

Vedlegg 1: CRR – Spørsmål til EBA-nettverket om CRR artikkel 128

Følgende spørsmål ble sendt EBA-nettverket 5. mars 2021:

a. "Have you published any guidance (circulars, Q&As or other statements) on CRR article 128 (2), cf. article 4 (1)(79)?

If YES to question a): Please send us a link to the publication.

If YES to question a): Please elaborate on any considerations behind the publication.

b. If NO to question a): Do you have any internal guidance on CRR article 128 (2), cf. article 4 (1)?

c. If NO to question a) and b) – what is your impression on how this article is interpreted in banks? I.e., is there any differentiation between immovable property financing based on the level of pre-sale and/or equity and/or prepayment?

We will appreciate answers to these question as soon as possible or before 25th March at the latest.

Any information we get will only be submitted to the Ministry subject to your approval."

Åtte tilsynsmyndigheter svarte innen fristen satt i nettverket, og én svarte etter denne fristen. Svarene er gjengitt nedenfor for landene som har samtykket i at informasjonen deles (to land har ikke gitt samtykke til deling av informasjon).

Authority (Country)	Answer
Finanstilsynet (Denmark)	The Danish FSA has published an external note on the term speculative immovable property in article 4(1)(79). Article 4(1)(79) refers to loans for acquisition, development or construction of property with the intention of reselling for profit. This in general includes all immovable property that the debtor buys or build with the money from the loan and intends to sell. Our note highlights the fact, that there are no exceptions from the treatment as high-risk exposures if the exposure meets the definition of speculative immovable property. The CRR definition does not take sales contracts into account when assessing whether an exposure meets this definition. The institution should therefore not asses the riskiness or

	<p>whether the exposure is deemed speculative but rather, whether the exposure fit the definition in article 4(1)(79). The publication can be found here: https://www.finanstilsynet.dk/-/media/Lovgivning/Solvens-II/Notat-om-risikovegtning.pdf</p>
Finansinspektionen (Sweden)	<p>a) No</p> <p>b) No</p> <p>c) We expect our banks to comply with CRR and related Q&As in this area. In this case we have not specifically reviewed how banks treat article 128 (2) and article 4 (1)(79) in practice.</p>
Finnish FSA (Finland)	<p>The FIN-FSA has not published any additional guidance on CRR article 128 (2), cf. article 4 (1)(79). We do not have any information about the differentiation between immovable property financing based on the level of pre-sale and/or equity and/or prepayment either. It would appear that this category items associated with particularly high risk' is rarely applied in Finnish banks, since the exposure amounts in the exposure class 'exposures/items associated with particularly high risk' in the COREP reporting are quite low.</p>
Bundesbank (Germany)	<p>According to EBA Q&A 2016_2560, a splitting of speculative immovable property finance exposures is not allowed. Therefore, if there is only one property unit financed by the loan the intention of reselling for profit can only cease to exist if that single property unit is irrevocably sold. However, in many cases the loan finances a multitude of immovable property units like e.g., flats in a block. For these cases article 4 (1) 79 CRR in our view does not specify the exact reference of the intention of reselling for profit. The stricter interpretation would only require there to be any intention of reselling for profit with regard to the project as a whole (i.e. all the immovable property units need to be sold before the exposure no longer qualifies as speculative immovable property finance) while the more lenient interpretation would require an intention of reselling for profit with regards to all the financed immovable property units (selling only one immovable property unit would be sufficient to no longer classify the whole exposure as speculative immovable property finance). We think that the 51 % threshold strikes a good balance between these rather drastic solutions.</p> <p>Link to the BaFin Q&A (only available in German):</p> <p>https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Auslegungsentscheidung/EBA_QA/eba_ga_5_2_20_009_Aussage_CRR_kreditrisiko.html</p>

