19 August 2024
EBF_046569

EBA Consultation - EBA/CP/2024/12

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

General Remarks

The European Banking Federation (EBF) welcomes the opportunity to express its views on the Draft Guidelines on ADC exposures to residential property under Article 126a of the Regulation (EU) 575/2013 ("**CRR**") ("**EBA Draft Guidelines**") included in the EBA's Consultation Paper *EBA/CP/2024/12*.

EBF Members acknowledge the importance of identifying clear rules for the requirements defined in Article 126a(2) of the CRR3 to ensure financial institutions apply a risk weight of 100% to ADC exposures (instead of 150%) taking into account the simplicity of the Standardised Approach and avoiding unnecessary burdens on the banking industry. Nevertheless, in our view, the EBA Draft Guidelines raise serious concerns regarding the implementation of the envisaged requirements. They could significantly reduce the bank's supply of credit for the acquisition, development, and construction ("**ADC**") of residential immovable property. This would, in turn, have negative impacts on the whole EU Residential Real Estate market, and consequently, on the EU economy.

It is very important that CRR3 and the EBA Draft Guidelines take into account national legal and market specificities, at the EU and non-EU levels. The respective market practices are well established and have been in place for several decades to minimise the risk that the construction of a residential real estate is not completed. This, in turn, commits the buyers to the purchase of the property upon the completion of the construction project. Moreover, concerning the international European banking groups, the EBA Draft Guidelines should also fit for non-EU countries market practices. As currently written, these guidelines would create an unlevel playing field for EU banks in third countries when consolidating at the EU.

Overall, Article 126a CRR33, in conjunction with the EBA Draft Guidelines, imply the development of an over-engineered set of requirements (and specificities) requiring banks to establish new procedures for classifying each type of ADC exposure, identifying the eligible forms of mitigation and the need to integrate all these requirements into IT systems in a short period of time. In our view, the EBA Draft Guidelines and specificities should be slimmed down in order to be as objective and simple as possible.

European Banking Federation aisbl

Brussels / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu
Frankfurt / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany
EU Transparency Register / ID number: 4722660838-23

www.ebf.eu

A. SUBSTANTIAL CASH DEPOSIT:

Q1: *What is the materiality of the pre-sale and pre-lease contracts that would not have the expected characteristics of legally binding contract?*

In most European jurisdictions, the financing of residential property developments for sales to individuals is regularly based on binding, notarised sale contracts. In contrast, all pre-sale and pre-lease contracts have the expected characteristics of a legally binding contract, as defined in the EBA Consultation Paper.

It is important to note that pre-lease contracts are very rare across Europe. In some countries, pre-lease by a natural person is even prohibited by law.

We would appreciate clarification on whether the requirement for cash deposits or equivalent prerequisites applies only in the case of pre-sale and pre-lease contracts.

Q2: *Do you agree with the approach proposed to specify the term "substantial cash deposit"?*

Yes, we agree with the definition of the ratio (cash/sale price). However, we would ask the EBA to kindly consider the fact that CRR3 should take into account consumer law provisions in many European countries.

Q3: *Do you consider the 10% ratio to be appropriate for the determination of the ADC exposures benefitting from the lower risk weight?*

As mentioned in Q2, the proposed 10% ratio would fit some jurisdictions; however, this is not the case for other jurisdictions, as it goes beyond the legal requirements or market practice. From a legal perspective, in France or Belgium, and aligned with the national legislation for the residential market, cash deposits are capped at 5% of the sale contracts.

