to deal with those risks than the draft national measures referred to in point (d) of this paragraph;

▼M8

(d) the draft national measures for domestically authorised institutions, or a subset of those institutions, intended to mitigate the changes in the intensity of risk and concerning:

(i) the level of own funds laid down in Article 92;

(ii) the requirements for large exposures laid down in Article 392 and Articles 395 to 403;

(iii) liquidity requirements laid down in Part Six;

(iv) risk weights for targeting asset bubbles in the residential property and commercial immovable property sector;

(v) the public disclosure requirements laid down in Part Eight;

(vi) the level of the capital conservation buffer laid down in Article 129 of Directive 2013/36/EU; or

(vii) intra-financial sector exposures;

(e) an explanation as to why the draft measures are considered by the authority designated in accordance with paragraph 1 to be suitable, effective and proportionate to address the situation; and

(f) an assessment of the likely positive or negative impact of the draft measures on the internal market based on information which is available to the Member State concerned.

▼C2

3. When authorised to apply national measures in accordance with this Article, the authorities determined in accordance with paragraph 1 shall provide relevant competent authorities or designated authorities in other Member States with all relevant information.

▼M8

4. The power to adopt an implementing act to reject the draft national measures referred to in point (d) of paragraph 2 is conferred on the Council, acting by qualified majority, on a proposal from the Commission.

Within one month of receipt of the notification referred to in paragraph 2, the ESRB and EBA shall provide their opinions on the matters referred to in points (a) to (f) of that paragraph to the Council, to the Commission and to the Member State concerned.

Taking utmost account of the opinions referred to in the second sub-paragraph and if there is robust, strong and detailed evidence that the measure will have a negative impact on the internal market that outweighs the financial stability benefits resulting in a reduction of the macroprudential or systemic risk identified, the Commission may, within one month, propose to the Council an implementing act to reject the draft national measures.

▼M8

In the absence of a Commission proposal within that period of one month, the Member State concerned may immediately adopt the draft national measures for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

The Council shall decide on the proposal by the Commission within one month after receipt of the proposal and state its reasons for rejecting or not rejecting the draft national measures.

The Council shall only reject the draft national measures if it considers that one or more of the following conditions are not met:

(a) the changes in the intensity of macroprudential or systemic risk are of such nature as to pose risk to financial stability at national level;

(b) the macroprudential tools set out in this Regulation and in Directive 2013/36/EU are less suitable or effective than the draft national measures to deal with the macroprudential or systemic risk identified;

(c) the draft national measures do not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole, thus forming or creating an obstacle to the functioning of the internal market; and

(d) the issue concerns only one Member State.

The assessment of the Council shall take into account the opinion of the ESRB and EBA and shall be based on the evidence presented in accordance with paragraph 2 by the authority designated in accordance with paragraph 1.

In the absence of a Council implementing act to reject the draft national measures within one month of receipt of the proposal by the Commission, the Member State concerned may adopt the measures and apply them for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

5. Other Member States may recognise the measures adopted in accordance with this Article and apply them to domestically authorised institutions, which have branches or have exposures located in the Member State authorised to apply the measure.

▼C2

6. Where Member States recognise the measures set in accordance with this Article, they shall notify the Council, the Commission, EBA, the ESRB and the Member State authorised to apply the measures.

7. When deciding whether to recognise the measures set in accordance with this Article, the Member State shall take into consideration the criteria set in paragraph 4.

8. The Member State authorised to apply the measures may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which do not recognise the measures.

▼M8

9. Before the expiry of the authorisation issued in accordance with paragraph 4, the Member State concerned shall, in consultation with the ESRB and EBA, review the situation and may adopt, in accordance with the procedure referred to in paragraph 4, a new decision for the extension of the period of application of national measures for up to two additional years each time. After the first extension, the Commission shall in consultation with the ESRB and EBA review the situation at least every two years thereafter.

10. Notwithstanding the procedure as set out in paragraphs 3 to 9 of this Article, Member States shall be allowed to increase the risk weights beyond those provided for in this Regulation by up to 25 %, for those exposures identified in points (d)(iv) and (d)(vii) of paragraph 2 of this Article and tighten the large exposure limit provided for in Article 395 by up to 15 % for a period of up to two years or until the macro-prudential or systemic risk ceases to exist if that occurs sooner, provided that the conditions and notification requirements laid down in paragraph 2 of this Article are met.

▼C2

Article 459

Prudential requirements

The Commission shall be empowered to adopt delegated acts in accordance with Article 462, to impose, for a period of one year, stricter prudential requirements for exposures where this is necessary to address changes in the intensity of microprudential and macroprudential risks which arise from market developments in the Union or outside the Union affecting all Member States, and where the instruments of this Regulation and Directive 2013/36/EU are not sufficient to address these risks, in particular upon the recommendation or opinion of the ESRB or EBA, concerning:

(a) the level of own funds laid down in Article 92;

(b) the requirements for large exposures laid down in Article 392 and Articles 395 to 403;

(c) the public disclosure requirements laid down in Articles 431 to 455.

The Commission, assisted by the ESRB shall, at least on an annual basis, submit to the European Parliament and the Council, a report on market developments potentially requiring the use of this Article.

Article 460

Liquidity

▼M8

1. The Commission is empowered to supplement this Regulation by adopting delegated acts in accordance with Article 462 to specify in detail the general requirement set out in Article 412(1). Delegated acts adopted in accordance with this paragraph shall be based on the items to be reported in accordance with Title II of Part Six and Annex III and shall specify under which circumstances competent authorities have to impose specific in- and outflow levels on institutions in order to capture specific risks to which they are exposed and shall respect the thresholds set out in paragraph 2 of this Article.

▼M8

In particular, the Commission is empowered to supplement this Regulation by adopting delegated acts specifying the detailed liquidity requirements for the purposes of the application of Article 8(3), Articles 411 to 416, 419, 422, 425, 428a, 428f, 428g, 428j to 428n, 428p, 428r, 428s, 428w, 428ae, 428ag, 428ah, 428ak and 451a.

▼C2

2. The liquidity coverage requirement referred to in Article 412 shall be introduced in accordance with the following phasing-in:

(a) 60 % of the liquidity coverage requirement in 2015;

(b) 70 % as from 1 January 2016;

(c) 80 % as from 1 January 2017;

(d) 100 % as from 1 January 2018.

For this purpose the Commission shall take into account the reports referred to in Article 509(1), (2) and (3) and international standards developed by international fora as well as Union specificities.

The Commission shall adopt the delegated act referred to in paragraph 1 by 30 June 2014. It shall enter into force by 31 December 2014, but shall not apply before 1 January 2015.

▼M8

3. The Commission is empowered to amend this Regulation by adopting delegated acts in accordance with Article 462 amending the list of products or services set out in Article 428f(2) if it considers that assets and liabilities directly linked to other products or services meet the conditions set out in Article 428f(1).

The Commission shall adopt the delegated act referred to in the first subparagraph by 28 June 2024.

▼C2

Article 461

Review of the phasing-in of the liquidity coverage requirement

1. EBA shall, after consulting the ESRB, by 30 June 2016 report to the Commission on whether the phase-in of the liquidity coverage requirement as specified in Article 460(2) should be amended. Such analysis shall take due account of market and international regulatory developments as well as Union specificities.

EBA shall in its report assess in particular a deferred introduction of the 100 % minimum binding standard, until 1 January 2019. The report shall take into account the annual reports referred to in Article 509(1), relevant market data and the recommendations of all competent authorities.

▼C2

2. Where necessary to address market and other developments, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 to alter the phase-in specified in Article 460 and defer until 2019 the introduction of a 100 % binding minimum standard for the liquidity coverage requirement set out in Article 412(1) and to apply in 2018 a 90 % binding minimum standard for the liquidity coverage requirement.

For the purposes of assessing the necessity of deferral the Commission shall take into account the report and assessment referred to in paragraph 1.

A delegated act adopted in accordance with this Article shall not apply before 1 January 2018 and shall enter into force by 30 June 2017.

▼M8

Article 461a

Alternative standardised approach for market risk

▼C7

For the purposes of the reporting requirements set out in Article 430b(1), the Commission is empowered to adopt delegated acts in accordance with Article 462, to amend this Regulation by making technical adjustments to Articles 325e, 325g to 325j, 325p, 325q, 325ae, 325ai, 325ak, 325am, 325ap to 325at, 325av, 325ax, and specify the risk weight of bucket 11 of Table 4 in Article 325ah and the risk weights of covered bonds issued by credit institutions in third countries in accordance with Article 325ah, and the correlation of covered bonds issued by credit institutions in third countries in accordance with Article 325aj of the alternative standardised approach set out in Chapter 1a of Title IV of Part Three, taking into account developments in international regulatory standards.

▼M8

The Commission shall adopt the delegated act referred to in paragraph 1 by 31 December 2019.

Article 462

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

▼C7

2. The power to adopt delegated acts referred to in Articles 244(6) and 245(6), in Articles 456, 457, 459, 460 and 461a shall be conferred on the Commission for an indeterminate period of time from 28 June 2013.

3. The delegation of power referred to in Articles 244(6) and 245(6), in Articles 456, 457, 459, 460 and 461a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.

▼C7

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 244(6) and 245(6), Articles 456, 457, 459, 460 and 461a shall enter into force only if no objection has been expressed by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

▼C2

Article 463

Objections to regulatory technical standards

Where the Commission adopts a regulatory technical standard pursuant to this Regulation which is the same as the draft regulatory technical standard submitted by EBA, the period during which the European Parliament and the Council may object to that regulatory technical standard shall be one month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month. By way of derogation from the second subparagraph of Article 13(1) of Regulation (EU) No 1093/2010, the period during which the European Parliament or the Council may object to that regulatory technical standard may, where appropriate, be further extended by one month.

Article 464

European Banking Committee

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC [1]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

[1] OJ L 3, 7.1.2004, p. 36.

▼C2

PART TEN

TRANSITIONAL PROVISIONS, REPORTS, REVIEWS AND AMENDMENTS

TITLE I

TRANSITIONAL PROVISIONS

CHAPTER 1

Own funds requirements, unrealised gains and losses measured at fair value and deductions

Section 1

Own funds requirements

Article 465

Own funds requirements

1. By way of derogation from points (a) and (b) of Article 92(1) the following own funds requirements shall apply during the period from 1 January 2014 to 31 December 2014:

(a) a Common Equity Tier 1 capital ratio of a level that falls within a range of 4 % to 4,5 %;

(b) a Tier 1 capital ratio of a level that falls within a range of 5,5 % to 6 %.

2. Competent authorities shall determine and publish the levels of the Common Equity Tier 1 and Tier 1 capital ratios in the ranges specified in paragraph 1 that institutions shall meet or exceed.

Article 466

First time application of International Financial Reporting Standards

By way of derogation from Article 24(2), competent authorities shall grant institutions which are required to effect the valuation of assets and off-balance sheet items and the determination of own funds in accordance with the international accounting standards as applicable under Regulation (EC) No 1606/2002 for the first time a lead time of 24 months for the implementation of the necessary internal processes and technical requirements.

Section 2

Unrealised gains and losses measured at fair value

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▼**M11**

Article 468

Temporary treatment of unrealised gains and losses measured at fair value through other comprehensive income in view of the COVID-19 pandemic

1. By way of derogation from Article 35, during the period from 1 January 2020 to 31 December 2022 (the ‘period of temporary treatment’), institutions may remove from the calculation of their Common Equity Tier 1 items the amount A, determined in accordance with the following formula:

$$A = a \cdot f$$

where:

a = the amount of unrealised gains and losses accumulated since 31 December 2019 accounted for as ‘fair value changes of debt instruments measured at fair value through other comprehensive income’ in the balance sheet, corresponding to exposures to central governments, to regional governments or to local authorities referred to in Article 115(2) of this Regulation and to public sector entities referred to in Article 116(4) of this Regulation, excluding those financial assets that are credit-impaired as defined in Appendix A to the Annex to Commission Regulation (EC) No 1126/2008 (‘Annex relating to IFRS 9’); and

f = the factor applicable for each reporting year during the period of temporary treatment in accordance with paragraph 2.

2. Institutions shall apply the following factors f to calculate the amount A referred in paragraph 1:

(a) 1 during the period from 1 January 2020 to 31 December 2020;

(b) 0,7 during the period from 1 January 2021 to 31 December 2021;

(c) 0,4 during the period from 1 January 2022 to 31 December 2022.

3. Where an institution decides to apply the temporary treatment set out in paragraph 1, it shall inform the competent authority of its decision at least 45 days before the remittance date for the reporting of the information based on that treatment. Subject to the prior permission of the competent authority, the institution may reverse its initial decision once during the period of temporary treatment. Institutions shall publicly disclose if they apply that treatment.

▼M11

4. Where an institution removes an amount of unrealised losses from its Common Equity Tier 1 items in accordance with paragraph 1 of this Article, it shall recalculate all requirements laid down in this Regulation and in Directive 2013/36/EU that are calculated using any of the following items:

(a) the amount of deferred tax assets that is deducted from Common Equity Tier 1 items in accordance with point (c) of Article 36(1) or risk weighted in accordance with Article 48(4);

(b) the amount of specific credit risk adjustments.

When recalculating the relevant requirement, the institution shall not take into account the effects that the expected credit loss provisions relating to exposures to central governments, to regional governments or to local authorities referred to in Article 115(2) of this Regulation and to public sector entities referred to in Article 116(4) of this Regulation, excluding those financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, have on those items.

5. During the periods set out in paragraph 2 of this Article, in addition to disclosing the information required in Part Eight, institutions that have decided to apply the temporary treatment set out in paragraph 1 of this Article shall disclose the amounts of own funds, Common Equity Tier 1 capital and Tier 1 capital, the total capital ratio, the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio, and the leverage ratio they would have in case they were not to apply that treatment.

▼C2

Section 3

Deductions

Sub-Section 1

Deductions from Common Equity Tier 1 items

Article 469

Deductions from Common Equity Tier 1 items

1. By way of derogation from Article 36(1), during the period from 1 January 2014 to 31 December 2017, the following shall apply:

(a) institutions shall deduct from Common Equity Tier 1 items the applicable percentage specified in Article 478 of the amounts required to be deducted pursuant to points (a) to (h) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences;

▼C2

(b) institutions shall apply the relevant provisions laid down in Article 472 to the residual amounts of items required to be deducted pursuant to points (a) to (h) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences;

(c) institutions shall deduct from Common Equity Tier 1 items the applicable percentage specified in Article 478 of the total amount required to be deducted pursuant to points (c) and (i) of Article 36(1) after applying Article 470;

(d) institutions shall apply the requirements laid down in Article 472(5) or (11), as applicable, to the total residual amount of items required to be deducted pursuant to points (c) and (i) of Article 36(1) after applying Article 470.

2. Institutions shall determine the portion of the total residual amount referred to in point (d) of paragraph 1, that is subject to Article 472(5), by dividing the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

(a) the amount of deferred tax assets that are dependent on future profitability and arise from temporary differences referred to in point (a) of Article 470(2);

(b) the sum of the amounts referred to in points (a) and (b) of Article 470(2).

3. Institutions shall determine the portion of the total residual amount referred to point (d) of paragraph 1 that is subject to Article 472(11) by dividing the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

(a) the amount of direct and indirect holdings of the Common Equity Tier 1 instruments referred to in point (b) of Article 470(2);

(b) the sum of the amounts referred to in points (a) and (b) of Article 470(2).

▼M7

Article 469a

Derogation from deductions from Common Equity Tier 1 items for non-performing exposures

By way of derogation from point (m) Article 36(1), institutions shall not deduct from Common Equity Tier 1 items the applicable amount of insufficient coverage for non-performing exposures where the exposure was originated prior to 26 April 2019.

Where the terms and conditions of an exposure which was originated prior to 26 April 2019 are modified by the institution in a way that increases the institution's exposure to the obligor, the exposure shall be considered as having been originated on the date when the modification applies and shall cease to be subject to the derogation provided for in the first subparagraph.

▼C2

Article 470

Exemption from deduction from Common Equity Tier 1 items

1. For the purposes of this Article, relevant Common Equity Tier 1 items shall comprise the Common Equity Tier 1 items of the institution calculated after applying the provisions of Articles 32 to 35 and making the deductions pursuant to points (a) to (h), (k)(ii) to (v) and (l) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences.

2. By way of derogation from Article 48(1), during the period from 1 January 2014 to 31 December 2017, institutions shall not deduct the items listed in points (a) and (b) of this paragraph which in aggregate are equal to or less than 15 % of relevant Common Equity Tier 1 items of the institution:

(a) deferred tax assets that are dependent on future profitability and arise from temporary differences and in aggregate are equal to or less than 10 % of relevant Common Equity Tier 1 items;

(b) where an institution has a significant investment in a financial sector entity, the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of that entity that in aggregate are equal to or less than 10 % of relevant Common Equity Tier 1 items.

3. By way of derogation from Article 48(4), the items exempt from deduction pursuant to paragraph 2 of this Article shall be risk weighted at 250 %. The items referred to in point (b) of paragraph 2 of this Article shall be subject to the requirements of Title IV of Part Three, as applicable.