Bank of Italy (Italy)	Bank of Italy has not published any guidance (circulars, Q&As or other statements) nor any internal guidance on article 4 (1) (79) nor on article 128(2) of the CRR. However, also in light of the Basel III implementation, we deem it is worth exploring the possibility to differentiate within that asset class based on the level of pre-sale and/or equity and/or prepayment either.
The Czech National Bank (Czech Republic)	<p>The Czech National Bank has not published any special guidance regarding the definition of speculative immovable property for the purpose of CRR Article 128(2)(d). We follow the CRR rules and its explanations published by the EBA.</p> <p>This type of property is already defined in the CRR definitions (Art. 4(1)(79)). The EBA has concluded during the preparation of the Guidelines on high-risk items (EBA/GL/2019/01) that the definition is already available in the CRR and will thus not be further elaborated in the guidelines. Moreover, this is an area in which substantial changes are foreseen in the Basel III framework implementation in the EU.</p> <p>Nevertheless, we would like to draw your attention to the EBA explanations already published on this topic - in particular QA 3173. EBA implicitly says that where the pre-sale or pre-lease agreements ARE irrevocable, the exposure might not necessarily be classified as speculative immovable property associated with particularly high risk. Such understanding would be broadly in line with the Basel III criteria in paragraph 75 (i.e. 20.91 consolidated version effective as of 1 Jan 2023) for residential ADC exposures. We understand it that by having a high percentage of written irrevocable contracts (and even better if they are accompanied by a cash deposit) the exposure loses the speculative character.</p>
Polish Financial Supervision Authority (UKNF) (Poland)	<p>We also have not issued any internal guidance on CRR article 128 (2) or article 4 (1)(79).</p> <p>Referring to the third question, we would like to underline, that we have not made any inquiries in supervised credit institutions about their interpretation of these regulations.</p> <p>Generally, we follow the rules defined in the CRR and in the documents issued by the EBA.</p> <p>As you have indicated in the question, the “speculative immovable property” is already defined in the CRR definitions (Art. 4(1)(79)).</p> <p>As far as the <i>“Guidelines on specification of types of exposures to be associated with high risk under Article 128(3) of Regulation (EU) No 575/2013”</i> goes, EBA stated in the chapter “Summary of key issues and the EBA’s response”, that:</p>

“Several respondents raised issues regarding the definition and the prudential treatment of speculative immovable property financing, despite the fact that the Consultation Paper underlines the fact that this type of exposure is outside the scope of the guidelines, as this type of exposure is already included in Article 128(2) CRR. The EBA’s decision to exclude speculative immovable property financing from the guidelines was based on the consideration that the CRR already provides a definition of this. Furthermore, this is an area in which substantial changes are foreseen in the Basel III framework and may therefore lead to either pre-empting the implementation of the Basel III agreement or risking an inconsistent implementation with the future Basel III agreement. Notwithstanding this, the observations provided by the industry will be carefully assessed during the current debate within the EBA on this topic.”.

Though you have already mentioned, that “We are aware of the Q&As from EBA in relation to article 128 (2) and article 4 (1)(79)”, we would like to draw your attention to the EBA Q&A 3173, which might further deepen your understanding of the discussed notion. Specifically, EBA stated there, that:

“In case of an exposure towards the developer of a real estate project, where future contract agreements with future prospective owners of the properties under development have been signed, but where these agreements are not irrevocable, the exposure will meet the conditions described in Article 4(1)(79) CRR for being classified as speculative immovable property financing and, as a result, needs to be assigned to the class of “exposures associated with particularly high risk” according to Article 112(k) CRR. Consequently the 150% RW applies to the exposure towards the developer.”.

The above is in line with the criteria provided in the paragraph 75 of the “Basel III: Finalising post-crisis reforms” (December 2017) document, where it is stated, that:

“75. ADC exposures to residential real estate may be risk weighted at 100%, provided that the following criteria are met:

- prudential underwriting standards meet the requirements in paragraph 60 where applicable.*
- pre-sale or pre-lease contracts amount to a significant portion of total contracts or substantial equity at risk. Pre-sale or pre-lease contracts must be legally binding written contracts and the purchaser/renter must have made a substantial cash deposit which is subject to forfeiture if the contract is terminated. Equity at risk should be determined as an appropriate amount of borrower-contributed equity to the real estate’s appraised as-completed value.”.*