Note that by proposing a cash deposit amount of a minimum of 10% of the sale price on pre-sales, whereas any deposit above 5% is considered in breach of the national law, the EBA hampers the possibility for French and Belgium banks to apply a reduced RW through this criterion since they will not be able to use pre-sales in the calculation of the significant portion of total contracts.[1]

In jurisdictions where the 10% is allowed, taking into consideration the traditional operations in many European markets, from a prudential perspective, a lower ratio would ensure a satisfactory level of commitment from the prospective buyer to

[1] We found unusual that the EBA decided to propose a set-up which is not supportive of local consumer laws, despite being fully aware of the existing restriction. We would like to kindly remind the EBA that Level 1 Text (i.e. in this case the CRR) usually takes into consideration relevant adjustments to fit with European countries' consumer law provisions. For example, for UCC treatment, the Level 1 Text mentions: "[…] *any commitment the terms of which permit the institution to cancel that commitment to the full extent allowable under consumer protection and related legal acts*." As such, we would support that the EBA is mindful of countries' local rules in its proposals.

convert the "pre-sale contract" into a "sale contract". In general, a ratio of 5% would be appropriate.

Q4: *Do you have any concerns with applying a single ratio to all ADC projects? Are there any practical options the EBA should consider setting the ratio in a more granular way (e-g- threshold subject to case-by-case adjustments for either insufficient incentives or for non-enforceability of sufficient incentives but floored at potential market price deterioration over relevant period) keeping in mind the simplicity of the SA and the level playing field across institutions? If yes, please elaborate these options in detail.*

No. However, a pre-lease requirement exceeding 100% seems excessive and inappropriate in some jurisdictions and does not reflect national market practices. Therefore, we suggest adopting a more flexible solution adapted to national specificities.

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

No. The proposed ratios would only make sense for pre-sale and sale-binding contracts. Regarding pre-lease and lease-binding contracts, individuals are very unlikely to be willing to pay 3 months in advance to rent a flat that is still under construction. This would also be the case for pre-lease agreements for commercial shopping centres and offices, which are out of the scope of this consultation/EBA's mandate.

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

No.

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

For the sake of simplicity, one single threshold should apply to all ADC projects. However, it is of utmost importance that the proposed ratio covers all market practices, not only at the EU level but also at the non-EU level, considering that these EBA Draft Guidelines also impact most of the international European banking groups.

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

No.

B. FINANCING ENSURED IN AN EQUIVALENT MANNER:

Q9: *Do you agree with the approach of strict equivalence with respect to cash deposit proposed? Do you deem other forms equivalent to the cash deposit from a risk perspective? If yes, please explain.*

Concerning the strict equivalence approach with respect to cash deposit proposed by the EBA Consultation Paper in the "Explanatory Text for consultation purposes" included on page 18, it seems that the EBA has a quite restrictive interpretation of the term "financing ensured in an equivalent manner", as it states that "*Only instalments already paid or cash held in a segregated account and subject to forfeiture if the contract is terminated are allowed as alternatives to the cash deposit.*" However, we believe this is contrary to the CRR3 Text, which in Article 126a(2)(a) states: "*legally binding pre-sale or pre-lease contracts for which the purchaser or tenant has made a substantial cash deposit which is subject to forfeiture if the contract is terminated or where the financing is ensured in an equivalent manner, or legally binding sale or lease contracts, including where the payment is made by instalments as the construction works progress, amount to a significant portion of total contracts.*" According to this phrase, it is our understanding that the existence of a contract that complies with the conditions "a.", "b." and "c." of Paragraph 12 of the EBA Consultation Paper foreseen for "financing ensured in an equivalent manner" would be sufficient, despite cash being provided in a later moment, as construction progress. In alternative to meeting conditions "a", "b" and "c" of Paragraph 12 of the EBA Consultation Paper, "[…] *the financing should be considered as ensured in a manner equivalent to cash deposits subject to forfeiture* […]" if the following condition is met: in the case of a housing company ordering construction work, there is explicit national legislation in place for the ADC phase, containing specific legal obligations for the project with the purpose of ensuring the buyer that construction will be completed. These shall at least include a cash deposit or a guarantee or insurance by the construction company and the buyer's front payment that together equal at least 10% of the agreed construction costs.