Article 471

Exemption from Deduction of Equity Holdings in Insurance Companies from Common Equity Tier 1 Items

▼M8

1. By way of derogation from Article 49(1), during the period from 31 December 2018 to 31 December 2024, institutions may choose not to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies where the following conditions are met:

(a) the conditions set out in points (a), and (e) of Article 49(1);

(b) the competent authorities are satisfied with the level of risk control and financial analysis procedures specifically adopted by the institution in order to supervise the investment in the undertaking or holding company;

▼M8

(c) the equity holdings of the institution in the insurance undertaking, reinsurance undertaking or insurance holding company do not exceed 15 % of the Common Equity Tier 1 instruments issued by that insurance entity as at 31 December 2012 and during the period from 1 January 2013 to 31 December 2024;

(d) the amount of the equity holding which is not deducted does not exceed the amount held in the Common Equity Tier 1 instruments in the insurance undertaking, reinsurance undertaking or insurance holding company as at 31 December 2012.

▼C2

2. The equity holdings which are not deducted pursuant to paragraph 1 shall qualify as exposures and be risk weighted at 370 %.

Article 472

Items not deducted from Common Equity Tier 1

1. By way of derogation from point (c) of Article 33(1) and points (a) to (i) of Article 36(1), during the period from 1 January 2014 to 31 December 2017, institutions shall apply this Article to the residual amounts of items referred to in Article 468(4) and in points (b) and (d) of Article 469(1), as applicable.

2. The residual amount of the valuation adjustments to derivative liabilities arising from an institution's own credit risk shall not be deducted.

3. Institutions shall apply the following to the residual amount of losses of the current financial year referred to in point (a) of Article 36(1):

(a) losses that are material are deducted from Tier 1 items;

(b) losses that are not material are not deducted.

4. Institutions shall deduct the residual amount of the intangible assets referred to in point (b) of Article 36(1) from Tier 1 items.

5. The residual amount of the deferred tax assets referred to in point (c) of Article 36(1) shall not be deducted and shall be subject to a risk weight of 0 %.

6. The residual amount of the items referred to in point (d) of Article 36(1) shall be deducted half from Tier 1 items and half from Tier 2 items.

7. The residual amount of the assets of a defined benefit pension fund referred to in point (e) of Article 36(1) shall not be deducted from any element of own funds and shall be included in Common Equity Tier 1 items to the extent that amount would have been recognised as original own funds in accordance with the national transposition measures for points (a) to (ca) of Article 57 of Directive 2006/48/EC.

▼C2

8. Institutions shall apply the following to the residual amount of holdings of own Common Equity Tier 1 instruments referred to in point (f) of Article 36(1):

(a) the amount of direct holdings is deducted from Tier 1 items;

(b) the amount of indirect and synthetic holdings, including own Common Equity Tier 1 instruments that an institution could be obliged to purchase by virtue of an existing or contingent contractual obligation, is not deducted and is subject to a risk weight in accordance with Chapter 2 or 3 of Title II of Part Three and to the requirements laid down in Title IV of Part Three, as applicable.

9. Institutions shall apply the following to the residual amount of holdings of Common Equity Tier 1 instruments of a financial sector entity where the institution has reciprocal cross holdings with that entity referred to in point (g) of Article 36(1):

(a) where an institution does not have a significant investment in that financial sector entity, the amount of its holding of the Common Equity Tier 1 instruments of that entity is treated as falling under point (h) of Article 36(1);

(b) where an institution has a significant investment in that financial sector entity, the amount of its holdings of Common Equity Tier 1 instruments of that entity is treated as falling under point (i) of Article 36(1).

10. Institutions shall apply the following to the residual amounts of items referred to in point (h) of Article 36(1):

(a) the amounts required to be deducted that relate to direct holdings are deducted half from Tier 1 items and half from Tier 2 items;

(b) the amounts that relate to indirect and synthetic holdings are not deducted and are subject to a risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and to the requirements laid down in Title IV of Part Three, as applicable.

11. Institutions shall apply the following to the residual amounts of the items referred to in point (i) of Article 36(1):

(a) the amounts required to be deducted that relate to direct holdings are deducted half from Tier 1 items and half from Tier 2 items;

(b) the amounts that relate to indirect and synthetic holdings are not deducted and are subject to risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and to the requirements laid down in Title IV of Part Three, as applicable.

▼C2

Article 473

Introduction of amendments to IAS 19

1. By way of derogation from Article 481 during the period from 1 January 2014 until 31 December 2018, competent authorities may permit institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 to add to their Common Equity Tier 1 capital the applicable amount in accordance with paragraph 2 or 3 of this Article, as applicable, multiplied by the factor applied in accordance with paragraph 4.

2. The applicable amount shall be calculated by deducting from the sum derived in accordance with point (a) the sum derived in accordance with point (b):

(a) institutions shall determine the values of the assets of their defined benefit pension funds or plans, as applicable, in accordance with Regulation (EC) No 1126/2008 ([1]) as amended by Regulation (EU) No 1205/2011 ([2]). Institutions shall then deduct from the values of these assets the values of the obligations under the same funds or plans determined according to the same accounting rules;

(b) institutions shall determine the values of the assets of their defined pension funds or plans, as applicable, in accordance with the rules set out in Regulation (EC) No 1126/2008. Institutions shall then deduct from the values of those assets, the values of the obligations under the same funds or plans determined in accordance with the same accounting rules.

3. The amount determined in accordance with paragraph 2 shall be limited to the amount not required to be deducted from own funds, prior to 1 January 2014, under national transposition measures of Directive 2006/48/EC, insofar as those national transposition measures would be eligible for the treatment set out in Article 481 of this Regulation in the Member State concerned.

4. The following factors apply:

(a) 1 in the period from 1 January 2014 to 31 December 2014;

(b) 0,8 in the period from 1 January 2015 to 31 December 2015;

(c) 0,6 in the period from 1 January 2016 to 31 December 2016;

([1]) Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

([2]) Commission Regulation (EU) No 1205/2011 of 22 November 2011 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 7 (OJ L 305, 23.11.2011, p. 16).

▼C2

(d) 0,4 in the period from 1 January 2017 to 31 December 2017;

(e) 0,2 in the period from 1 January 2018 to 31 December 2018.

5. Institutions shall disclose the values of assets and liabilities in accordance with paragraph 2 in their published financial statements.

▼M4

Article 473a

Introduction of IFRS 9

▼M11

1. By way of derogation from Article 50 and until the end of the transitional periods set out in paragraphs 6 and 6a of this Article, the following may include in their Common Equity Tier 1 capital the amount calculated in accordance with this paragraph:

▼M4

(a) institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002;

(b) institutions that, pursuant to Article 24(2) of this Regulation, effect the valuation of assets and off-balance sheet items and the determination of own funds in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002;

(c) institutions that effect the valuation of assets and off-balance sheet items in conformity with accounting standards under Directive 86/635/EEC and that use an expected credit loss model that is the same as the one used in international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002.

▼M11

The amount referred to in the first subparagraph shall be calculated as the sum of the following:

(a) for exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three, the amount (AB_{SA}) calculated in accordance with the following formula:

$$AB_{SA} = \left(A_{2,SA} - t_1\right) \cdot f_1 + \left(A_{4,SA} - t_2\right) \cdot f_2 + \left(A_{SA}^{old} - t_3\right) \cdot f_1$$

where:

$A_{2,SA}$ = the amount calculated in accordance with paragraph 2;

$A_{4,SA}$ = the amount calculated in accordance with paragraph 4 based on the amounts calculated in accordance with paragraph 3;

$$A_{SA}^{old} = \max\left\{P_{1.1.2020}^{SA} - P_{1.1.2018}^{SA}; 0\right\};$$

▼**M11**

$P^{SA}_{1.1.2020}$ = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, on 1 January 2020;

$P^{SA}_{1.1.2018}$ = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, on 1 January 2018 or on the date of the initial application of IFRS 9, whichever is later;

f_1 = the applicable factor laid down in paragraph 6;

f_2 = the applicable factor laid down in paragraph 6a;

t_1 = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount $A_{2,SA}$;

t_2 = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount $A_{4,SA}$;

t_3 = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount A^{old}_{SA};

(b) for exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, the amount (AB_{IRB}) calculated in accordance with the following formula:

$$AB_{IRB} = \left(A_{2,IRB} - t_1\right) \cdot f_1 + \left(A_{4,IRB} - t_2\right) \cdot f_2 + \left(A^{old}_{IRB} - t_3\right) \cdot f_1$$

where:

$A_{2,IRB}$ = the amount calculated in accordance with paragraph 2 which is adjusted in accordance with point (a) of paragraph 5;

$A_{4,IRB}$ = the amount calculated in accordance with paragraph 4 based on the amounts calculated in accordance with paragraph 3 which are adjusted in accordance with points (b) and (c) of paragraph 5;

▼**M11**

$$A_{IRB}^{old} = \max\{P_{1.1.2020}^{IRB} - P_{1.1.2018}^{IRB}; 0\};$$

$P_{1.1.2020}^{IRB}$ = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation, on 1 January 2020. Where the calculation results in a negative number, the institution shall set the value of $P_{1.1.2020}^{IRB}$ to zero;

$P_{1.1.2018}^{IRB}$ = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, on 1 January 2018 or on the date of the initial application of IFRS 9, whichever is later, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation. Where the calculation results in a negative number, the institution shall set the value of $P_{1.1.2018}^{IRB}$ as equal to zero;

f_1 = the applicable factor laid down in paragraph 6;

f_2 = the applicable factor laid down in paragraph 6a;

t_1 = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount $A_{2,IRB}$;

t_2 = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount $A_{4,IRB}$;

▼M11

t_3 = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount A_{IRB}^{old}.

▼M4

2. Institutions shall calculate the amounts $A_{2,SA}$ and $A_{2,IRB}$ referred to, respectively, in points (a) and (b) of the second subparagraph of paragraph 1 as the greater of the amounts referred to in points (a) and (b) of this paragraph separately for their exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three and for their exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three:

(a) zero;

(b) the amount calculated in accordance with point (i) reduced by the amount calculated in accordance with point (ii):

(i) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of IFRS 9 as set out in the Annex to Commission Regulation (EC) No 1126/2008 ('Annex relating to IFRS 9') and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9 as of 1 January 2018 or on the date of initial application of IFRS 9;

(ii) the total amount of impairment losses on financial assets classified as loans and receivables, held-to-maturity investments and available-for-sale financial assets, as defined in paragraph 9 of IAS 39, other than equity instruments and units or shares in collective investment undertakings, determined in accordance with paragraphs 63, 64, 65, 67, 68 and 70 of IAS 39 as set out in the Annex to Regulation (EC) No 1126/2008 as of 31 December 2017 or the day before the date of initial application of IFRS 9.

3. Institutions shall calculate the amount by which the amount referred to in point (a) exceeds the amount referred to in point (b) separately for their exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three and for their exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three:

▼M11

(a) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, on the reporting date and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9;

▼M11

(b) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9 and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9, on 1 January 2020 or on the date of the initial application of IFRS 9, whichever is later.

▼M4

4. For exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three, where the amount specified in accordance with point (a) of paragraph 3 exceeds the amount specified in point (b) of paragraph 3, institutions shall set $A_{4,SA}$ as equal to the difference between those amounts, otherwise they shall set $A_{4,SA}$ as equal to zero.

For exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, where the amount specified in accordance with point (a) of paragraph 3, after applying point (b) of paragraph 5, exceeds the amount for these exposures as specified in point (b) of paragraph 3, after applying point (c) of paragraph 5, institutions shall set $A_{4,IRB}$ as equal to the difference between those amounts, otherwise they shall set $A_{4,IRB}$ as equal to zero.

5. For exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, institutions shall apply paragraphs 2 to 4 as follows:

(a) for the calculation of $A_{2,IRB}$ institutions shall reduce each of the amounts calculated in accordance with points (b)(i) and (ii) of paragraph 2 of this Article by the sum of expected loss amounts calculated in accordance with Article 158(5), (6) and (10) as of 31 December 2017 or the day before the date of initial application of IFRS 9. Where for the amount referred to in point (b)(i) of paragraph 2 of this Article the calculation results in a negative number, the institution shall set the value of that amount as equal to zero. Where for the amount referred to in point (b)(ii) of paragraph 2 of this Article the calculation results in a negative number, the institution shall set the value of that amount as equal to zero;

▼M11

(b) institutions shall replace the amount calculated in accordance with point (a) of paragraph 3 of this Article with the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, and, where Article 468 of this Regulation applies, excluding expected credit losses determined for

▼M11

exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation on the reporting date. Where the calculation results in a negative number, the institution shall set the value of the amount referred to in point (a) of paragraph 3 of this Article as equal to zero;

(c) institutions shall replace the amount calculated in accordance with point (b) of paragraph 3 of this Article with the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9, on 1 January 2020 or on the date of the initial application of IFRS 9, whichever is later, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation on 1 January 2020 or on the date of the initial application of IFRS 9, whichever is later. Where the calculation results in a negative number, the institution shall set the value of the amount referred to in point (b) of paragraph 3 of this Article as equal to zero.

6. Institutions shall apply the following factors f_I to calculate the amounts AB_{SA} and AB_{IRB} referred to in points (a) and (b) of the second subparagraph of paragraph 1 respectively:

(a) 0,7 during the period from 1 January 2020 to 31 December 2020;

(b) 0,5 during the period from 1 January 2021 to 31 December 2021;

(c) 0,25 during the period from 1 January 2022 to 31 December 2022;

(d) 0 during the period from 1 January 2023 to 31 December 2024.

Institutions whose financial year commences after 1 January 2020 but before 1 January 2021 shall adjust the dates in points (a) to (d) of the first subparagraph so that they correspond to their financial year, shall report the adjusted dates to their competent authority and shall publicly disclose them.

▼M11

Institutions which start to apply accounting standards as referred to in paragraph 1 on or after 1 January 2021 shall apply the relevant factors in accordance with points (b) to (d) of the first subparagraph starting with the factor corresponding to the year of the first application of those accounting standards.

6a. Institutions shall apply the following factors f_2 to calculate the amounts AB_{SA} and AB_{IRB} referred to in points (a) and (b) of the second subparagraph of paragraph 1 respectively:

(a) 1 during the period from 1 January 2020 to 31 December 2020;

(b) 1 during the period from 1 January 2021 to 31 December 2021;

(c) 0,75 during the period from 1 January 2022 to 31 December 2022;

(d) 0,5 during the period from 1 January 2023 to 31 December 2023;

(e) 0,25 during the period from 1 January 2024 to 31 December 2024.

Institutions whose financial year commences after 1 January 2020 but before 1 January 2021 shall adjust the dates in points (a) to (e) of the first subparagraph so that they correspond to their financial year, shall report the adjusted dates to their competent authority and shall publicly disclose them.

Institutions which start to apply accounting standards as referred to in paragraph 1 on or after 1 January 2021 shall apply the relevant factors in accordance with points (b) to (e) of the first subparagraph starting with the factor corresponding to the year of the first application of those accounting standards.

▼M4

7. Where an institution includes in its Common Equity Tier 1 capital an amount in accordance with paragraph 1 of this Article, it shall recalculate all requirements laid down in this Regulation and in Directive 2013/36/EU that use any of the following items by not taking into account the effects that the expected credit loss provisions that it included in its Common Equity Tier 1 capital have on those items:

(a) the amount of deferred tax assets that is deducted from Common Equity Tier 1 capital in accordance with point (c) of Article 36(1) or risk weighted in accordance with Article 48(4);

(b) the exposure value as determined in accordance with Article 111(1) whereby the specific credit risk adjustments by which the exposure value shall be reduced shall be multiplied by the following scaling factor (sf):

$$sf = 1 - (AB_{SA}/RA_{SA})$$

where:

AB_{SA} = the amount calculated in accordance with point (a) of the second subparagraph of paragraph 1;

RA_{SA} = the total amount of specific credit risk adjustments;

▼M4

(c) the amount of Tier 2 items calculated in accordance with point (d) of Article 62.

▼M11

7a. By way of derogation from point (b) of paragraph 7 of this Article, when recalculating the requirements laid down in this Regulation and in Directive 2013/36/EU, institutions may assign a risk weight of 100 % to the amount AB_{SA} referred to in point (a) of the second subparagraph of paragraph 1 of this Article. For the purposes of calculating the total exposure measure referred to in Article 429(4) of this Regulation, institutions shall add the amounts AB_{SA} and AB_{IRB} referred to in points (a) and (b) of the second subparagraph of paragraph 1 of this Article to the total exposure measure.

Institutions may choose only once whether to use the calculation set out in point (b) of paragraph 7 or the calculation set out in the first subparagraph of this paragraph. Institutions shall disclose their decision.

8. During the periods set out in paragraphs 6 and 6a of this Article, in addition to disclosing the information required in Part Eight, institutions that have decided to apply the transitional arrangements set out in this Article shall report to competent authorities and shall disclose the amounts of own funds, Common Equity Tier 1 capital and Tier 1 capital, the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio, the total capital ratio and the leverage ratio they would have in case they were not to apply this Article.

9. An institution shall decide whether to apply the arrangements set out in this Article during the transitional period and shall inform the competent authority of its decision by 1 February 2018. Where an institution has received the prior permission of the competent authority, it may reverse its decision during the transitional period. Institutions shall publicly disclose any decision taken in accordance with this subparagraph.