In the case of a housing company ordering construction work, other forms of financing should also be considered equivalent. There may be explicit national legislation in place for the ADC phase, containing specific legal obligations for the project with the purpose of ensuring the buyer that the construction will be completed. When these shall at least include a cash deposit or a guarantee or insurance by the construction company and the buyer's front payment that together equal at least 10% of the agreed construction costs, the guidelines should also allow this kind of assurance of financing as it is legally binding and in essence equivalent from an economic point of view.

Finally, clarification from the EBA on the wording "segregated account" is needed. In what way does the account need to be segregated? Is the builder (obligor) allowed to withdraw money from the account to use it for production costs? Are there any special conditions that apply to a segregated account?

C. SIGNIFICANT PORTION OF TOTAL CONTRACTS:

Q10: *Do you agree in using two different options for pre-sale/sale and pre-lease/lease contracts?*

In most countries, leases are only granted after completion. Therefore, the proposed metric for pre-lease and lease contracts (i.e., Paragraph 16 of the EBA Consultation Paper) would not work in the first place. In practice, the decisive determinant of the actual risk is the situation in the rental market. For instance, the current housing shortage minimises the likelihood of entities remaining unlet – irrespective of the presence of pre-lease contracts.

Concerning pre-sale and sale contracts, we are supportive of the EBA credit-facility-based approach (Option 1). It ensures a more comprehensive assessment of risk, by measuring the significant portion of total contracts concerning the loan granted. This is more risk-sensitive and ensures that the RW will be lowered only when legally binding pre-sales and sales amounts reach a sufficient level relative to the loan facility, i.e. when:

i) the construction risk is mitigated since the residual financing gap is sufficiently reduced, and
ii) in a material proportion of the loan amount.

France is one of the countries where pre-lease contracts are not allowed by law. Concerning pre-sale contracts, in France, the loan is granted when:

- the obligor contributed equity is usually 10% of total costs (or 5% of total cost in case of 100% block sales)
- the reservations reach ~30 to 40%; the latter are gradually "transformed" into outright and irrevocable sales signed before notaries, while new reservations are booked.

This practice mechanically leads to a lower debt ratio of developers (who finance themselves above all by equity and regular cash advances provided by the buyers as the project progresses the credit covering the financial impasse), ensuring the strength and resilience of the market.

However, when applying Option 1-credit facility based, to sale contracts, banks should be allowed to use in the "numerator" the "Value of the sold entities" or the "Sales Price". For lease contracts, the reference should be the "Value for Properties".

Q11: *Do you see any drawbacks related to the proposed options under paragraphs 14 to 16 of these Guidelines?*

Yes, we do.

From our perspective, Option 1 - credit facility based is the most reasonable approach and, therefore, our clear preference. However, for pre-sale and sale contracts, we consider the proposed ratio of 50% overly conservative. It would be very difficult to comply with it, given that it is super-equivalent to current EU and non-EU market practices and banks' internal risk policies. We suggest reducing

the proposed percentage from 50% to a lower percentage ranging between 30% and 40%.

This proposal would fit with current conservative market practices where institutions require a 30% pre-sales requirement at the outset, considering the LTC assumed by the institutions is around 70-75% (30/70=43%). Having a lower percentage ranging between 30% and 40% of the loan amount secured by contracts at inception seems reasonable to consider it as a risk mitigator.

It should be noted that some European banking groups operate and have a presence in third countries, including in Latin America. These banks must comply with EU rules while competing locally, considering local market practice specificities. If EU rules do not consider third countries' local market practices, as is the case for the proposed ratio, this would pose a problem with the level playing field for most international European banking groups that consolidate their activity in the EU. Therefore, and as mentioned above, we would suggest reducing the proposed percentage.

Moreover, the background and rationale section of the EBA Consultation Paper considers that this condition is meant to mitigate the risk of the absence or scarcity of marketability of the ADC project. We would like to highlight that a lower ratio does not necessarily mean that it is a riskier project. The project might even absorb a negative market shock better, if it was a more profitable project (c.f. response to Q19).

Should the EBA select another option than the one supported by EBF (i.e., not Option 1 - credit facility based), the proposed threshold should be further reduced to better reflect the reality of market standards in terms of transaction derisking: from our perspective, an additional reduction of the legally binding sales level should then be considered as sufficient, given the mechanism described above.

Q12: *What is the materiality of ADC projects with mixed use foreseen? How are these projects structured and whether the proposed options raise any particular issues to be applied in practice?*

As flagged previously, projects with mixed-use are not material for some EBF members.

In those jurisdictions where EBF members can engage in pre-lease and lease contracts, it would be important to clarify that the additional guidance foreseen in Paragraph 17 of the EBA Consultation Paper only addresses situations in which one credit facility covers both entities for sale and rent ("mixed-use credit facilities"). In cases of separate credit facilities, no additional questions arise, even if they refer to the same overarching development project ("mixed-used developments").

Despite appreciating that the EBA analyses potential specific solutions for mixed-use credit facilities, we would like to note that the EBA Consultation Paper explores very detailed and small-scale specifications. From our point of view, the actual mandate in Article 126a CRR3 does not require the EBA to provide explicit guidance at such a granular level. If additional guidance was still deemed

necessary, it should at least remain flexible and align with the proposals mentioned under Q14 to Q16.

Q13: *Do you agree with the pros and cons on the different methods explained above? Are there any further issues that the EBA should consider?*

N/A.

Q14: *Do you agree with the use of method B1 for the aggregation of pre-sale/sale contracts with pre-lease/lease contracts? Can method B1 be applied in practice using option 1 for pre-sale/sale contracts and option 3 for pre-lease/lease contracts? Is it possible to separately identify the amount of the ADC exposure used for financing housing units for sale or for lease ?*

We disagree with the Method B1- Two Step Approach proposed on page 22 of the EBA Consultation Paper. According to this approach, it is necessary to calculate separate thresholds (one for pre-sale contracts and one for pre-lease contracts) and to satisfy both of them, to make banks apply 100% risk weight. We believe this approach is excessively conservative and risks creating paradoxical effects that do not consider the material risk of the ADC exposure. For example, in an ADC project with 100 residential units, where 99 units are intended for sale and only one for rental, if the ratio indicated in Paragraph 16 of the EBA Consultation Paper for the property to lease is not achieved, even if the other 99 buildings are all sold or pre-sold, banks could not apply the 100% risk weight to this exposure. Consequently, the entire ADC project exposure would be weighted at 150%, despite all other risk-mitigating conditions for achieving the benefit.

Overall, Method B1- Two Step Approach does not take into account any concept of "prevalence" of the destination of the properties.

Q15: *Are there any other combinations of the options and methods considered by the EBA for aggregating pre-sale/sale contracts and/or pre-lease/lease contracts that are preferable?*

Considering the simplicity of the Standardised Approach, also pointed out by the EBA in the Consultation Paper, we deem it appropriate to define a single ratio following the approach proposed in Q11.

Q16: *Which alternative should be considered for assessing whether, for a project where a mixed use is foreseen, the eligible pre-sale/sale and pre-lease/lease contracts are a significant portion of total contracts?*

As an alternative to the Approach described in the answers to Q11 and Q15, and as anticipated in answer to Q14, we propose the introduction of a "prevalence" requirement for projects with properties where mixed-use is foreseen. It should be easily measurable without imposing additional burdens on banks, considering that it should be used in the Standardised Approach.

This requirement should consider the "prevalence" of use of properties, calculated in terms of number of properties destined for sale or lease compared to the total number of units that are part of the ADC project or in terms of the value of the properties (according to the "property value" as defined by Article 229 of the CRR

and determined by an independent valuer). In this case, to apply a risk weight of 100% to the ADC exposure, it should be sufficient to satisfy the requirement of Paragraphs 14 or 16 of the EBA Consultation Paper, according to the main "intended use" of the property (for sale properties or for lease ones).