An institution that has decided to apply the transitional arrangements set out in this Article may decide not to apply paragraph 4 in which case it shall inform the competent authority of its decision by 1 February 2018. In such a case, the institution shall set $A_{4,SA}$, $A_{4,IRB}$, A_{SA}^{old}, A_{IRB}^{old}, t_2 and t_3 referred to in paragraph 1 as equal to zero. Where an institution has received the prior permission of the competent authority, it may reverse its decision during the transitional period. Institutions shall publicly disclose any decision taken in accordance with this subparagraph.

An institution that has decided to apply the transitional arrangements set out in this Article may decide not to apply paragraph 2 in which case it shall inform the competent authority of its decision without delay. In such a case, the institution shall set $A_{2,SA}$, $A_{2,IRB}$ and t_1 referred to in paragraph 1 as equal to zero. An institution may reverse its decision during the transitional period provided it has received the prior permission of the competent authority.

Competent authorities shall notify EBA at least on an annual basis of the application of this Article by institutions under their supervision.

▼M4

10. In accordance with Article 16 of Regulation (EU) No 1093/2010, the EBA shall issue guidelines by 30 June 2018 on the disclosure requirements laid down in this Article.

▼C2

Sub-Section 2

Deductions from Additional Tier 1 items

Article 474

Deductions from Additional Tier 1 items

By way of derogation from Article 56, during the period from 1 January 2014 to 31 December 2017, the following shall apply:

(a) institutions shall deduct from Additional Tier 1 items the applicable percentage specified in Article 478 of the amounts required to be deducted pursuant to Article 56;

(b) institutions shall apply the requirements laid down in Article 475 to the residual amounts of the items required to be deducted pursuant to Article 56.

Article 475

Items not deducted from Additional Tier 1 items

1. By way of derogation from Article 56, during the period from 1 January 2014 to 31 December 2017, the requirements laid down in this Article shall apply to the residual amounts referred to in point (b) of Article 474.

2. Institutions shall apply the following to the residual amount of the items referred to in point (a) of Article 56:

(a) direct holdings of own Additional Tier 1 instruments are deducted at book value from Tier 1 items;

(b) indirect and synthetic holdings of own Additional Tier 1 instruments, including own Additional Tier 1 instruments that an institution could be obliged to purchase by virtue of an existing or contingent contractual obligation, are not deducted and are risk weighted in accordance with Chapter 2 or 3 of Title II of Part Three and subject to the requirements of Title IV of Part Three, as applicable.

▼C2

3. Institutions shall apply the following to the residual amount of the items referred to in point (b) of Article 56:

(a) where an institution does not have a significant investment in a financial sector entity with which it has reciprocal cross holdings, the amount of its direct, indirect and synthetic holdings of those Additional Tier 1 instruments of that entity is treated as falling within point (c) of Article 56;

(b) where the institution has a significant investment in a financial sector entity with which it has reciprocal cross holdings, the amount of its direct, indirect and synthetic holdings of those Additional Tier 1 instruments of that entity is treated as falling within point (d) of Article 56.

4. Institutions shall apply the following to the residual amount of the items referred to in points (c) and (d) of Article 56:

(a) the amount relating to direct holdings required to be deducted in accordance with points (c) and (d) of Article 56 are deducted half from Tier 1 items and half from Tier 2 items;

(b) the amount relating to indirect and synthetic holdings required to be deducted in accordance with points (c) and (d) of Article 56 shall not be deducted and shall be subject to a risk weight in accordance with Chapter 2 or 3 of Title II of Part Three and to the requirements of Title IV of Part Three, as applicable.

Sub-Section 3

Deductions from Tier 2 items

Article 476

Deductions from Tier 2 items

By way of derogation from Article 66, during the period from 1 January 2014 to 31 December 2017, the following shall apply:

(a) institutions shall deduct from Tier 2 items the applicable percentage specified in Article 478 of the amounts required to be deducted pursuant to Article 66;

(b) institutions shall apply the requirements laid down in Article 477 to the residual amounts required to be deducted pursuant to Article 66.

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Article 477

Deductions from Tier 2 items

1. By way of derogation from Article 66, during the period from 1 January 2014 to 31 December 2017, the requirements laid down in this Article shall apply to the residual amounts referred to in point (b) of Article 476.

2. Institutions shall apply the following to the residual amount of items referred to in point (a) of Article 66:

(a) direct holdings of own Tier 2 instruments are deducted at book value from Tier 2 items;

(b) indirect and synthetic holdings of own Tier 2 instruments, including own Tier 2 instruments that an institution could be obliged to purchase by virtue of an existing or contingent contractual obligation are not deducted and are risk weighted in accordance with Chapter 2 or 3 of Title II of Part Three and subject to the requirements of Title IV of Part Three, as applicable.

3. Institutions shall apply the following to the residual amount of the items referred to in point (b) of Article 66:

(a) where an institution does not have a significant investment in a financial sector entity with which it has reciprocal cross holdings, the amount of its direct, indirect and synthetic holdings of the Tier 2 instruments of that entity is treated as falling within point (c) of Article 66;

(b) where the institution has a significant investment in a financial sector entity with which it has reciprocal cross holdings, the amount of direct, indirect and synthetic holdings of the Tier 2 instruments of that financial sector entity are treated as falling within point (d) of Article 66.

4. Institutions shall apply the following to the residual amount of the items referred to in points (c) and (d) of Article 66:

(a) the amount relating to direct holdings that is required to be deducted in accordance with points (c) and (d) of Article 66 is deducted half from Tier 1 items and half from Tier 2 items;

(b) the amount relating to indirect and synthetic holdings that is required to be deducted in accordance with points (c) and (d) of Article 66 is not be deducted and is subject to a risk weight under Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

▼M15

Sub-Section 3a

Deductions from eligible liabilities items

Article 477a

Deductions from eligible liabilities items

1. By way of derogation from Article 72e(4) and until 31 December 2024, the resolution authority of a parent institution, after duly considering the opinion of the resolution authorities or relevant third-country authorities of any subsidiaries concerned, may permit that the adjusted amount m_i be calculated by using the following definition of r_i, and w_i:

r_i = the total risk-based capital requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered own funds under this Regulation;

w_i = the total non-risk-based Tier 1 capital requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered Tier 1 capital under this Regulation.

2. The resolution authority may grant the permission referred to in paragraph 1 where the subsidiary is established in a third country that does not yet have in place an applicable local resolution regime if at least one of the following conditions is met:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of assets from the subsidiary to the parent institution;

(b) the relevant third-country authority of the subsidiary has provided an opinion to the resolution authority of the parent institution that assets equal to the amount to be deducted by the subsidiary in accordance with Article 72e(4), second subparagraph, could be transferred from the subsidiary to the parent institution.

▼C2

Sub-Section 4

Applicable percentages for deduction

Article 478

Applicable percentages for deduction from Common Equity Tier 1, Additional Tier 1 and Tier 2 items

1. The applicable percentage for the purposes of Article 468(4), points (a) and (c) of Article 469(1), point (a) of Article 474 and point (a) of Article 476 shall fall within the following ranges:

▼C2

(a) 20 % to 100 % for the period from 1 January 2014 to 31 December 2014;

(b) 40 % to 100 % for the period from 1 January 2015 to 31 December 2015;

(c) 60 % to 100 % for the period from 1 January 2016 to 31 December 2016;

(d) 80 % to 100 % for the period from 1 January 2017 to 31 December 2017.

2. By way of derogation from paragraph 1, for the items referred in point (c) of Article 36(1) that existed prior to 1 January 2014, the applicable percentage for the purpose of point (c) of Article 469(1) shall fall within the following ranges:

(a) 0 % to 100 % for the period from 1 January 2014 to 31 December 2014;

(b) 10 % to 100 % for the period from 1 January 2015 to 31 December 2015;

(c) 20 % to 100 % for the period from 1 January 2016 to 31 December 2016;

(d) 30 % to 100 % for the period from 1 January 2017 to 31 December 2017;

(e) 40 % to 100 % for the period from 1 January 2018 to 31 December 2018;

(f) 50 % to 100 % for the period from 1 January 2019 to 31 December 2019;

(g) 60 % to 100 % for the period from 1 January 2020 to 31 December 2020;

(h) 70 % to 100 % for the period from 1 January 2021 to 31 December 2021;

(i) 80 % to 100 % for the period from 1 January 2022 to 31 December 2022;

(j) 90 % to 100 % for the period from 1 January 2023 to 31 December 2023.

3. Competent authorities shall determine and publish an applicable percentage in the ranges specified in paragraphs 1 and 2 for each of the following deductions:

▼C2

(a) the individual deductions required pursuant to points (a) to (h) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences;

(b) the aggregate amount of deferred tax assets that rely on future profitability and arise from temporary differences and the items referred to in point (i) of Article 36(1) that is required to be deducted pursuant to Article 48;

(c) each deduction required pursuant to points (b) to (d) of Article 56;

(d) each deduction required pursuant to points (b) to (d) of Article 66.

Section 4

minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries

Article 479

Recognition in consolidated Common Equity Tier 1 capital of instruments and items that do not qualify as minority interests

1. By way of derogation from Title II of Part Two, during the period from 1 January 2014 to 31 December 2017, recognition in consolidated own funds of the items that would qualify as consolidated reserves in accordance with national transposition measures for Article 65 of Directive 2006/48/EC that do not qualify as consolidated Common Equity Tier 1 capital for any of the following reasons shall be determined by the competent authorities in accordance with paragraphs 2 and 3 of this Article:

(a) the instrument does not qualify as a Common Equity Tier 1 instrument, and the related retained earnings and share premium accounts consequently do not qualify as consolidated Common Equity Tier 1 items;

(b) the items do not qualify as a result of Article 81(2);

(c) the items do not qualify because the subsidiary is not an institution or an entity that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;

(d) the items do not qualify because the subsidiary is not included fully in the consolidation pursuant to Chapter 2 of Title II of Part One.

▼C2

2. The applicable percentage of the items referred to in paragraph 1 that would have qualified as consolidated reserves in accordance with the national transposition measures for Article 65 of Directive 2006/48/EC shall qualify as consolidated Common Equity Tier 1 capital.

3. For the purposes of paragraph 2, the applicable percentages shall fall within the following ranges:

(a) 0 % to 80 % for the period from 1 January 2014 to 31 December 2014;

(b) 0 % to 60 % for the period from 1 January 2015 to 31 December 2015;

(c) 0 % to 40 % for the period from 1 January 2016 to 31 December 2016;

(d) 0 % to 20 % for the period from 1 January 2017 to 31 December 2017.

4. Competent authorities shall determine and publish the applicable percentage in the ranges specified in paragraph 3.

Article 480

Recognition in consolidated own funds of minority interests and qualifying Additional Tier 1 and Tier 2 capital

1. By way of derogation from point (b) of Article 84(1), point (b) of Article 85(1) and point (b) of Article 87(1), during the period from 1 January 2014 to 31 December 2017, the percentages referred to in those Articles shall be multiplied by an applicable factor.

2. For the purposes of paragraph 1, the applicable factor shall fall within the following ranges:

(a) 0,2 to 1 in the period from 1 January 2014 to 31 December 2014;

(b) 0,4 to 1 in the period from 1 January 2015 to 31 December 2015;

(c) 0,6 to 1 in the period from 1 January 2016 to 31 December 2016; and

(d) 0,8 to 1 in the period from 1 January 2017 to 31 December 2017.

▼C2

3. Competent authorities shall determine and publish the value of the applicable factor in the ranges specified in paragraph 2.

Section 5

Additional filters and deductions

Article 481

Additional filters and deductions

1. By way of derogation from Articles 32 to 36, 56 and 66, during the period from 1 January 2014 to 31 December 2017, institutions shall make adjustments to include in or deduct from Common Equity Tier 1 items, Tier 1 items, Tier 2 items or own funds items the applicable percentage of filters or deductions required under national transposition measures for Articles 57, 61, 63, 63a, 64 and 66 of Directive 2006/48/EC, and for Articles 13 and 16 of Directive 2006/49/EC, and which are not required in accordance with Part Two of this Regulation.

2. By way of derogation from Article 36(1)(i) and Article 49(1), during the period from the 1 January 2014 to 31 December 2014, competent authorities may require or permit institutions to apply the methods referred to in Article 49(1) where the requirements laid down in point (b) of Article 49(1) are not met, rather than the deduction required pursuant to Article 36(1). In such cases, the proportion of holdings of the own funds instruments of a financial sector entity in which the parent undertaking has a significant investment that is not required to be deducted in accordance with Article 49(1) shall be determined by the applicable percentage referred to in paragraph 4 of this Article. The amount that is not deducted shall be subject to the requirements of Article 49(4), as applicable.

3. For the purposes of paragraph 1, the applicable percentage shall fall within the following ranges:

(a) 0 % to 80 % for the period from 1 January 2014 to 31 December 2014;

(b) 0 % to 60 % for the period from 1 January 2015 to 31 December 2015;

(c) 0 % to 40 % for the period from 1 January 2016 to 31 December 2016;

(d) 0 % to 20 % for the period from 1 January 2017 to 31 December 2017.

4. For the purpose of paragraph 2, the applicable percentage shall fall between 0 % and 50 % for the period from 1 January 2014 to 31 December 2014.

▼C2

5. For each filter or deduction referred to in paragraphs 1 and 2, competent authorities shall determine and publish the applicable percentages in the ranges specified in paragraphs 3 and 4.

6. EBA shall develop draft regulatory technical standards to specify the conditions according to which competent authorities shall determine whether adjustments made to own funds, or elements thereof, in accordance with national transposition measures for Directive 2006/48/EC or Directive 2006/49/EC that are not included in Part Two of this Regulation are, for the purposes of this Article, to be made to Common Equity Tier 1 items, Additional Tier 1 items, Tier 1 items, Tier 2 items or own funds.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 482

Scope of application for derivatives transactions with pension funds

In respect of those transactions referred to in Article 89 of Regulation (EU) No 648/2012 and entered into with a pension scheme arrangement as defined in Article 2 of that Regulation, institutions shall not calculate own funds requirements for CVA risk as provided for in Article 382(4)(c) of this Regulation.

CHAPTER 2

Grandfathering of capital instruments

Section 1

Instruments constituting State aid

Article 483

Grandfathering of State aid instruments

1. By way of derogation from Articles 26 to 29, 51, 52, 62 and 63, during the period from 1 January 2014 to 31 December 2017 this Article applies to capital instruments and items where the following conditions are met:

(a) the instruments were issued prior to 1 January 2014;

(b) the instruments were issued within the context of recapitalisation measures pursuant to State aid rules. Insofar as part of the instruments are privately subscribed, they must be issued prior to 30 June 2012 and in conjunction with those parts that are subscribed by the Member State;

▼C2

(c) the instruments were considered compatible with the internal market by the Commission under Article 107 TFEU.

Where the instruments are subscribed by both the Member State and private investors and there is a partial redemption of the instruments subscribed by the Member State, a corresponding share of the privately subscribed part of the instruments shall be grandfathered in accordance with Article 484. When all the instruments subscribed by the Member State have been redeemed, the remaining instruments subscribed by private investors shall be grandfathered in accordance with Article 484.

2. Instruments that qualified in accordance with the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 instruments notwithstanding either of the following:

(a) the conditions laid down in Article 28 of this Regulation are not met;

(b) the instruments were issued by an undertaking referred to in Article 27 of this Regulation and the conditions laid down in Article 28 of this Regulation or, where applicable, Article 29 of this Regulation are not met.

3. Instruments referred to in point (c) of paragraph 1 of this Article that do not qualify under national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 instruments notwithstanding the fact that the requirements of point (a) or (b) of paragraph 2 of this Article are not met, provided that the requirements of paragraph 8 of this Article are met.

Instruments that qualify as Common Equity Tier 1 pursuant to the first subparagraph shall not qualify as Additional Tier 1 instruments or Tier 2 instruments under paragraph 5 or 7.

4. Instruments that qualified in accordance with the national transposition measures for point (ca) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Additional Tier 1 instruments notwithstanding that the conditions laid down in Article 52(1) of this Regulation are not met.

5. Instruments referred to in point (c) of paragraph 1 of this Article that do not qualify under the national transposition measures for point (ca) of Article 57 of Directive 2006/48/EC shall qualify as Additional Tier 1 instruments notwithstanding that the conditions laid down in Article 52(1) of this Regulation are not met, provided that the requirements of paragraph 8 of this Article are met.

Instruments that qualify as Additional Tier 1 instruments pursuant to the first subparagraph shall not qualify as Common Equity Tier 1 instruments or Tier 2 instruments under paragraph 3 or 7.

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6. Items that qualified in accordance with national transposition measures for points (f), (g) or (h) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Tier 2 instruments notwithstanding that the items are not referred to in Article 62 of this Regulation or that the conditions laid down in Article 63 of this Regulation are not met.

7. Instruments referred to in point (c) of paragraph 1 of this Article that do not qualify under the national transposition measures for point (f), (g) or (h) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Tier 2 instruments notwithstanding that the items are not referred to in Article 62 of this Regulation or that the conditions laid down in Article 63 of this Regulation are not met, provided that the conditions in paragraph 8 of this Article are met.