Q17: *Do you foresee any practical impediments to include the verification that the developer only has a residual claim on the property in the underwriting standards? How could this "residual claim" feature be ensured in practice in your jurisdiction (e.g., SPV, pledge, mortgages, …)? Please provide reasoning, taking into account market practices and underwriting standards if you think that an adjustment of the EBA's definition of obligor contributed equity is necessary.*

N/A.

Q18: *What are your views on the proposed threshold for determining the appropriateness of the amount of obligor-contributed equity? Please provide reasoning, taking into account market practices and underwriting standards if you think that an adjustment of the EBA's proposal is necessary.*

The appropriateness of the threshold value depends on the metric that is chosen. In our view, neither of the proposed approaches is appropriate from a conceptual point of view (c.f. Q19). However, the threshold of 35% would not be appropriate, in any case.

Overall, we consider that the threshold of 35% is not aligned with market practices. We understand that the EBA would allow a reduced RW from 150% to 100% as an incentive for the safest transactions. However, we believe the proposed level is too high to be reached across Europe and outside the EU for most international banking groups operating in third countries. Hence, the proposed methodology would not address the point correctly.

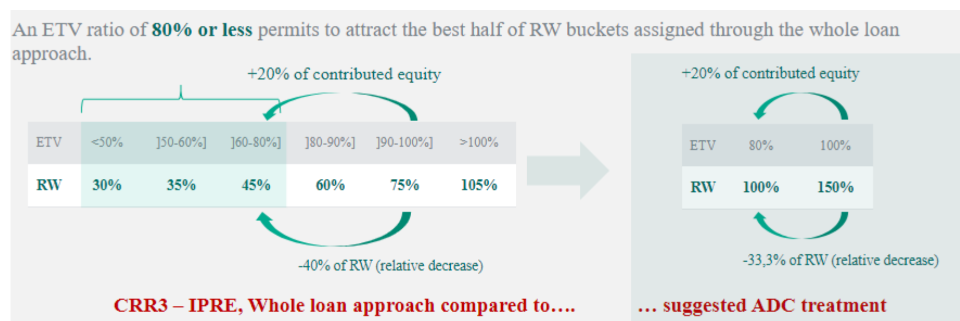
In practice, the level of equity is not assessed in relation to the value upon completion but in relation to total investment costs. This is because banks finance at maximum the total financing costs but not the full property value upon completion (c.f. response to Q19). For example, concerning the French Real Estate development financings for the residential market (i.e., excluding investor loans with a construction period), the practice is to ask for an equity ratio of around 10% of total costs (or even 5% in case of 100% block sales). In Luxembourg, banks intervene upstream of the project when the real estate developer acquires the land, by financing a maximum of 80% of the land price (excluding acquisition costs). A minimum equity contribution of 20% of the land price must be injected by the real estate developer.

Hence, the proposed level of threshold is not risk-sensitive enough and would simply disqualify too many transactions from the Level 1 Text derogation based on significant obligor-contributed equity. Concretely, 35% of value upon completion (equivalent to 65% Loan-To-Value upon completion) may be unduly conservative and decorrelated from the average level of equity contributed that would effectively mitigate the risk.

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

The threshold level to be set in the context of ADC exposure would lead to a less significant mitigation of a 33% relative decrease (from 150% to 100% RW).

Thus, we believe that a level of obligor-contributed equity of 20% would be significant enough and appropriate since ensuring proportionality to the IPRRE treatment while taking into account the additional construction risk through the lower extent of risk weight reduction.



Moreover, this ratio still remains above the average observed in European markets, which would ensure that the substance of the EBA proposal meets the requirements for a lower RW application.

Q19: *Do you agree to use Approach 4 for identifying the appropriate amount of obligor-contributed equity? If not, what alternative options should the EBA consider?*

From our point of view, the basic problem with the proposed approaches arises from the CRR3 definition of "denominator" being the cost of the project.

This is because the appraised "Property Value upon completion" includes, conceptually, a part of the profit that the developer is expecting to make. However, such profit is hardly "at risk" at the point in time when the financing is granted. Therefore, it is common market practice in some countries (i.e. Germany) to base the equity contribution of the developer on the total cost of the project instead of the property value. Unfortunately, the "denominator" is bindingly defined as "Property Value upon completion" in the Level 1 Text (in Article 126a CRR3).

Consequently, under Approaches 1, 3 and 4, a project with a comparably high profit margin would require a higher equity cheque than a less profitable development, which seems not intuitive.

Moreover, all proposed approaches fail to recognise certain effective and commonly used risk mitigants. We strongly recommend the inclusion of any available sureties, i.e. all valuable/liquid assets/collateral (such as recourse/cash,

guarantees, assessable land charge on other properties) as a source of equity in the "numerator". Appropriate levels of conservatism can still be ensured by applying common criteria on the value and realisation, e.g. a certain minimum creditworthiness of a guarantor. Completely discarding frequently used equity-equivalent risk mitigants would jeopardise the level playing field among institutions and create counterproductive incentives.

If the EBA chose Approach 4, the threshold should be further reduced to compensate for the above-mentioned, methodologically flawed, adverse consideration of borrowers' profits.

Otherwise, the EBA could adopt an enhanced version of Approach 2:

$$\frac{\text{Property Value upon Completion} - (\text{Total Loans} - \text{Sureties})}{\text{Property Value upon Completion}}$$

Where eligible sureties should include any risk mitigants that do not directly reduce the loan amount and are thus not automatically included under Approach 2.

Q20: *Do you see any rationale for setting different threshold levels?*

"Significant portion of total contracts" (50%)

- We suggest a lower threshold ranging between 30% and 40% (c.f. Q11).

"Amount of obligor-contributed equity" (35%)

- We suggest a threshold of 20% or less (depending on which metric is chosen) and widening the perimeter of eligible collateral (c.f. Q18).

Q21: *Do you agree with the adjusted criteria for public housing or not-for-profit entities?*

EBF Members disagree with such criteria being applied to the financing of the construction of public housing and advocate for lower and more lenient regulatory requirements for exposures linked to public housing / not-for-profit entities. Specifically, we would make the following comments with respect to adjusted requirements under Paragraph 21 a., b. and c. of the EBA Consultation Paper:

- a. Substantial Cash Deposit: In the situation where a developer contracts to sell a full housing development to a public housing or not-for-profit entity, this would typically have a nominal deposit but would be considered low risk and aligned with the intention of the regulation to support development of public housing. We would propose the requirement for a cash deposit is removed for these entities. Otherwise, we do not believe that housing bodies or not-for-profit organisations will be able to meet these requirements. In some EU Member States, it is not market standard for such entities to provide substantial cash deposits; rather, they provide a nominal payment as outlined above.
- b. and c. Financing Ensured In An Equivalent Manner & Significant Portion Of Total Contracts: As currently drafted, the EBA proposal under point b. and c. cannot be applied in some countries (such as Austria, France,

Germany and Denmark, where there are no pre-letting agreements before completion), given that the proposed criteria (equity, pre-sale rate, cash deposit) could not be met for this specific perimeter, leading to an anti-economic and political situation where such exposures providing a service of general interest under the control of the State would face a higher charge than those led by private developers. EBF Members argue that the intention of the project and the obligation to comply with statutory regulations should be sufficient to justify the 100% risk weight.

With reference to the above, it is necessary with an amendment of Paragraph 21 of the EBA Consultation Paper to give access to the 100% risk weight for ADC exposures to public housing or not-for-profit entities if the conditions in Paragraph 20 of the EBA Consultation Paper are met.

In our view, there are two major points of criticism:

1) Financing of non-profit housing developers (point 6. Paragraph 20 of the EBA Consultation Paper):

The provisions under point 6. stipulate that financing to public housing or non-profit organisations for properties under construction are to be assigned to the 'ADC' category.