Instruments that qualify as Tier 2 instruments pursuant to the first subparagraph shall not qualify as Common Equity Tier 1 instruments or Additional Tier 1 instruments under paragraph 3 or 5.

8. Instruments referred to paragraphs 3, 5 and 7 may qualify as own funds instruments referred to in those paragraphs only where the condition in point (a) of paragraph 1 is met and where they are issued by institutions that are incorporated in a Member State that is subject to an Economic Adjustment Programme, and the issuance of those instruments is agreed or eligible under that programme.

Section 2

Instruments not constituting State aid

Sub-Section 1

Grandfathering eligibility and limits

Article 484

Eligibility for grandfathering of items that qualified as own funds under national transposition measures for Directive 2006/48/EC

1. This Article shall apply only to instruments and items that were issued on or prior to 31 December 2011 and that were eligible as own funds on 31 December 2011 and are not those referred to in Article 483(1).

2. By way of derogation from Articles 26 to 29, 51, 52, 62 and 63, this Article shall apply from 1 January 2014 to 31 December 2021.

3. Subject to Article 485 of this Regulation and to the limit specified in Article 486(2) thereof, capital within the meaning of Article 22 of Directive 86/635/EEC, and the related share premium accounts, that qualified as original own funds under the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 items notwithstanding that the conditions laid down in Article 28 or, where applicable, Article 29 of this Regulation are not met.

▼C2

4. Subject to the limit specified Article 486(3) of this Regulation, instruments, and the related share premium accounts, that qualified as original own funds under national transposition measures for point (ca) of Article 57 and Article 154(8) and (9) of Directive 2006/48/EC shall qualify as Additional Tier 1 items, notwithstanding that the conditions laid down in Article 52 of this Regulation are not met.

5. Subject to the limits specified in Article 486(4) of this Regulation, items, and the related share premium accounts, that qualified under national transposition measures for points (e), (f), (g) or (h) of Article 57 of Directive 2006/48/EC shall qualify as Tier 2 items, notwithstanding that those items are not included in Article 62 of this Regulation or that the conditions laid down in Article 63 of this Regulation are not met.

Article 485

Eligibility for inclusion in the Common Equity Tier 1 of share premium accounts related to items that qualified as own funds under national transposition measures for Directive 2006/48/EC

1. This Article shall apply only to instruments that were issued prior to 31 December 2010 and are not those referred to in Article 483(1).

2. Share premium accounts related to capital within the meaning of Article 22 of Directive 86/635/EEC that qualified as original own funds under the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 items if they meet the conditions laid down in points (i) and (j) of Article 28 of this Regulation.

Article 486

Limits for grandfathering of items within Common Equity Tier 1, Additional Tier 1 and Tier 2 items

1. From 1 January 2014 to 31 December 2021, the extent to which instruments and items referred to in Article 484 shall qualify as own funds shall be limited in accordance with this Article.

2. The amount of items referred to in Article 484(3) that shall qualify as Common Equity Tier 1 items is limited to the applicable percentage of the sum of the amounts specified in points (a) and (b) of this paragraph:

(a) the nominal amount of capital referred to in Article 484(3) that were in issue on 31 December 2012;

(b) the share premium accounts related to the items referred to in point (a).

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3. The amount of items referred to in Article 484(4) that shall qualify as Additional Tier 1 items is limited to the applicable percentage multiplied by the result of subtracting from the sum of the amounts specified in points (a) and (b) of this paragraph the sum of the amounts specified in points (c) to (f) of this paragraph:

(a) the nominal amount of instruments referred to in Article 484(4), that remained in issue on 31 December 2012;

(b) the share premium accounts related to the instruments referred to in point (a);

(c) the amount of instruments referred to in Article 484(4) which on 31 December 2012 exceeded the limits specified in the national transposition measures for point (a) of Article 66(1) and Article 66(1a) of Directive 2006/48/EC;

(d) the share premium accounts related to the instruments referred to in point (c);

(e) the nominal amount of instruments referred to Article 484(4) that were in issue on 31 December 2012 but do not qualify as Additional Tier 1 instruments pursuant to Article 489(4);

(f) the share premium accounts related to the instruments referred to in point (e).

4. The amount of items referred to in Article 484(5) that shall qualify as Tier 2 items is limited to the applicable percentage of the result of subtracting from the sum of the amounts specified in points (a) to (d) of this paragraph the sum of amounts specified in points (e) to (h) of this paragraph:

(a) the nominal amount of instruments referred to in Article 484(5) that remained in issue on 31 December 2012;

(b) the share premium accounts related to the instruments referred to in point (a);

(c) the nominal amount of subordinated loan capital that remained in issue on 31 December 2012, reduced by the amount required pursuant to national transposition measures for point (c) of Article 64(3) of Directive 2006/48/EC;

(d) the nominal amount of items referred to in Article 484(5), other than the instruments and subordinated loan capital referred to in points (a) and (c) of this paragraph, that were in issue on 31 December 2012;

(e) the nominal amount of instruments and items referred to in Article 484(5) that were in issue on 31 December 2012 that exceeded the limits specified in the national transposition measures for point (a) of Article 66(1) of Directive 2006/48/EC;

(f) the share premium accounts related to the instruments referred to in point (e);

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(g) the nominal amount of instruments referred to in Article 484(5) that were in issue on 31 December 2012 that do not qualify as Tier 2 items pursuant to Article 490(4);

(h) the share premium accounts related to the instruments referred to in point (g).

5. For the purposes of this Article, the applicable percentages referred to in paragraphs 2 to 4 shall fall within the following ranges:

(a) 60 % to 80 % during the period from 1 January 2014 to 31 December 2014;

(b) 40 % to 70 % during the period from 1 January 2015 to 31 December 2015;

(c) 20 % to 60 % during the period from 1 January 2016 to 31 December 2016;

(d) 0 % to 50 % during the period from 1 January 2017 to 31 December 2017;

(e) 0 % to 40 % during the period from 1 January 2018 to 31 December 2018;

(f) 0 % to 30 % during the period from 1 January 2019 to 31 December 2019;

(g) 0 % to 20 % during the period from 1 January 2020 to 31 December 2020;

(h) 0 % to 10 % during the period from 1 January 2021 to 31 December 2021.

6. Competent authorities shall determine and publish the applicable percentages in the ranges specified in paragraph 5.

Article 487

Items excluded from grandfathering in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds

1. From 1 January 2014 to 31 December 2021, institutions may, by way of derogation from Articles 51, 52, 62 and 63, treat as items referred to in Article 484(4), capital, and the related share premium accounts, referred to in Article 484(3) that are excluded from Common Equity Tier 1 items because they exceed the applicable percentage specified in Article 486(2), to the extent that the inclusion of that capital and the related share premium accounts, does not exceed the applicable percentage limit referred to in Article 486(3).

▼C2

2. From 1 January 2014 to 31 December 2021, institutions may, by way of derogation from Articles 51, 52, 62 and 63, treat the following as items referred to in Article 484(5), to the extent that their inclusion does not exceed the applicable percentage limit referred to in Article 486(4):

(a) capital, and the related share premium accounts, referred to in Article 484(3) that are excluded from Common Equity Tier 1 items because they exceed the applicable percentage specified in Article 486(2);

(b) instruments, and the related share premium accounts, referred to in Article 484(4) that exceed the applicable percentage referred to in Article 486(3).

3. EBA shall develop draft regulatory technical standards to specify the conditions for treating own funds instruments referred to in paragraphs 1 and 2 as falling under Article 486(4) or (5) during the period from 1 January 2014 to 31 December 2021.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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

Article 488

Amortisation of items grandfathered as Tier 2 items

The items referred to in Article 484(5) that qualify as Tier 2 items referred to in Article 484(5) or Article 486(4) shall be subject to the requirements laid down in Article 64.

Sub-Section 2

Inclusion of instruments with a call and incentive to redeem in additional Tier 1 and Tier 2 items

Article 489

Hybrid instruments with a call and incentive to redeem

1. From 1 January 2014 to 31 December 2021, instruments referred to in Article 484(4) that include in their terms and conditions a call with an incentive for them to be redeemed by the institution shall, by way of derogation from Articles 51 and 52, be subject to this Article.

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2. The instruments shall qualify as Additional Tier 1 instruments provided that the following conditions are met:

(a) the institution was able to exercise a call with an incentive to redeem only prior to 1 January 2013;

(b) the institution did not exercise the call;

(c) the conditions laid down in Article 52 are met from 1 January 2013.

3. The instruments shall qualify as Additional Tier 1 instruments with their recognition reduced in accordance with Article 484(4) until the date of their effective maturity and thereafter shall qualify as Additional Tier 1 items without limit provided that:

(a) the institution was able to exercise a call with an incentive to redeem only on or after 1 January 2013;

(b) the institution did not exercise the call on the date of the effective maturity of the instruments;

(c) the conditions laid down in Article 52 are met from the date of the effective maturity of the instruments.

4. The instruments shall not qualify as Additional Tier 1 instruments, and shall not be subject to Article 484(4), from 1 January 2014 where the following conditions are met:

(a) the institution was able to exercise a call with an incentive to redeem between 31 December 2011 and 1 January 2013;

(b) the institution did not exercise the call on the date of the effective maturity of the instruments;

(c) the conditions laid down in Article 52 are not met from the date of the effective maturity of the instruments.

5. The instruments shall qualify as Additional Tier 1 instruments with their recognition reduced in accordance with Article 484(4) until the date of their effective maturity, and shall not qualify as Additional Tier 1 instruments thereafter, where the following conditions are met:

(a) the institution was able to exercise a call with an incentive to redeem on or after 1 January 2013;

(b) the institution did not exercise the call on the date of the effective maturity of the instruments;

(c) the conditions laid down in Article 52 are not met from the date of the effective maturity of the instruments.

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6. The instruments shall qualify as Additional Tier 1 instruments in accordance with Article 484(4) where the following conditions are met:

(a) the institution was able to exercise a call with an incentive to redeem only prior to or on 31 December 2011;

(b) the institution did not exercise the call on the date of the effective maturity of the instruments;

(c) the conditions laid down in Article 52 were not met from the date of the effective maturity of the instruments.

Article 490

Tier 2 items with an incentive to redeem

1. By way of derogation from Articles 62 and 63, during the period from 1 January 2014 to 31 December 2021, items referred to in Article 484(5) that qualified under the national transposition measures for point (f) or (h) of Article 57 of Directive 2006/48/EC and include in their terms and conditions a call with an incentive for them to be redeemed by the institution shall be subject to this Article.

2. The items shall qualify as Tier 2 instruments provided that:

(a) the institution was able to exercise a call with an incentive to redeem only prior to 1 January 2013;

(b) the institution did not exercise the call;

(c) from 1 January 2013 the conditions laid down in Article 63 are met.

3. The items shall qualify as Tier 2 items in accordance with Article 484(5) until the date of their effective maturity, and shall qualify thereafter as Tier 2 items without limit, provided that the following conditions are met:

(a) the institution was able to exercise a call with an incentive to redeem only on or after 1 January 2013;

(b) the institution did not exercise the call on the date of the effective maturity of the items;

(c) the conditions laid down in Article 63 are met from the date of the effective maturity of the items.

4. The items shall not qualify as Tier 2 items from 1 January 2014 where the following conditions are met:

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(a) the institution was able to exercise a call with an incentive to redeem only between 31 December 2011 and 1 January 2013;

(b) the institution did not exercise the call on the date of the effective maturity of the items;

(c) the conditions laid down in Article 63 are not met from the date of the effective maturity of the items.

5. The items shall qualify as Tier 2 items with their recognition reduced in accordance with Article 484(5) until the date of their effective maturity, and shall not qualify as Tier 2 items thereafter, where:

(a) the institution was able to exercise a call with an incentive to redeem on or after 1 January 2013;

(b) the institution did not exercise the call on the date of their effective maturity;

(c) the conditions set out in Article 63 are not met from the date of effective maturity of the items.

6. The items shall qualify as Tier 2 items in accordance with Article 484(5) where:

(a) the institution was able to exercise a call with an incentive to redeem only prior to or on 31 December 2011;

(b) the institution did not exercise the call on the date of the effective maturity of the items;

(c) the conditions laid down in Article 63 are not met from the date of the effective maturity of the items.

Article 491

Effective maturity

For the purposes of Articles 489 and 490, effective maturity shall be determined as follows:

(a) for the items referred to in paragraphs 3 and 5 of those Articles, the date of the first call with an incentive to redeem occurring on or after 1 January 2013;

(b) for the items referred to in paragraph 4 of those Articles, the date of the first call with an incentive to redeem occurring between 31 December 2011 and 1 January 2013;

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(c) for the items referred to in paragraph 6 of those Articles, the date of the first call with an incentive to redeem prior to 31 December 2011.

CHAPTER 3

Transitional provisions for disclosure of own funds

Article 492

Disclosure of own funds

1. Institutions shall apply this Article during the period from 1 January 2014 to 31 December 2021.

2. From 1 January 2014 to 31 December 2015, institutions shall disclose the extent to which the level of Common Equity Tier 1 capital and Tier 1 capital exceed the requirements laid down in Article 465.

3. From 1 January 2014 to 31 December 2017, institutions shall disclose the following additional information about their own funds:

(a) the nature and effect on Common Equity Tier 1 capital, Additional Tier 1 capital, Tier 2 capital and own funds of the individual filters and deductions applied in accordance with Articles 467 to 470, 474, 476 and 479;

(b) the amounts of minority interests and Additional Tier 1 and Tier 2 instruments, and related retained earnings and share premium accounts, issued by subsidiaries that are included in consolidated Common Equity Tier 1 capital, Additional Tier 1 capital, Tier 2 capital and own funds in accordance with 4 of Chapter 1;

(c) the effect on Common Equity Tier 1 capital, Additional Tier 1 capital, Tier 2 capital and own funds of the individual filters and deductions applied in accordance with Article 481;

(d) the nature and amount of items that qualify as Common Equity Tier 1 items, Tier 1 items and Tier 2 items by virtue of applying the derogations specified in Section 2 of Chapter 2.

4. From 1 January 2014 to 31 December 2021, institutions shall disclose the amount of instruments that qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments by virtue of applying Article 484.

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5. EBA shall develop draft implementing technical standards to specify uniform templates for disclosure made in accordance with this Article. The templates shall include the items listed in points (a), (b), (d) and (e) of Article 437(1), as amended by Chapters 1 and 2 of this Title.

EBA shall submit those draft implementing technical standards to the Commission by 28 July 2013.

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

CHAPTER 4

Large exposures, own funds requirements, leverage and the Basel I Floor

Article 493

Transitional provisions for large exposures

1. ►M9 Until 26 June 2021, the provisions on large exposures as laid down in Articles 387 to 403 of this Regulation shall not apply to investment firms, the main business of which consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points (5), (6), (7), (9), (10) and (11) of Section C of Annex I to Directive 2014/65/EU and to which Directive 2004/39/EC of the European Parliament and of the Council [1] did not apply on 31 December 2006. ◄

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3. By way of derogation from Article 400(2) and (3), Member States may, for a transitional period until the entry into force of any legal act following the review in accordance with Article 507, but not after 31 December 2028, fully or partially exempt the following exposures from the application of Article 395(1):

(a) covered bonds falling within Article 129(1), (3) and (6);

[1] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

▼C2

(b) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20 % risk weight under Part Three, Title II, Chapter 2 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20 % risk weight under Part Three, Title II, Chapter 2;

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(c) exposures, including participations or other kinds of holdings, incurred by an institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries and qualifying holdings, in so far as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country; exposures that do not meet those criteria, whether or not exempted from Article 395(1) of this Regulation, shall be treated as exposures to a third party;

▼C2

(d) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to regional or central credit institutions with which the credit institution belongs to a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;

(e) asset items constituting claims on and other exposures to credit institutions incurred by credit institutions, one of which operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via credit institutions or from the guarantees of these loans;

(f) asset items constituting claims on and other exposures to institutions, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency;

(g) asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies;

(h) asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated ECAI is investment grade;

▼C2

(i) 50 % of medium/low risk off-balance sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annex I and subject to the competent authorities' agreement, 80 % of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions;

(j) legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided that the guarantee is not used as reducing the risk in calculating the risk-weighted exposure amounts;

(k) assets items constituting claims on and other exposures to recognised exchanges.

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4. By way of derogation from Article 395(1), competent authorities may allow institutions to incur any of the exposures provided for in paragraph 5 of this Article meeting the conditions set out in paragraph 6 of this Article, up to the following limits:

(a) 100 % of the institution’s Tier 1 capital until 31 December 2018;

(b) 75 % of the institution’s Tier 1 capital until 31 December 2019;

(c) 50 % of the institution’s Tier 1 capital until 31 December 2020.

The limits referred to in points (a), (b) and (c) of the first subparagraph shall apply to exposure values after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403.

5. The transitional arrangements set out in paragraph 4 shall apply to the following exposures:

(a) asset items constituting claims on central governments, central banks, or public sector entities of Member States;

(b) asset items constituting claims expressly guaranteed by central governments, central banks, or public sector entities of Member States;

(c) other exposures to, or guaranteed by, central governments, central banks, or public sector entities of Member States;

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(d) asset items constituting claims on regional governments or local authorities of Member States treated as exposures to a central government in accordance with Article 115(2);

(e) other exposures to, or guaranteed by, regional governments or local authorities of Member States treated as exposures to a central government in accordance with Article 115(2).