In our opinion, an ADC categorisation for these financings is completely incomprehensible, as in the Commission's recitals to CRR3, the 'very uncertain future cash flows' have been the decisive factor for the categorisation of ADC. This is **not** the case for non-profit housing, as there is **increased demand** due to the more favourable conditions, and the risk of vacancies is virtually non-existent. The risk content of this financing is therefore very low and in no way justifies categorisation as ADC.

Both in the Basel Committee's policy paper on the finalisation of capital requirements in accordance with CRR3 and directly in the provisions of CRR3 (Article 124 (2) regarding non-income producing real estate), non-profit housing is granted a special status, which is now incomprehensibly to be completely removed with the EBA Consultation Paper.

2) Calculation of the significant share of total contracts for letting/leasing (point 4., Paragraph 16 of the EBA Consultation Paper)

The defined formula for calculating whether the share of total contracts for letting/leasing is significant is based on the number of signed contracts. Particularly in the case of mixed-use (sale and rent), this results in a less favourable position for rent.

As the rented space is not considered at all, this blurs the results. Even if a rented unit accounts for more than 50% of the area, the proposed calculation does not achieve a significant proportion of the total contracts. Therefore, the rented m² area should be integrated into the calculation.

Example:

70% of a property is sold (assumed pre-sales rate of 60%) and 30% is let. However, only two rental agreements of six units have been concluded, whereby the concluded rental agreements include two penthouse flats totalling 150 m². The remaining 4 units, each with 60 m², are still vacant. In this example, the pre-letting rate is only around 33%. Despite the large rented area, the necessary pre-rent rate has not been achieved. Taking the square metres into account, a pre-rent rate of around 55% would be achieved.

In addition, the requirement that, in the case of mixed-use, both the 50% for sale and the 50% for rent must be achieved separately means that a favoured underpinning obligation is often not enforceable.

For example, if 100% of the property is (pre-)sold and only the two small flats are not (pre-)rented, a risk weighting of 100% is still not permitted. In our opinion, this approach is excessive. Even with mixed-use, there needs to be one quota that must be achieved (and not two different ones).

In addition, we believe that it is contrary to practice for rent-projects to have pre-rent agreements with cash deposits (see also the comments on Q14 above).

We are strongly in favour of reducing the equity requirement calculated from the "Property Value upon completion" to 20% in accordance with the answer to Q18, because we also believe that a potential profit share does not have to be backed by equity. In principle, however, we believe that the equity requirement should not be calculated on the value of the property after completion, but on the total cost.

Nevertheless, we believe that 35% is too high and propose a reduction to 20%.

In connection with the preferential risk weighting, the definition of own funds should in any case be broadened and also allow for own funds surrogates (guarantees, realisable liens on alternative properties).

In Austria there is a specific law for non-for-profit entities (GBVs) in place (*Wohnungsgemeinnützigkeitsgesetz* – WGG). GBVs do not pay profit tax, are allowed only to perform specific business, and are strictly monitored by supervisory authority from the federal state where they are registered.

GBVs often finance their housing objects with big parts of public subsidies, rents are based on a strict cost principle for calculating the rents. Therefore, residential projects (developments) of GBVs based on Austrian *Wohnungsgemeinnützigkeits Gesetz* ("WGG") should, in any case, be considered with the lowest level of ADC RWA factor.

Because of these special requirements and this strict cost principle, a more favourable treatment should be considered.

Moreover, as flagged previously, there are many jurisdictions where there are no pre-lease contracts. Thus, institutions would not profit from the approach taken in this respect.

Therefore, we would suggest broadening the scope of adjusted criteria for public housing and non-for-profit entities to sell. In many jurisdictions, in the EU but also non-EU countries, while there are no pre-lease contracts, public housing and not-for-profit entity sales are market practices. If considering the previous approach (pre-sale and sale conditions to be met for benefitting 100% RW), public housing and not-for-profit entity sales would be out of the market.