For the purposes of points (a), (b) and (c) of the first subparagraph, the transitional arrangements set out in paragraph 4 of this Article shall apply only to asset items and other exposures to, or guaranteed by, public sector entities which are treated as exposures to a central government, a regional government or a local authority in accordance with Article 116(4). Where asset items and other exposures to, or guaranteed by, public sector entities are treated as exposures to a regional government or a local authority in accordance with Article 116(4), the transitional arrangements set out in paragraph 4 of this Article shall apply only where exposures to that regional government or local authority are treated as exposures to a central government in accordance with Article 115(2).

6. The transitional arrangements set out in paragraph 4 of this Article shall apply only where an exposure referred to in paragraph 5 of this Article meets all of the following conditions:

(a) the exposure would be assigned a risk weight of 0 % in accordance with the version of Article 495(2) in force on 31 December 2017;

(b) the exposure was incurred on or after 12 December 2017.

7. An exposure as referred to in paragraph 5 of this Article incurred before 12 December 2017 to which a risk weight of 0 % was assigned on 31 December 2017 in accordance with Article 495(2) shall be exempted from the application of Article 395(1).

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Article 494

Transitional provisions concerning the requirement for own funds and eligible liabilities

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1. By way of derogation from Article 92a, as from 27 June 2019 until 31 December 2021, institutions identified as resolution entities that are G-SII entities shall at all times satisfy the following requirements for own funds and eligible liabilities:

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(a) a risk-based ratio of 16 %, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) and (4);

(b) a non-risk-based ratio of 6 %, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Article 429(4).

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2. By way of derogation from Article 72b(3), as from 27 June 2019 until 31 December 2021, the extent to which eligible liabilities instruments referred to in Article 72b(3) may be included in eligible liabilities items shall be 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) and (4).

3. By way of derogation from Article 72b(3), until the resolution authority assesses for the first time the compliance with the condition set out in point (c) of that paragraph, liabilities shall qualify as eligible liabilities instruments up to an aggregate amount that does not exceed, until 31 December 2021, 2,5 % and, after that date, 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3) and (4), provided that they meet the conditions set out in points (a) and (b) of Article 72b(3).

Article 494a

Grandfathering of issuances through special purpose entities

1. By way of derogation from Article 52, capital instruments not issued directly by an institution shall qualify as Additional Tier 1 instruments until 31 December 2021 only where all the following conditions are met:

(a) the conditions set out in Article 52(1), except for the condition requiring that the instruments are directly issued by the institution;

(b) the instruments are issued through an entity within the consolidation pursuant to Chapter 2 of Title II of Part One;

(c) the proceeds are immediately available to the institution without limitation and in a form that satisfies the conditions set out in this paragraph.

2. By way of derogation from Article 63, capital instruments not issued directly by an institution shall qualify as Tier 2 instruments until 31 December 2021 only where all the following conditions are met:

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(a) the conditions set out in Article 63, except for the condition requiring that the instruments are directly issued by the institution;

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(b) the instruments are issued through an entity within the consolidation pursuant to Chapter 2 of Title II of Part One;

(c) the proceeds are immediately available to the institution without limitation and in a form that satisfies the conditions set out in this paragraph.

Article 494b

Grandfathering of own funds instruments and eligible liabilities instruments

1. By way of derogation from Articles 51 and 52, instruments issued prior to 27 June 2019 shall qualify as Additional Tier 1 instruments at the latest until 28 June 2025, where they meet the conditions set out in Articles 51 and 52, except for the conditions referred to in points (p), (q) and (r) of Article 52(1).

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2. By way of derogation from Articles 62 and 63, instruments issued prior to 27 June 2019 shall qualify as Tier 2 instruments at the latest until 28 June 2025, where they meet the conditions set out in Articles 62 and 63, except for the conditions referred to in points (n), (o) and (p) of Article 63.

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3. By way of derogation from point (a) of Article 72a(1), liabilities issued prior to 27 June 2019 shall qualify as eligible liabilities instruments where they meet the conditions set out in Article 72b, except for the conditions referred to in point (b)(ii) and points (f) to (m) of Article 72b(2).

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Article 494c

Grandfathering of senior securitisation positions

By way of derogation from Article 270, an originator institution may calculate the risk-weighted exposure amounts of a senior securitisation position in accordance with Article 260, 262 or 264 where both the following conditions are met:

(a) the securitisation was issued before 9 April 2021;

(b) the securitisation met, on 8 April 2021, the conditions laid down in Article 270 as applicable at that date.

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Article 495

Treatment of equity exposures under the IRB Approach

1. Until 31 December 2017, the competent authorities may, by way of derogation from Chapter 3 of Part Three, exempt from the IRB treatment certain categories of equity exposures held by institutions and EU subsidiaries of institutions in that Member State as at 31 December 2007. The competent authority shall publish the categories of equity exposures which benefit from such treatment in accordance with Article 143 of Directive 2013/36/EU.

The exempted position shall be measured as the number of shares as at 31 December 2007 and any additional share arising directly as a result of owning those holdings, provided that they do not increase the proportional share of ownership in a portfolio company.

If an acquisition increases the proportional share of ownership in a specific holding the part of the holding which constitutes the excess shall not be subject to the exemption. Nor shall the exemption apply to holdings that were originally subject to the exemption, but have been sold and then bought back.

Equity exposures subject to this provision shall be subject to the capital requirements calculated in accordance with the Standardised Approach under Part Three, Title II, Chapter 2 and the requirements set out in Title IV of Part Three, as applicable.

Competent authorities shall notify the Commission and EBA of the implementation of this paragraph.

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3. EBA shall develop draft regulatory technical standards to specify the conditions according to which competent authorities shall afford the exemption referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2014.

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

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Article 497

Own funds requirements for exposures to CCPs

1. Where a third-country CCP applies for recognition in accordance with Article 25 of Regulation (EU) No 648/2012, institutions may consider that CCP as a QCCP from the date on which it submitted its application for recognition to ESMA and until one of the following dates:

(a) where the Commission has already adopted an implementing act referred to in Article 25(6) of Regulation (EU) No 648/2012 in relation to the third country in which the CCP is established and that implementing act has entered into force, two years after the date of submission of the application;

(b) where the Commission has not yet adopted an implementing act referred to in Article 25(6) of Regulation (EU) No 648/2012 in relation to the third country in which the CCP is established or where that implementing act has not yet entered into force, the earlier of the following dates:

(i) two years after the date of entry into force of the implementing act;

(ii) for CCPs that submitted the application after 27 June 2019, two years after the date of submission of the application;

(iii) for those CCPs that submitted the application before 27 June 2019, 28 June 2021.

2. Until the expiration of the deadline referred to in paragraph 1 of this Article, where a CCP referred to in that paragraph does not have a default fund and does not have in place a binding arrangement with its clearing members that allows it to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions, the institution shall substitute the formula for calculating the own funds requirement in Article 308(2) with the following one:

$$K_{CM_i} = \max\left\{K_{CCP} \cdot \frac{IM_i}{DF_{CCP} + IM};\ 8\,\% \cdot 2\,\% \cdot IM_i\right\}$$

where:

K_{CM_i} = the own funds requirement;

▼M8

K_{CCP} = the hypothetical capital of the QCCP communicated to the institution by the QCCP in accordance with Article 50c of Regulation (EU) No 648/2012;

DF_{CCP} = the pre-funded financial resources of the CCP communicated to the institution by the CCP in accordance with Article 50c of Regulation (EU) No 648/2012;

i = the index denoting the clearing member;

IM_i = the initial margin posted with the CCP by clearing member i; and

IM = the total amount of initial margin communicated to the institution by the CCP in accordance with Article 89(5a) of Regulation (EU) No 648/2012.

3. In exceptional circumstances, where it is necessary and proportionate in order to avoid disruption to international financial markets, the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision to extend once, by 12 months, the transitional provisions set out in paragraph 1 of this Article.

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Article 498

Exemption for Commodities dealers

Until 26 June 2021, the provisions on own funds requirements as set out in this Regulation shall not apply to investment firms the main business of which consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points (5), (6), (7), (9), (10) and (11) of Section C of Annex I to Directive 2014/65/EU and to which Directive 2004/39/EC did not apply on 31 December 2006.

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Article 499

Leverage

1. By way of derogation from Articles 429 and 430, during the period between 1 January 2014 and 31 December 2021, institutions shall calculate and report the leverage ratio by using both of the following as the capital measure:

(a) Tier 1 capital;

(b) Tier 1 capital, subject to the derogations laid down in Chapters 1 and 2 of this Title.

2. By way of derogation from Article 451(1), institutions may choose whether to disclose the information on the leverage ratio based on either just one or both of the definitions of the capital measure specified in points (a) and (b) of paragraph 1 of this Article. Where institutions change their decision on which leverage ratio to disclose, the first

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disclosure that occurs after such change shall contain a reconciliation of the information on all leverage ratios disclosed up to the moment of the change.

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Article 500

Adjustment for massive disposals

1. By way of derogation from point (a) of Article 181(1), an institution may adjust its LGD estimates by partly or fully offsetting the effect of massive disposals of defaulted exposures on realised LGDs up to the difference between the average estimated LGDs for comparable exposures in default that have not been finally liquidated and the average realised LGDs including on the basis of the losses realised due to massive disposals, as soon as all the following conditions are met:

(a) the institution has notified the competent authority of a plan providing the scale, composition and the dates of the disposals of defaulted exposures;

(b) the dates of the disposals of defaulted exposures are after 23 November 2016 but not later than 28 June 2022;

▼C7

(c) the cumulative amount of defaulted exposures disposed of since the date of the first disposal in accordance with the plan referred to in point (a) has surpassed 20 % of the outstanding amount of all defaulted exposures as of the date of the first disposal referred to in points (a) and (b).

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The adjustment referred to in the first subparagraph may only be carried out until 28 June 2022 and its effects may last for as long as the corresponding exposures are included in the institution's own LGD estimates.

2. Institutions shall notify the competent authority without delay when the condition set out in point (c) of paragraph 1 has been met.

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Article 500a

Temporary treatment of public debt issued in the currency of another Member State

1. By way of derogation from Article 114(2), until 31 December 2024, for exposures to the central governments and central banks of Member States, where those exposures are denominated and funded in the domestic currency of another Member State, the following apply:

(a) until 31 December 2022, the risk weight applied to the exposure values shall be 0 % of the risk weight assigned to those exposures in accordance with Article 114(2);

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(b) in 2023, the risk weight applied to the exposure values shall be 20 % of the risk weight assigned to those exposures in accordance with Article 114(2);

(c) in 2024, the risk weight applied to the exposure values shall be 50 % of the risk weight assigned to those exposures in accordance with Article 114(2).

2. By way of derogation from Articles 395(1) and 493(4), competent authorities may allow institutions to incur exposures referred to in paragraph 1 of this Article, up to the following limits:

(a) 100 % of the institution's Tier 1 capital until 31 December 2023;

(b) 75 % of the institution's Tier 1 capital between 1 January and 31 December 2024;

(c) 50 % of the institution's Tier 1 capital between 1 January and 31 December 2025.

The limits referred to in points (a), (b) and (c) of the first subparagraph of this paragraph shall apply to exposure values after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403.

3. By way of derogation from point (ii) of point (d) of Article 150(1), after receiving the prior permission of the competent authorities and subject to the conditions laid down in Article 150, institutions may also apply the Standardised Approach to exposures to central governments and central banks, where those exposures are assigned a 0 % risk weight under paragraph 1 of this Article.

Article 500b

Temporary exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic

1. By way of derogation from Article 429(4), until 27 June 2021, an institution may exclude from its total exposure measure the following exposures to the institution's central bank, subject to the conditions set out in paragraphs 2 and 3 of this Article:

(a) coins and banknotes constituting legal currency in the jurisdiction of the central bank;

(b) assets representing claims on the central bank, including reserves held at the central bank.

The amount excluded by the institution shall not exceed the daily average amount of the exposures listed in points (a) and (b) of the first subparagraph over the most recent full reserve maintenance period of the institution's central bank.

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2. An institution may exclude the exposures listed in paragraph 1 where the institution's competent authority has determined, after consultation with the relevant central bank, and publicly declared that exceptional circumstances exist that warrant the exclusion in order to facilitate the implementation of monetary policies.

The exposures to be excluded under paragraph 1 shall meet both of the following conditions:

(a) they are denominated in the same currency as the deposits taken by the institution;

(b) their average maturity does not significantly exceed the average maturity of the deposits taken by the institution.

An institution that excludes exposures to its central bank from its total exposure measure in accordance with paragraph 1 shall also disclose the leverage ratio it would have if it did not exclude those exposures.

Article 500c

Exclusion of overshootings from the calculation of the back-testing addend in view of the COVID-19 pandemic

By way of derogation from Article 366(3), competent authorities may, in exceptional circumstances and in individual cases, permit institutions to exclude the overshootings evidenced by the institution's back-testing on hypothetical or actual changes from the calculation of the addend set out in Article 366(3), provided that those overshootings do not result from deficiencies in the internal model and provided that they occurred between 1 January 2020 and 31 December 2021.

Article 500d

Temporary calculation of the exposure value of regular-way purchases and sales awaiting settlement in view of the COVID-19 pandemic

1. By way of derogation from Article 429(4), until 27 June 2021, institutions may calculate the exposure value of regular-way purchases and sales awaiting settlement in accordance with paragraphs 2, 3 and 4 of this Article.

2. Institutions shall treat cash related to regular-way sales and securities related to regular-way purchases which remain on the balance sheet until the settlement date as assets in accordance with point (a) of Article 429(4).

3. Institutions that, in accordance with the applicable accounting framework, apply trade date accounting to regular-way purchases and sales which are awaiting settlement shall reverse out any offsetting between cash receivables for regular-way sales awaiting settlement and

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cash payables for regular-way purchases awaiting settlement allowed under that accounting framework. After institutions have reversed out the accounting offsetting, they may offset between those cash receivables and cash payables where the related regular-way sales and purchases are both settled on a delivery-versus-payment basis.

4. Institutions that, in accordance with the applicable accounting framework, apply settlement date accounting to regular-way purchases and sales which are awaiting settlement shall include in the total exposure measure the full nominal value of commitments to pay related to regular-way purchases.

Institutions may offset the full nominal value of commitments to pay related to regular-way purchases by the full nominal value of cash receivables related to regular-way sales awaiting settlement only where both of the following conditions are met:

(a) both the regular-way purchases and sales are settled on a delivery-versus-payment basis;

(b) the financial assets bought and sold that are associated with cash payables and receivables are measured at fair value through profit or loss and included in the institution's trading book.

5. For the purposes of this Article, 'regular-way purchase or sale' means a purchase or sale of a security under a contract for which the terms require the delivery of the security within the period established generally by law or convention in the marketplace concerned.

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Article 501

Adjustment of risk-weighted non-defaulted SME exposures

1. Institutions shall adjust the risk-weighted exposure amounts for non-defaulted exposures to an SME (RWEA), which are calculated in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable, in accordance with the following formula:

$$RWEA^{*} = RWEA \cdot \frac{\min\{E^{*};\ EUR\ \ 2\ 500\ 000\} \cdot 0{,}7619 + \max\{E^{*} - EUR\ \ 2\ 500\ 000;\ 0\} \cdot 0{,}85}{E^{*}}$$

where:

RWEA* = the RWEA adjusted by an SME supporting factor; and

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E* = is either of the following:

(a) the total amount owed to the institution, its subsidiaries, its parent undertakings and other subsidiaries of those parent undertakings, including any exposure in default, but excluding claims or contingent claims secured on residential property collateral, by the SME or the group of connected clients of the SME;

▼C7

(b) where the total amount referred to in point (a) is equal to 0, the amount of claims or contingent claims against the SME or the group of connected clients of the SME that are secured on residential property collateral and that are excluded from the calculation of the total amount referred to in that point.

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2. For the purposes of this Article:

(a) the exposure to an SME shall be included either in the retail or in the corporates or secured by mortgages on immovable property classes;

(b) an SME is defined in accordance with Commission Recommendation 2003/361/EC ([1]); among the criteria listed in Article 2 of the Annex to that Recommendation only the annual turnover shall be taken into account;

(c) institutions shall take reasonable steps to correctly determine E* and obtain the information required under point (b).

Article 501a

Adjustment to own funds requirements for credit risk for exposures to entities that operate or finance physical structures or facilities, systems and networks that provide or support essential public services

1. Own funds requirements for credit risk calculated in accordance with Title II of Part III shall be multiplied by a factor of 0,75, provided that the exposure complies with all the following criteria:

(a) the exposure is included either in the corporate exposure class or in the specialised lending exposures class, with the exclusion of exposures in default;

(b) the exposure is to an entity which was created specifically to finance or operate physical structures or facilities, systems and networks that provide or support essential public services;

(c) the source of repayment of the obligation is represented for not less than two thirds of its amount by the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise, or by subsidies, grants or funding provided by one or more of the entities listed in points (b)(i) and (b)(ii) of paragraph 2;

(d) the obligor can meet its financial obligations even under severely stressed conditions that are relevant for the risk of the project;

(e) the cash flows that the obligor generates are predictable and cover all future loan repayments during the duration of the loan;

(f) the re-financing risk of the exposure is low or adequately mitigated, taking into account any subsidies, grants or funding provided by one or more of the entities listed in points (b)(i) and (b)(ii) of paragraph 2;

([1]) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).;

▼M8

(g) the contractual arrangements provide lenders with a high degree of protection including the following:

(i) where the revenues of the obligor are not funded by payments from a large number of users, the contractual arrangements shall include provisions that effectively protect lenders against losses resulting from the termination of the project by the party which agrees to purchase the goods or services provided by the obligor;

(ii) the obligor has sufficient reserve funds fully funded in cash or other financial arrangements with highly rated guarantors to cover the contingency funding and working capital requirements over the lifetime of the assets referred to in point (b) of this paragraph;

(iii) the lenders have a substantial degree of control over the assets and the income generated by the obligor;

(iv) the lenders have the benefit of security to the extent permitted by applicable law in assets and contracts critical to the infrastructure business or have alternative mechanisms in place to secure their position;

(v) equity is pledged to lenders such that they are able to take control of the entity upon default;

(vi) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;

(vii) there are contractual restrictions on the ability of the obligor to perform activities that may be detrimental to lenders, including the restriction that new debt cannot be issued without the consent of existing debt providers;

(h) the obligation is senior to all other claims other than statutory claims and claims from derivatives counterparties;

(i) where the obligor is in the construction phase, the following criteria shall be fulfilled by the equity investor, or where there is more than one equity investor, the following criteria shall be fulfilled by a group of equity investors as a whole:

(i) the equity investors have a history of successfully overseeing infrastructure projects, the financial strength and the relevant expertise;

(ii) the equity investors have a low risk of default, or there is a low risk of material losses for the obligor as a result of their default;

(iii) there are adequate mechanisms in place to align the interest of the equity investors with the interests of lenders;

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(j) the obligor has adequate safeguards to ensure completion of the project according to the agreed specification, budget or completion date; including strong completion guarantees or the involvement of an experienced constructor and adequate contract provisions for liquidated damages;

(k) where operating risks are material, they are properly managed;

(l) the obligor uses tested technology and design;

(m) all necessary permits and authorisations have been obtained;

(n) the obligor uses derivatives only for risk-mitigation purposes;

(o) the obligor has carried out an assessment whether the assets being financed contribute to the following environmental objectives:

(i) climate change mitigation;

(ii) climate change adaptation;

(iii) sustainable use and protection of water and marine resources;

(iv) transition to a circular economy, waste prevention and recycling;

(v) pollution prevention and control;

(vi) protection of healthy ecosystems.

2. For the purposes of point (e) of paragraph 1, the cash flows generated shall not be considered predictable unless a substantial part of the revenues satisfies the following conditions:

(a) one of the following criteria is met:

(i) the revenues are availability-based;

(ii) the revenues are subject to a rate-of-return regulation;

(iii) the revenues are subject to a take-or-pay contract;

(iv) the level of output or the usage and the price shall independently meet one of the following criteria:

— it is regulated,

— it is contractually fixed,

— it is sufficiently predictable as a result of low demand risk;

▼M8

(b) where the revenues of the obligor are not funded by payments from a large number of users, the party which agrees to purchase the goods or services provided by the obligor shall be one of the following:

(i) a central bank, a central government, a regional government or a local authority, provided that they are assigned a risk weight of 0 % in accordance with Articles 114 and 115 or are assigned an ECAI rating with a credit quality step of at least 3;

(ii) a public sector entity, provided that it is assigned a risk weight of 20 % or below in accordance with Article 116 or is assigned an ECAI rating with a credit quality step of at least 3;

(iii) a multilateral development bank referred to in Article 117(2);

(iv) an international organisation referred to in Article 118;

(v) a corporate entity which has been assigned an ECAI rating with a credit quality step of at least 3;

(vi) an entity that is replaceable without a significant change in the level and timing of revenues.

3. Institutions shall report to competent authorities every six months on the total amount of exposures to infrastructure project entities calculated in accordance with paragraph 1 of this Article.

4. The Commission shall, by 28 June 2022 report on the impact of the own funds requirements laid down in this Regulation on lending to infrastructure project entities and shall submit that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

5. For the purposes of paragraph 4, EBA shall report on the following to the Commission:

(a) an analysis of the evolution of the trends and conditions in markets for infrastructure lending and project finance over the period referred to in paragraph 4;

(b) an analysis of the effective riskiness of entities referred to in point (b) of paragraph 1 over a full economic cycle;

(c) the consistency of own funds requirements laid down in this Regulation with the outcomes of the analysis under points (a) and (b) of this paragraph.

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Article 501b

Derogation from reporting requirements

By way of derogation from Article 430, during the period between the date of application of the relevant provisions of this Regulation and the date of the first remittance of reports specified in the implementing technical standards referred to in that Article, a competent authority may waive the requirement to report information in the format specified in the templates contained in the implementing act referred to in Article 430(7) where those templates have not been updated to reflect the provisions of this Regulation.

▼C2

TITLE II

REPORTS AND REVIEWS

▼M8

Article 501c

Prudential treatment of exposures related to environmental and/or social objectives

▼M13

EBA, after consulting the ESRB, shall, on the basis of available data and the findings of the Commission High-Level Expert Group on Sustainable Finance, assess whether a dedicated prudential treatment of exposures related to assets, including securitisations, or activities associated substantially with environmental and/or social objectives would be justified. In particular, EBA shall assess:

▼M8

(a) methodologies for the assessment of the effective riskiness of exposures related to assets and activities associated substantially with environmental and/or social objectives compared to the riskiness of other exposure;

(b) the development of appropriate criteria for the assessment of physical risks and transition risks, including the risks related to the depreciation of assets due to regulatory changes;

(c) the potential effects of a dedicated prudential treatment of exposures related to assets and activities which are associated substantially with environmental and/or social objectives on financial stability and bank lending in the Union.

EBA shall submit a report on its findings to the European Parliament, to the Council and to the Commission by 28 June 2025.

On the basis of that report, the Commission shall, if appropriate, submit to the European Parliament and to the Council a legislative proposal.

▼C2

Article 502

Cyclicality of capital requirements

The Commission, in cooperation with EBA, ESRB and the Member States, and taking into account the opinion of the ECB, shall periodically monitor whether this Regulation taken as a whole, together with

▼C2

Directive 2013/36/EU, has significant effects on the economic cycle and, in the light of that examination, shall consider whether any remedial measures are justified.

By 31 December 2013, EBA shall report to the Commission on whether, and if so how, methodologies of institutions under the IRB Approach should converge with a view to more comparable capital requirements while mitigating pro-cyclicality.

Based on that analysis and taking into account the opinion of the ECB, the Commission shall draw up a biennial report and submit it to the European Parliament and to the Council, together with any appropriate proposals. Contributions from credit taking and credit lending parties shall be adequately acknowledged when the report is drawn up.

By 31 December 2014, the Commission shall review, and report on, the application of Article 33(1)(c) and shall submit that report to the European Parliament and the Council, together with a legislative proposal, if appropriate.

With respect to the potential deletion of Article 33(1)(c) and its potential application at the Union level, the review shall in particular ensure that sufficient safeguards are in place to ensure financial stability in all Member States.

Article 503

Own funds requirements for exposures in the form of covered bonds

1. The Commission shall, by 31 December 2014, after consulting EBA, report to the European Parliament and to the Council, together with any appropriate proposals, on whether the risk weights laid down in Article 129 and the own funds requirements for specific risk in Article 336(3) are adequate for all the instruments that qualify for these treatments and whether the criteria in Article 129 are appropriate.

2. The report and the proposals referred to in paragraph 1 shall take into account:

(a) the extent to which the current regulatory capital requirements applicable to covered bonds adequately differentiate between variances in the credit quality of covered bonds and the collateral against which they are secured, including the extent of variations across Member States;

(b) the transparency of the covered bond market and the extent to which this facilitates comprehensive internal analysis by investors in respect of the credit risk of covered bonds and the collateral against which they are secured and the asset segregation in case of the issuer's insolvency, including the mitigating effects of the underlying strict national legal framework in accordance with Article 129 of this Regulation and Article 52(4) of Directive 2009/65/EC on the overall credit quality of a covered bond and its implications on the level of transparency needed by investors; and

▼C2

(c) the extent to which covered bond issuance by a credit institution impacts on the credit risk to which other creditors of the issuing institution are exposed.

3. The Commission shall, by 31 December 2014, after consulting EBA, report to the European Parliament and the Council on whether loans secured by aircrafts (aircraft liens) and residential loans secured by a guarantee but not secured by a registered mortgage, should under certain conditions be considered an eligible asset in accordance with Article 129.

4. The Commission shall, by 31 December 2016, review the appropriateness of the derogation set out in Article 496 and, if relevant, the appropriateness of extending similar treatment to any other form of covered bond. In the light of that review, the Commission may, if appropriate, adopt delegated acts in accordance with Article 462 to make that derogation permanent, or make legislative proposals to extend it to other forms of covered bonds.

Article 504

Capital instruments subscribed by public authorities in emergency situations

The Commission shall, by 31 December 2016, after consulting EBA, report to the European Parliament and the Council, together with any appropriate proposals, whether the treatment set out in Article 31 needs to be amended or deleted.

▼M8

Article 504a

Holdings of eligible liabilities instruments

By 28 June 2022, EBA shall report to the Commission on the amounts and distribution of holdings of eligible liabilities instruments among institutions identified as G-SIIs or O-SIIs and on potential impediments to resolution and the risk of contagion in relation to those holdings.

Based on the report by EBA the Commission shall, by 28 June 2023, report to the European Parliament and to the Council on the appropriate treatment of such holdings, accompanied by a legislative proposal, where appropriate.

▼C2

Article 505

Review of long-term financing

By 31 December 2014, the Commission shall report to the European Parliament and to the Council, together with any appropriate proposals, about the appropriateness of the requirements of this Regulation in light of the need to ensure adequate levels of funding for all forms of long-term financing for the economy, including critical infrastructure projects in the Union in the field of transport, energy and communications.

▼C2

Article 506

Credit risk — definition of default

EBA shall, by 31 December 2017, report to the Commission on how replacing 90 days by 180 days past due, as provided in point (b) of Article 178(1), impacts risk-weighted exposure amounts and the appropriateness of the continued application of that provision after 31 December 2019.

On the basis of that report, the Commission may submit a legislative proposal to amend this Regulation.

▼M13

Article 506a

CIUs with an underlying portfolio of euro area sovereign bonds

In close cooperation with the ESRB and EBA, the Commission shall publish a report by 31 December 2021 in which it shall assess whether changes to the regulatory framework are needed to promote the market for, and bank purchases of, exposures in the form of units or shares in CIUs with an underlying portfolio consisting exclusively of sovereign bonds of Member States whose currency is the euro, where the relative weight of each Member States' sovereign bonds in the total portfolio of the CIU is equal to the relative weight of each Member States' capital contribution to the ECB.

Article 506b

NPE securitisations

1. EBA shall monitor the application of Article 269a and shall evaluate the regulatory capital treatment of NPE securitisations having regard to the state of the market for NPEs in general and the state of NPE securitisation market in particular, and submit a report on its findings to the Commission by 10 October 2022.

2. By 10 April 2023, the Commission shall, on the basis of the report referred to in paragraph 1 of this Article, submit a report to the European Parliament and to the Council on the application of Article 269a. The Commission's report shall, where appropriate, be accompanied by a legislative proposal.

▼M8

Article 507

Large exposures

1. EBA shall monitor the use of exemptions set out in point (b) of Article 390(6), points (f) to (m) of Article 400(1), point (a) and points (c) to (g), (i), (j) and (k) of Article 400(2) and by 28 June 2021 submit a report to the Commission assessing the quantitative impact that the removal of those exemptions or the setting of a limit on their use would have. That report shall assess, in particular, for each exemption provided for in those Articles:

(a) the number of large exposures exempted in each Member State;

(b) the number of institutions that make use of the exemption in each Member State;

(c) the aggregate amount of exposures exempted in each Member State.

2. By 31 December 2023, the Commission shall submit a report to the European Parliament and to the Council on the application of the derogations referred to in Articles 390(4) and 401(2) concerning the methods for the calculation of exposure value of securities financing transactions, and in particular the need to take account of amendments in international standards determining the methods for such calculation.

▼C2

Article 508

Level of application

1. By 31 December 2014, the Commission shall review, and report on, the application of Part One, Title II, and Article 113(6) and (7) and shall submit that report to the European Parliament and the Council, together with a legislative proposal, if appropriate.

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Article 509

Liquidity requirements

1. EBA shall monitor and evaluate the reports made in accordance with Article 415(1), across currencies and across different business models. EBA shall, after consulting the ESRB, non-financial end-users, the banking industry, competent authorities and the ESCB central banks, annually and for the first time by 31 December 2013 report to the Commission on whether a specification of the general liquidity coverage requirement in Part Six based on the items to be reported in accordance with Part Six, Title II and Annex III, considered either individually or cumulatively, is likely to have a material detrimental impact on the business and risk profile of institutions established in the Union or on the stability and orderly functioning of financial markets or on the economy and the stability of the supply of bank lending, with a particular focus on lending to SMEs and on trade financing, including lending under official export credit insurance schemes.

The report referred to in the first subparagraph shall take due account of markets and international regulatory developments as well as of the interactions of the liquidity coverage requirement with other prudential requirements under this Regulation such as the risk-based capital ratios as set out in Article 92 and the leverage ratio.

The European Parliament and the Council shall be given the opportunity to state their views on the report referred to in the first subparagraph.

2. EBA shall, in the report referred to in paragraph 1, assess the following, in particular:

(a) the provision of mechanisms restricting the value of liquidity inflows, in particular with a view to determining an appropriate inflow cap and the conditions for its application, taking into account different business models including pass through financing, factoring, leasing, covered bonds, mortgages, issuance of covered bonds, and the extent to which that cap should be amended or removed to cater for the specificities of specialised financing;

(b) the calibration of inflows and outflows referred to in Part Six, Title II, in particular under Article 422(7) and Article 425(2);

▼C2

(c) the provision of mechanisms restricting the coverage of liquidity requirements by certain categories of liquid assets, in particular assessing the appropriate minimum percentage for liquid assets referred to in points (a), (b) and (c) of Article 416(1) to the total of liquid assets, testing a threshold of 60 % and taking into account international regulatory developments. Assets owed and due or callable within 30 calendar days should not count towards the limit unless the assets have been obtained against collateral that also qualifies under points (a), (b) and (c) of Article 416(1);

(d) the provision of specific lower outflow and/or higher inflow rates for intragroup flows, specifying under which conditions such specific in- or outflow rates would be justified from a prudential point of view and setting out the high level outline of a methodology using objective criteria and parameters in order to determine specific levels of inflows and outflows between the institution and the counterparty when they are not established in the same Member State;

(e) the calibration of the draw-down rates applicable to the undrawn committed credit and liquidity facilities that fall under Article 424(3) and (5). In particular, EBA shall test a draw-down rate of 100 %;

(f) the definition of retail deposit in point (2) of Article 411, in particular the appropriateness of introducing a threshold on deposits of natural persons;

(g) the need to introduce a new retail deposit category with a lower outflow in the light of the specific characteristics of such deposits that could justify a lower outflow rate and taking into account international developments;

(h) derogations from requirements on the composition of the liquid assets institutions will be required to hold, where in a given currency the institutions' collective justified needs for liquid assets are exceeding the availability of those liquid assets and conditions to which such derogations should be subject;

(i) the definition of Shari'ah-compliant financial products as an alternative to assets that would qualify as liquid assets for the purposes of Article 416, for the use of Shari'ah-compliant banks;

(j) the definition of circumstances of stress, including principles for the use of the stock of liquid assets and the necessary supervisory reactions under which institutions would be able to use their liquid assets to meet liquidity outflows and how to address non-compliance;

(k) the definition of an established operational relationship for non-financial customer as referred to in Article 422(3)(c);

(l) the calibration of the outflow rate applicable to correspondent banking and prime brokerage services as referred to in the first subparagraph of Article 422(4);

▼C2

(m) mechanisms for the grandfathering of government guaranteed bonds issued to credit institutions as part of government support measures with Union State aid approval, such as bonds issued by the National Asset Management Agency (NAMA) in Ireland and by the Spanish Asset Management Company in Spain, designed to remove problem assets from the balance sheets of credit institutions, as assets of extremely high liquidity and credit quality until at least December 2023.

3. EBA shall, after consulting ESMA and the ECB, by 31 December 2013, report to the Commission on appropriate uniform definitions of high and of extremely high liquidity and credit quality of transferable assets for the purposes of Article 416 and appropriate haircuts for assets that would qualify as liquid assets for the purposes of Article 416, with the exception of assets referred to in points (a), (b) and (c) of Article 416(1).

The European Parliament and the Council shall be given the opportunity to state their views on that report.

The report referred to in the first subparagraph shall also consider:

(a) other categories of assets, in particular residential mortgage-backed securities of high liquidity and credit quality;

(b) other categories of central bank eligible securities or loans, such as local government bonds and commercial paper; and

(c) other non-central bank eligible but tradable assets, such as equities listed on a recognised exchange, gold, major index linked equity instruments, guaranteed bonds, covered bonds, corporate bonds and funds based on those assets.

4. The report referred to in paragraph 3 shall consider whether, and if so to what extent, standby credit facilities referred to in point (e) of Article 416(1) should be included as liquid assets in light of international development and taking into account European specificities, including the way monetary policy is performed in the Union.

EBA shall in particular test the adequacy of the following criteria and the appropriate levels for such definitions:

(a) minimum trade volume of the assets;

▼C2

(b) minimum outstanding volume of the assets;

(c) transparent pricing and post-trade information;

(d) credit quality steps referred to in Part Three, Title II, Chapter 2;

(e) proven record of price stability;

(f) average volume traded and average trade size;

(g) maximum bid/ask spread;

(h) remaining time to maturity;

(i) minimum turnover ratio.

5. By 31 January 2014, EBA shall also report on the following:

(a) uniform definitions of high and extremely high liquidity and credit quality;

(b) the possible unintended consequences of the definition of liquid assets on the conduct of monetary policy operation and the extent to which:

(i) a list of liquid assets that is disconnected from the list of central bank eligible assets may incentivise institutions to submit eligible assets which are not included in the definition of liquid assets in refinancing operations;

(ii) regulation of liquidity may disincentivise institutions from lending or borrowing on the unsecured money market and whether this may lead to question the targeting of EONIA in monetary policy implementation;

(iii) the introduction of the liquidity coverage requirement may make it more difficult for central banks to ensure price stability by using the existing monetary policy framework and instruments;

(c) the operational requirements for the holdings of liquid assets, as referred in points (b) to (f) of Article 417, in line with international regulatory developments.

▼C2

Article 510

Net Stable Funding Requirements

1. By 31 December 2015, EBA shall report to the Commission, on the basis of the items to be reported in accordance with Part Six, Title III, on whether and how it would be appropriate to ensure that institutions use stable sources of funding, including an assessment of the impact on the business and risk profile of institutions established in the Union or on financial markets or the economy and bank lending, with a particular focus on lending to SMEs and on trade financing, including lending under official export credit insurance schemes and pass through financing models, including match funded mortgage lending. In particular EBA shall analyse the impact of stable sources of funding on the refinancing structures of different banking models in the Union.

2. By 31 December 2015, EBA shall also report to the Commission, on the basis of the items to be reported in accordance with Part Six, Title III and, in accordance with the uniform reporting formats referred to in point (a) of Article 415(3) and after consulting the ESRB, on methodologies for determining the amount of stable funding available to and required by institutions and on appropriate uniform definitions for calculating such a net stable funding requirement, examining in particular the following:

(a) the categories and weightings applied to sources of stable funding in Article 427(1);

(b) the categories and weightings applied to determine the requirement for stable funding in Article 428(1);

(c) methodologies shall provide incentives and disincentives as appropriate to encourage a more stable longer term funding of assets, business activities, investment and funding of institutions;

(d) the need to develop different methodologies for different types of institutions.

3. By 31 December 2016, the Commission shall, if appropriate, taking into account the reports referred to in paragraphs 1 and 2, and taking full account of the diversity of the banking sector in the Union, submit a legislative proposal to the European Parliament and the Council on how to ensure that institutions use stable sources of funding.

▼M8

4. EBA shall monitor the amount of required stable funding covering the funding risk linked to the derivative contracts listed in Annex II and credit derivatives over the one-year horizon of the net stable funding ratio, in particular the future funding risk for those derivative contracts set out in Articles 428s(2) and 428at(2), and report to the Commission on the opportunity to adopt a higher required stable funding factor or a more risk-sensitive measure by 28 June 2024. That report shall at least assess:

▼M8

(a) the opportunity to distinguish between margined and unmargined derivative contracts;

(b) the opportunity to remove, increase or replace the requirement set out in Articles 428s(2) and 428at(2);

(c) the opportunity to change more broadly the treatment of derivative contracts in the calculation of the net stable funding ratio, as set out in Article 428d, Articles 428k(4) and 428s(2), points (a) and (b) of Article 428ag, Articles 428ah(2), 428al(4) and 428at(2), points (a) and (b) of Article 428ay and Article 428az(2), to better capture the funding risk linked to those contracts over the one-year horizon of the net stable funding ratio;

(d) the impact of the proposed changes on the amount of stable funding required for institutions' derivative contracts.

5. If international standards affect the treatment of derivative contracts listed in Annex II and credit derivatives for the calculation of the net stable funding ratio, the Commission shall, if appropriate and taking into account the report referred to in paragraph 4, those changes of international standards and the diversity of the banking sector in the Union, submit a legislative proposal to the European Parliament and to the Council on how to amend the provisions regarding the treatment of derivative contracts listed in Annex II and credit derivatives for the calculation of the net stable funding ratio as set out in Title IV of Part Six to take better account of the funding risk linked to those transactions.

6. EBA shall monitor the amount of stable funding required to cover the funding risk linked to securities financing transactions, including to the assets received or given in those transactions, and to unsecured transactions with a residual maturity of less than six months with financial customers and report to the Commission on the appropriateness of that treatment by 28 June 2023. That report shall at least assess:

(a) the opportunity to apply higher or lower stable funding factors to securities financing transactions with financial customers and to unsecured transactions with a residual maturity of less than six months with financial customers to take better account of their funding risk over the one-year horizon of the net stable funding ratio and of the possible contagion effects between financial customers;

(b) the opportunity to apply the treatment set out in point (g) of Article 428r(1) to securities financing transactions collateralised by other types of assets;

(c) the opportunity to apply stable funding factors to off-balance-sheet items used in securities financing transactions as an alternative to the treatment set out in Article 428p(5);

▼M8

(d) the adequacy of the asymmetric treatment between liabilities with a residual maturity of less than six months provided by financial customers that are subject to a 0 % available stable funding factor in accordance with point (c) of Article 428k(3) and assets resulting from transactions with a residual maturity of less than six months with financial customers that are subject to a 0 %, 5 % or 10 % required stable funding factor in accordance with point (g) of Article 428r(1), point (c) of Article 428s(1) and point (b) of Article 428v;

(e) the impact of the introduction of higher or lower required stable funding factors for securities financing transactions, in particular with a residual maturity of less than six months with financial customers, on the market liquidity of assets received as collateral in those transactions, in particular of sovereign and corporate bonds;

(f) the impact of the proposed changes on the amount of stable funding required for those institutions' transactions, in particular for securities financing transactions with a residual maturity of less than six months with financial customers where sovereign bonds are received as collateral in those transactions.

7. By 28 June 2024, the Commission shall, where appropriate and taking into account the report referred to in paragraph 6, any international standards and the diversity of the banking sector in the Union, submit a legislative proposal to the European Parliament and to the Council on how to amend the provisions regarding the treatment of securities financing transactions, including of the assets received or given in those transactions, and the treatment of unsecured transactions with a residual maturity of less than six months with financial customers for the calculation of the net stable funding ratio as set out in Title IV of Part Six where it considers it appropriate regarding the impact of the existing treatment on institutions' net stable funding ratio and to take better account of the funding risk linked to those transactions.

▼C7

8. By 28 June 2025, the required stable funding factors applied to the transactions referred to in point (g) of Article 428r(1), point (b) of Article 428s(1) and in point (a) of Article 428v, shall be raised from 0 % to 10 %, from 5 % to 15 % and from 10 % to 15 % respectively, unless otherwise specified in a legislative act adopted on the basis of a proposal by the Commission, in accordance with paragraph 7 of this Article.

▼M8

9. EBA shall monitor the amount of stable funding required to cover the funding risk linked to institutions' holdings of securities to hedge derivative contracts. EBA shall report on the appropriateness of the treatment by 28 June 2023. That report shall at least assess:

(a) the possible impact of the treatment on investors' ability to gain exposure to assets and the impact of the treatment on credit supply in the capital markets union;

▼M8

(b) the opportunity to apply adjusted stable funding requirements to securities that are held to hedge derivatives which are funded by initial margin, either wholly or in part;

(c) the opportunity to apply adjusted stable funding requirements to securities that are held to hedge derivatives which are not funded by initial margin.

10. By 28 June 2023 or a year after an agreement on international standards that is developed by the BCBS, whichever is the earliest, the Commission shall, where appropriate and taking into account the report referred to in paragraph 9, any international standards developed by the BCBS, the diversity of the banking sector in the Union and the aims of the capital markets union, submit a legislative proposal to the European Parliament and to the Council on how to amend the provisions regarding the treatment of institutions' holdings of securities to hedge derivative contracts for the calculation of the net stable funding ratio as set out in Title IV of Part Six where it considers it appropriate regarding the impact of the existing treatment on institutions' net stable funding ratio and to take better account of the funding risk linked to those transactions.

11. EBA shall assess whether it would be justified to reduce the required stable funding factor for assets used for providing clearing and settlement services of precious metals such as gold, silver, platinum and palladium or assets used for providing financing transactions of precious metals such as gold, silver, platinum and palladium of a term of 180 days or less. EBA shall submit its report to the Commission by 28 June 2021.

Article 511

Leverage

1. The Commission shall by 31 December 2020 submit a report to the European Parliament and to the Council on whether:

(a) it is appropriate to introduce a leverage ratio surcharge for O-SIIs; and

(b) the definition and calculation of the total exposure measure referred to in Article 429(4), including the treatment of central bank reserves, is appropriate.

2. For the purposes of the report referred to in paragraph 1, the Commission shall take into account international developments and internationally agreed standards. Where appropriate, that report shall be accompanied by a legislative proposal.

▼C2

Article 512

Exposures to transferred credit risk

By 31 December 2014, the Commission shall report to the European Parliament and the Council on the application and effectiveness of the provisions of Part Five in the light of international market developments.

▼M8

Article 513

Macroprudential rules

1. By 30 June 2022, and every five years thereafter, the Commission shall, after consulting the ESRB and EBA, review whether the macroprudential rules contained in this Regulation and in Directive 2013/36/EU are sufficient to mitigate systemic risks in sectors, regions and Member States including assessing:

(a) whether the current macroprudential tools in this Regulation and in Directive 2013/36/EU are effective, efficient and transparent;

(b) whether the coverage and the possible degrees of overlap between different macroprudential tools for targeting similar risks in this Regulation and in Directive 2013/36/EU are adequate and, if appropriate, propose new macroprudential rules;

(c) how internationally agreed standards for systemic institutions interact with the provisions in this Regulation and in Directive 2013/36/EU and, if appropriate, propose new rules taking into account those internationally agreed standards;

(d) whether other types of instruments, such as borrower-based instruments, should be added to the macroprudential tools provided for in this Regulation and in Directive 2013/36/EU to complement capital-based instruments and to allow for the harmonised use of the instruments in the internal market; taking into account whether harmonised definitions of those instruments and the reporting of respective data at Union level are a prerequisite for the introduction of such instruments;

(e) whether the leverage ratio buffer requirement as referred to in Article 92(1a) should be extended to systemically important institutions other than G-SIIs, whether its calibration should be different from the calibration for G-SIIs, and whether its calibration should depend on the level of systemic importance of the institution;

(f) whether the current voluntary reciprocity of macroprudnetial measures should be turned into mandatory reciprocity and whether the current ESRB framework for voluntary reciprocity is an appropriate basis for that;

(g) how relevant Union and national macroprudential authorities can be mandated with tools to address new emerging systemic risks arising from credit institutions exposures to the non-banking sector, in particular from derivatives and securities financing transactions markets, the asset management sector and the insurance sector.

2. By 31 December 2022, and every five years thereafter, the Commission shall, on the basis of the consultation with the ESRB and EBA, report to the European Parliament and to the Council on the assessment referred to in paragraph 1 and, where appropriate, submit a legislative proposal to the European Parliament and to the Council.

▼M8

Article 514

Method for the calculation of the exposure value of derivative transactions

1. EBA shall, by 28 June 2023, report to the Commission on the impact and the relative calibration of the approaches set out in Sections 3, 4 and 5 of Chapter 6 of Title II of Part Three to calculate the exposure values of derivative transactions.

2. On the basis of the report by EBA, the Commission shall, where appropriate, submit a legislative proposal to amend the approaches set out in Sections 3, 4 and 5 of Chapter 6 of Title II of Part Three.

▼C2

Article 515

Monitoring and evaluation

1. By 28 June 2014, EBA, together with ESMA, shall report on the functioning of this Regulation with the related obligations under Regulation (EU) No 648/2012 and in particular with regard to institutions operating a central counterparty, in order to avoid duplication of requirements for derivative transactions and thereby avoid increased regulatory risk and increased costs for monitoring by competent authorities.

2. EBA shall monitor and evaluate the operation of the provisions for own funds requirements for exposures to a central counterparty as set out in Section 9 of Chapter 6 of Title II of Part Three. By 1 January 2015 EBA shall report to the Commission on the impact and effectiveness of such provisions.

3. By 31 December 2016, the Commission shall review, and report on, the reconciliation of this Regulation with the related obligations under Regulation (EU) No 648/2012, the own funds requirements as set out in Section 9 of Chapter 6 of Title II of Part Three and shall submit that report to the European Parliament and the Council, and, if appropriate, a legislative proposal.

Article 516

Long-term financing

By 31 December 2015, the Commission shall report on the impact of this Regulation on the encouragement of long-term investments in growth promoting infrastructure.

Article 517

Definition of eligible capital

By 31 December 2014, the Commission shall review, and report on, the appropriateness of the definition of eligible capital being applied for the purposes of Title III of Part Two and Part Four and shall submit that report to the European Parliament and the Council, and, if appropriate, a legislative proposal.

▼C2

Article 518

Review of capital instruments which may be written down or converted at the point of non-viability

By 31 December 2015, the Commission shall review, and report on, whether this Regulation should contain a requirement that Additional Tier 1 or Tier 2 capital instruments are to be written down in the event of a determination that an institution is no longer viable. The Commission shall submit that report to the European Parliament and the Council, together with a legislative proposal, if appropriate.

▼M8

Article 518a

Review of cross-default provisions

By 28 June 2022, the Commission shall review and assess whether it is appropriate to require that eligible liabilities may be bailed-in without triggering cross-default clauses in other contracts, with a view to reinforcing as much as possible the effectiveness of the bail-in tool and to assessing whether a no-cross-default provision referring to eligible liabilities should be included in the terms or contracts governing other liabilities. Where appropriate, that review and assessment shall be accompanied by a legislative proposal.

▼M11

Article 518b

Report on overshootings and supervisory powers to limit distributions

By 31 December 2021, the Commission shall report to the European Parliament and to the Council on whether exceptional circumstances that trigger serious economic disturbance in the orderly functioning and integrity of financial markets justify:

(a) during such periods, permitting competent authorities to exclude from institutions' market risk internal models overshootings that do not result from deficiencies in those models;

(b) during such periods, granting additional binding powers to competent authorities to impose restrictions on distributions by institutions.

The Commission shall consider further measures, if appropriate.

▼C2

Article 519

Deduction of defined benefit pension fund assets from Common Equity Tier 1 items

By 30 June 2014, EBA shall prepare a report on whether the revised IAS 19 in conjunction with the deduction of net pension assets as set out in Article 36(1)(e) and changes in the net pension liabilities lead to undue volatility of institutions' own funds.

▼C2

Taking into account the EBA report, the Commission shall by, 31 December 2014 prepare a report for the European Parliament and the Council on the issue referred to in the first paragraph, together with a legislative proposal, if appropriate, to introduce a treatment which adjusts defined net benefit pension fund assets or liabilities for the calculation of own funds.

▼M5

Article 519a

Reporting and review

By 1 January 2022, the Commission shall report to the European Parliament and the Council on the application of the provisions in Chapter 5 of Title II of Part Three in the light of developments in securitisation markets, including from a macroprudential and economic perspective. That report shall, if appropriate, be accompanied by a legislative proposal and shall, in particular, assess the following points:

(a) the impact of the hierarchy of methods set out in Article 254 and of the calculation of the risk-weighted exposure amounts of securitisation positions set out in Articles 258 to 266 on issuance and investment activity by institutions in securitisation markets in the Union;

(b) the effects on the financial stability of the Union and Member States, with a particular focus on potential immovable property market speculation and increased interconnection between financial institutions;

(c) what measures would be warranted to reduce and counter any negative effects of securitisation on financial stability while preserving its positive effect on financing, including the possible introduction of a maximum limit on exposure to securitisations;

(d) the effects on the ability of financial institutions to provide a sustainable and stable funding channel to the real economy, with particular attention to SMEs; and

▼M13

(e) how environmental sustainability criteria could be integrated into the securitisation framework, including for exposures to NPE securitisations.

▼M5

The report shall also take into account regulatory developments in international fora, in particular those relating to international standards on securitisation.

▼M8

Article 519b

Own funds requirements for market risk

1. By 30 September 2019, EBA shall report on the impact, on institutions in the Union, of international standards to calculate the own funds requirements for market risk.

2. By 30 June 2020, the Commission shall, taking into account the results of the report referred to in paragraph 1 and the international standards and the approaches set out in Chapters 1a and 1b of Title IV of Part Three, submit a report together with a legislative proposal, where appropriate, to the European Parliament and to the Council on how to implement international standards on adequate own funds requirements for market risk.

▼M8

TITLE IIA

IMPLEMENTATION OF RULES

Article 519c

Compliance tool

1. EBA shall develop an electronic tool aimed at facilitating institutions' compliance with this Regulation and Directive 2013/36/EU, as well as with regulatory technical standards, implementing technical standards, guidelines and templates adopted to implement this Regulation and that Directive.

2. The tool referred to in paragraph 1 shall at least enable each institution to:

(a) rapidly identify the relevant provisions to comply with in relation to the institution's size and business model;

(b) follow the changes made in legislative acts and in the related implementing provisions, guidelines and templates.

▼C2

TITLE III

AMENDMENTS

Article 520

Amendment of Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) the following Chapter is added in Title IV:

'CHAPTER 4

Calculations and reporting for the purposes of Regulation (EU) No 575/2013

Article 50a

Calculation of K_{CCP}

1. For the purposes of Article 308 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (*), a CCP shall calculate K_{CCP} as specified in paragraph 2 of this Article for all contracts and transactions it clears for all its clearing members falling within the coverage of the given default fund.

2. A CCP shall calculate the hypothetical capital (K_{CCP}) as follows:

$$K_{CCP} = \sum_i max\{EBRM_i - IM_i - DF_i; 0\} \cdot RW \cdot captial\ ratio$$

▼C2

where:

$EBRM_i$ = exposure value before risk mitigation that is equal to the exposure value of the CCP to clearing member i arising from all the contracts and transactions with that clearing member, calculated without taking into account the collateral posted by that clearing member;

IM_i = the initial margin posted to the CCP by clearing member i;

DF_i = the pre-funded contribution of clearing member i;

RW = a risk weight of 20 %;

capital ratio = 8 %.

All values in the formula in the first subparagraph shall relate to the valuation at the end of the day before the margin called on the final margin call of that day is exchanged.

3. A CCP shall undertake the calculation required by paragraph 2 at least quarterly or more frequently where required by the competent authorities of those of its clearing members which are institutions.

4. For the purpose of paragraph 3, EBA shall develop draft implementing technical standards to specify the following:

(a) the frequency and dates of the calculation laid down in paragraph 2;

(b) the situations in which the competent authority of an institution acting as a clearing member may require higher frequencies of calculation and reporting than those referred to in point (a).

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

Article 50b

General rules for the calculation of K_{CCP}

For the purposes of the calculation laid down in Article 50a(2), the following shall apply:

(a) a CCP shall calculate the value of the exposures it has to its clearing members as follows:

(i) for exposures arising from contracts and transactions listed in Article 301(1)(a) and (d) of Regulation (EU) No 575/2013 it shall calculate them in accordance with the mark-to-market method laid down in Article 274 thereof;

▼C2

(ii) for exposures arising from contracts and transactions listed in Article 301(1)(b), (c) and (e) of Regulation (EU) No 575/2013 it shall calculate them in accordance with the Financial Collateral Comprehensive Method specified in Article 223 of that Regulation with supervisory volatility adjustments, specified in Articles 223 and 224 of that Regulation. The exception set out in point (a) of Article 285(3) of that Regulation, shall not apply;

(iii) for exposures arising from transactions not listed in Article 301(1) of Regulation (EU) No 575/2013 and which entails settlement risk only it shall calculate them in accordance with Part Three, Title V of that Regulation;

(b) for institutions that fall under the scope of Regulation (EU) No 575/2013 the netting sets are the same as those defined in Part Three, Title II of that Regulation;

(c) when calculating the values referred to in point (a), the CCP shall subtract from its exposures the collateral posted by its clearing members, appropriately reduced by the supervisory volatility adjustments in accordance with the Financial Collateral Comprehensive Method specified in Article 224 of Regulation (EU) No 575/2013;

(e) where a CCP has exposures to one or more CCPs it shall treat any such exposures as if they were exposures to clearing members and include any margin or pre-funded contributions received from those CCPs in the calculation of K_{CCP};

(f) where a CCP has in place a binding contractual arrangement with its clearing members that allows it to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions, the CCP shall consider that initial margin as prefunded contributions for the purposes of the calculation in paragraph 1 and not as initial margin;

(h) when applying the Mark-to-Market Method as set out in Article 274 of Regulation (EU) No 575/2013, a CCP shall replace the formula in point (c)(ii) of Article 298(1) of that Regulation with the following:

$$PCE_{red} = 0.15 \cdot PCE_{gross} + 0.85 \cdot NGR \cdot PCE_{gross}$$

▼C2

where the numerator of NGR is calculated in accordance with Article 274(1) of that Regulation and just before the variation margin is actually exchanged at the end of the settlement period, and the denominator is gross replacement cost;

(i) where a CCP cannot calculate the value of NGR as set out in point (c)(ii) of Article 298(1) of Regulation (EU) No 575/2013, it shall:

(i) notify those of its clearing members which are institutions and their competent authorities about its inability to calculate NGR and the reasons why it is unable to carry out the calculation;

(ii) for a period of three months, it may use a value of NGR of 0,3 to perform the calculation of PCE_{red} specified in point (h) of this Article;

(j) where, at the end of the period specified in point (ii) of point (i), the CCP would still be unable to calculate the value of NGR, it shall do the following:

(i) stop calculating K_{CCP};

(ii) notify those of its clearing members which are institutions and their competent authorities that it has stopped calculating K_{CCP};

(k) for the purpose of calculating the potential future exposure for options and swaptions in accordance with the Mark-to-Market Method specified in Article 274 of Regulation (EU) No 575/2013, a CCP shall multiply the notional amount of the contract by the absolute value of the option's delta$(\delta V/\delta p)$as set out in point (a) of Article 280(1) of that Regulation;

(l) where a CCP has more than one default fund, it shall carry out the calculation laid down in Article 50a(2) for each default fund separately.

Article 50c

Reporting of information

1. For the purposes of Article 308 of Regulation (EU) No 575/2013, a CCP shall report the following information to those of its clearing members which are institutions and to their competent authorities:

(a) the hypothetical capital (K_{CCP});

(b) the sum of pre-funded contributions (DF_{CM});

▼C2

(c) the amount of its pre-funded financial resources that it is required to use — by law or due to a contractual agreement with its clearing members — to cover its losses following the default of one or more of its clearing members before using the default fund contributions of the remaining clearing members (DF_{CCP});

(d) the total number of its clearing members (N);

(e) the concentration factor (β), as set out in Article 50d.

Where the CCP has more than one default fund, it shall report the information in the first subparagraph for each default fund separately.

2. The CCP shall notify those of its clearing members which are institutions at least quarterly or more frequently where required by the competent authorities of those clearing members.

3. EBA shall develop draft implementing technical standards to specify the following:

(a) the uniform template for the purpose of the reporting specified in paragraph 1;

(b) the frequency and dates of the reporting specified in paragraph 2;

(c) the situations in which the competent authority of an institution acting as a clearing member may require higher frequencies of reporting than those referred to in point (b).

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

Article 50d

Calculation of specific items to be reported by the CCP

For the purposes of Article 50c, the following shall apply:

(a) where the rules of a CCP provide that it use part or all of its financial resources in parallel to the pre-funded contributions of its clearing members in a manner that makes those resources equivalent to pre-funded contributions of a clearing member in terms of how they absorb the losses incurred by the CCP in the case of the default or insolvency of one or more of its clearing members, the CCP shall add the corresponding amount of those resources to DF_{CM};

▼C2

(b) where the rules of a CCP provide that it use part or all of its financial resources to cover its losses due to the default of one or more of its clearing members after it has depleted its default fund, but before it calls on the contractually committed contributions of its clearing members, the CCP shall add the corresponding amount of those additional financial resources (DF^{a}_{CCP})to the total amount of pre-funded contributions (DF) as follows:

$$DF = DF_{CCP} + DF_{CM} + DF^{a}_{CCP}.$$

(c) a CCP shall calculate the concentration factor (β) in accordance with the following formula:

$$\beta = \frac{PCE_{red,1} + PCE_{red,2}}{\sum_i PCE_{red,i}}$$

where:

$PCE_{red,i}$ = the reduced figure for potential future credit exposure for all contracts and transaction of a CCP with clearing member *i*;

$PCE_{red,1}$ = the reduced figure for potential future credit exposure for all contracts and transaction of a CCP with the clearing member that has the largest PCE_{red} value;

$PCE_{red,2}$ = the reduced figure for potential future credit exposure for all contracts and transaction of a CCP with the clearing member that has the second largest PCE_{red} value.

(*) OJ L 176, 27.6.2013, p. 1.';

(2) in Article 11(15), point (b) is deleted;

(3) in Article 89, the following paragraph is inserted:

'5a. Until 15 months after the date of entry into force of the latest of the regulatory technical standards referred to in Articles 16, 25, 26, 29, 34, 41, 42, 44, 45, 47 and 49, or until a decision is made under Article 14 on the authorisation of the CCP, whichever is earlier, that CCP shall apply the treatment specified in the third subparagraph of this paragraph.

Until 15 months after the date of entry into force of the latest of the regulatory technical standards referred to in Articles 16, 26, 29, 34, 41, 42, 44, 45, 47 and 49, or until a decision is made under Article 25 on the recognition of the CCP, whichever is earlier, that CCP shall apply the treatment specified in the third subparagraph of this paragraph.

▼C2

Until the deadlines defined in the first two subparagraphs of this paragraph, and subject to the fourth subparagraph of this paragraph, where a CCP neither has a default fund nor has in place a binding arrangement with its clearing members that allows it to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions, the information it is to report in accordance with Article 50c(1) shall include the total amount of initial margin it has received from its clearing members.

The deadlines referred to in the first and second subparagraphs of this paragraph may be extended by six months in accordance with a Commission implementing act adopted pursuant to Article 497(3) of Regulation (EU) No 575/2013.’ .

PART ELEVEN

FINAL PROVISIONS

Article 521

Entry into force and date of application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. This Regulation shall apply from 1 January 2014, with the exception of:

(a) Article 8(3), Article 21 and Article 451(1), which shall apply from 1 January 2015;

(b) Article 413(1), which shall apply from 1 January 2016;

(c) the provisions of this Regulation that require the ESAs to submit to the Commission draft technical standards and the provisions of this Regulation that empower the Commission to adopt delegated acts or implementing acts, which shall apply from 28 June 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

▼C2

ANNEX I

Classification of off-balance sheet items

1. Full risk:

   (a) guarantees having the character of credit substitutes, (e.g. guarantees for the good payment of credit facilities);

   (b) credit derivatives;

   (c) acceptances;

▼M9

   (d) endorsements on bills not bearing the name of another institution or investment firm;

▼C2

   (e) transactions with recourse (e.g. factoring, invoice discount facilities);

   (f) irrevocable standby letters of credit having the character of credit substitutes;

   (g) assets purchased under outright forward purchase agreements;

   (h) forward deposits;

   (i) the unpaid portion of partly-paid shares and securities;

   (j) asset sale and repurchase agreements as referred to in Article 12(3) and (5) of Directive 86/635/EEC;

   (k) other items also carrying full risk.

2. Medium risk:

   (a) trade finance off-balance sheet items, namely documentary credits issued or confirmed (see also ‘Medium/low risk’);

   (b) other off-balance sheet items:

      (i) shipping guarantees, customs and tax bonds;

      (ii) undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of more than one year;

      (iii) note issuance facilities (NIFs) and revolving underwriting facilities (RUFs);

      (iv) other items also carrying medium risk and as communicated to EBA.

3. Medium/low risk:

   (a) trade finance off-balance sheet items:

      (i) documentary credits in which underlying shipment acts as collateral and other self-liquidating transactions;

▼C2

(ii) warranties (including tender and performance bonds and associated advance payment and retention guarantees) and guarantees not having the character of credit substitutes;

(iii) irrevocable standby letters of credit not having the character of credit substitutes;

(b) other off-balance sheet items:

(i) undrawn credit facilities which comprise agreements to lend, purchase securities, provide guarantees or acceptance facilities with an original maturity of up to and including one year which may not be cancelled unconditionally at any time without notice or that do not effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness;

(ii) other items also carrying medium/low risk and as communicated to EBA.

4. Low risk:

(a) undrawn credit facilities comprising agreements to lend, purchase securities, provide guarantees or acceptance facilities which may be cancelled unconditionally at any time without notice, or that do effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness. Retail credit lines may be considered as unconditionally cancellable if the terms permit the institution to cancel them to the full extent allowable under consumer protection and related legislation;

(b) undrawn credit facilities for tender and performance guarantees which may be cancelled unconditionally at any time without notice, or that do effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness; and

(c) other items also carrying low risk and as communicated to EBA.

▼C2

ANNEX II

Types of derivatives

1. Interest-rate contracts:

   (a) single-currency interest rate swaps;

   (b) basis-swaps;

   (c) forward rate agreements;

   (d) interest-rate futures;

▼M8

   (e) interest-rate options;

▼C2

   (f) other contracts of similar nature.

2. Foreign-exchange contracts and contracts concerning gold:

   (a) cross-currency interest-rate swaps;

   (b) forward foreign-exchange contracts;

   (c) currency futures;

▼M8

   (d) currency options;

▼C2

   (e) other contracts of a similar nature;

   (f) contracts of a nature similar to (a) to (e) concerning gold.

▼M8

3. Contracts of a nature similar to those in points 1(a) to (e) and 2(a) to (d) of this Annex concerning other reference items or indices. This includes as a minimum all instruments specified in points (4) to (7), (9), (10) and (11) of Section C of Annex I to Directive 2014/65/EU not otherwise included in point 1 or 2 of this Annex.

▼C2

ANNEX III

Items subject to supplementary reporting of liquid assets

1. Cash.

2. Central bank exposures, to the extent that these exposures can be drawn down in times of stress.

3. Transferable securities representing claims on or claims guaranteed by sovereigns, central banks, non-central government public sector entities, regions with fiscal autonomy to raise and collect taxes and local authorities, the Bank for International Settlements, the International Monetary Fund, the European Union, the European Financial Stability Facility, the European Stability Mechanism or multilateral development banks and satisfying all of the following conditions:

   (a) they are assigned a 0 % risk-weight under Chapter 2, Title II of Part Three;

▼M9

   (b) they are not an obligation of an institution or investment firm or any of its affiliated entities.

▼C2

4. Transferable securities other than those referred to in point 3 representing claims on or claims guaranteed by sovereigns or central banks issued in domestic currencies by the sovereign or central bank in the currency and country in which the liquidity risk is being taken or issued in foreign currencies, to the extent that holding of such debt matches the liquidity needs of the bank's operations in that third country.

5. Transferable securities representing claims on or claims guaranteed by sovereigns, central banks, non-central government public sector entities, regions with fiscal autonomy to raise and collect taxes and local authorities, or multilateral development banks and satisfying all of the following conditions:

   (a) they are assigned a 20 % risk-weight under Chapter 2, Title II of Part Three;

▼M9

   (b) they are not an obligation of an institution or investment firm or any of its affiliated entities.

▼C2

6. Transferable securities other than those referred to in points 3, 4 and 5 that qualify for a 20 % or better risk weight under Chapter 2, Title II of Part Three or are internally rated as having an equivalent credit quality, and fulfil any of the following conditions:

▼M9

   (a) they do not represent a claim on an SSPE, an institution or investment firm or any of its affiliated entities;

▼C2

   (b) they are bonds eligible for the treatment set out in Article 129(4) or (5);

▼M10

   (c) they are covered bonds as defined in point (1) of Article 3 of Directive (EU) 2019/2162 other than those referred to in point (b) of this point.

▼M9

7. Transferable securities other than those referred to in points 3 to 6 that qualify for a 50 % or better risk weight under Chapter 2 of Title II of Part Three or are internally rated as having an equivalent credit quality, and do not represent a claim on an SSPE, an institution or investment firm or any of its affiliated entities.

▼C2

8. Transferable securities other than those referred to in points 3 to 7 that are collateralised by assets that qualify for a 35 % or better risk weight under Chapter 2, Title II of Part Three or are internally rated as having an equivalent credit quality, and are fully and completely secured by mortgages on residential property in accordance with Article 125.

9. Standby credit facilities granted by central banks within the scope of monetary policy to the extent that these facilities are not collateralised by liquid assets and excluding emergency liquidity assistance.

10. Legal or statutory minimum deposits with the central credit institution and other statutory or contractually available liquid funding from the central credit institution or institutions that are members of the network referred to in Article 113(7), or eligible for the waiver provided in Article 10, to the extent that this funding is not collateralised by liquid assets, if the credit institution belongs to a network in accordance with legal or statutory provisions.

▼M9

11. Exchange traded, centrally cleared common equity shares that are a constituent of a major stock index, denominated in the domestic currency of the Member State and not issued by an institution or investment firm or any of its affiliates.

▼C2

12. Gold listed on a recognised exchange, held on an allocated basis.

All items with the exception of those referred to in points 1, 2 and 9 must satisfy all of the following conditions:

(a) they are traded in simple repurchase agreements or cash markets characterised by a low level of concentration;

(b) they have a proven record as a reliable source of liquidity by either repurchase agreement or sale even during stressed market conditions;

(c) they are unencumbered.

▼C2

ANNEX IV

Correlation table

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Article 1		
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Article 3		
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Point (63) of Article 4(1)	Article 4(40a)	
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This Regulation	Directive 2006/48/EC	Directive 2006/49/EC
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This Regulation	Directive 2006/48/EC	Directive 2006/49/EC
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