AFME Comments on EU Commission Guidance on Article 133(5) CRR3

8th September 2025

	Draft Guidelines Equity Exposures	AFME Remarks
1. SCOPE		
1	Article 133(5) CRR covers *“equity exposures incurred under legislative programmes to stimulate specified sectors of the economy”*. Legislative programmes are schemes providing public financial resources in the form of subsidies and guarantees to undertakings operating in specific sectors on the basis of an act of general and abstract application, such as national statutes, EU regulations, and EU decisions, notably those related to the implementation of the budget.	We understand that the preferential treatment for the bank’s equity exposures can be applied not only in case of ‘direct investments’ but also in case of ‘indirect investments’ (e.g., investment done through closed-end funds or other investments vehicles). Is this correct?
2	The following measures do not meet the definition of legislative programmes: ad hoc public interventions designed for individual situations or individual beneficiaries, such as for instance the investment by national promotional banks in large, listed enterprises; programmes targeting the whole economy such as labour benefits; purely private initiatives without any direct public intervention such as venture capital schemes set up by banks.	
3	The Commission considers that programmes which – besides meeting the requirements of Article 133(5)(a-c) CRR – support one or more specific economic sectors such as those listed in the Competitiveness Compass or in the ReArm Europe plan fall within the notion of legislative programmes for the purposes of Article 133(5) CRR.	
4	It is possible that other sectors might be deemed eligible for legislative programmes at the initiative of the EU or national authorities.	

2. ELIGIBILITY CONDITIONS OF LEGISLATIVE PROGRAMMES FOR THE PURPOSES OF ARTICLE 133(5) CRR		
5	For the purposes of Article 133(5) CRR, legislative programmes must contain financial and legal arrangements mitigating the credit risk of the investing institutions. In particular, legislative programmes should provide significant subsidies or guarantees for the investment to the institution; involve government oversight; and contain restrictions on equity investment.	It should be noted that the introduction of numerous constraints and limitations could undermine the objective of the SIU, which is to increase the flow of capital towards innovative and strategic SMEs/PMI for the European system. This para should specify what "significant" means.
6	Programmes developed and supported by the EIB or the EIF which aim at fostering equity financing in EU companies are considered compliant with the conditions set by Article 133(5) CRR as specified by the present Communication. This presumption does not exclude the eligibility of programmes administered by other EU bodies or national promotional banks, where these meet the criteria set out in this Communication.	It would seem appropriate to include, within the scope of 'legislative programmes', also investments already present in banks' portfolios that may have characteristics compatible with the provision, such as public financial institutions, mutual guarantee institutions or similar.We also support inclusion of other national institutions in addition to national promotional banks, such as ICO, Cofides, CDTI, SETT, CDP, ICF etc.
2.1 Significant subsidies and guarantees for the investment to the institution		
7	Article 133(5)(a) CRR states that legislative programmes should provide *"significant subsidies or guarantees, including by multilateral development banks, public development credit institutions as defined in Article 429a(2) or international organisations, for the investment to the institution"*.	We also support inclusion of other national institutions in addition to national promotional banks, such as ICO, Cofides, CDTI, SETT, CDP, ICF etc.
8	The term "subsidies" means funded public interventions such as grants, equity, and debt financing, whereas the term "guarantees" means "unfunded" public measures. For the purposes of art 133(5) CRR, neither subsidies nor guarantees need to meet the	We understand that there's not a strict definition of subsidies and guarantees.

	requirements set by Part Three, Title II, Chapter 4 of the CRR to be considered eligible.	
9	Subsidies and guarantees can be considered significant for the purposes of Article 133(5) CRR under different conditions: a) if the legislative programme involves the co-investment into funds investing in equity, where the public participation is at least [10/20]% of the total amount of the fund; or b) if the co-investment by the public sector is at least 10% of the capital of an entity eligible under the respective legislative programme; or c) if the public intervention achieves a reduction of the exposure value of institutions by at least 30%.	1) We believe it is appropriate to explore the possibility of removing the "floors"; otherwise, it should be specified at which stage of the fund or equity lifecycle the limit verification applies. Specifically regarding this, for equity investments, in closed-end funds the floor is easily spottable on the cap table, since this rarely changes from the inception to liquidate of the fund. In case a floor was to be set, it might necessitate that the floor is achieved as the sum of different public bodies that might be LPs in a fund. In direct equity investments, however, the start-ups / scale-ups usually undergo different funding rounds, meaning that the initial investors dilute. Thus, the investment floor in this sense varies as the companies grow and mature, and an initial investment in a company of 10% might end up diluting to a stake of below 1%. Under the current floor definition, this investment would not be considered as eligible for the favourable treatment. This issue might be sorted-out either by eliminating the floor, or by setting the floor on the original investments carried-out by the eligible public institution. 2) If the bank invests in a fund which invests in Programmes, will it be necessary to apply the look through approach or could it be acceptable that 100% applies to the fund's share? 3) Regarding point (c), how can the public intervention achieve a reduction in exposure (not only a RWA reduction?) We do not understand how the exposure can be reduced by 30% so we request clarification of how the risk reduction for the investor of at least 30% should be calculated.

10	Subsidies and guarantees compatible with the State aid framework are considered eligible under Article 133(5)(a) CRR.	
11	Legislative programmes which do not constitute State aid could still provide an advantage to the investing institution and thus be considered significant subsidies and guarantees for the purposes of art 133(5)(a), provided that the applicable condition mentioned in paragraph 9 and the selection process and the oversight mentioned in section 2.2 are met.	
12	Eligible providers of subsidies and guarantees are the entities listed in Article 133(5)(a) CRR and other EU public sector entities such as EU bodies and institutions, central and regional governments of Member States, and EU and national public development banks and institutions.	We note that Article 133.5 CRR3 is not limited in terms of application to EU legislative programmes. Consequently, the Commission should reconsider this point and allow for legislative programmes from third countries that meet the requirements set out in the consultation to benefit from this treatment, or at least to allow for it if there is reciprocity or it is an equivalent country (Art 107.4 CRR3). The Basel framework (CRE 20.59) also mentions national legislated programmes, so this treatment should not be exclusive to the transposition of the EU to CRR3.
13	The subsidies and guarantees can be provided to the investing institutions or the investees including via co-investment structures or intermediary vehicles established in the EU under EU or national legislative programmes.	It would be appropriate to specify that public support may be represented, in addition to the subsidies and guarantees mentioned in the provision, by other forms frequently used in public-private equity investment schemes (for example, co-investments by multilateral development banks/public development credit institutions together with other private investors, investments in shares or units of closed-end investment funds). The risk weight at 100% should be ensured whichever the way the bank invests in the project (directly, through a fund or a SPV)
2.2 Government oversight		

14	Article 133(5)(b) CRR requires that legislative programmes must involve *"some form of government oversight"*.	It is unclear what this supervision consists of: does it refer a supervision at the Member State level or at institution level?
15	For the purposes of Article 133(5), government means public authorities with some form of executive powers, including central and regional governments of Member States, the European Commission, European and national public financial institutions, agencies and bodies.	Likewise, it is unclear what constitutes 'executive powers' or if this is left to the NCA to determine.
16	The governmental authorities or agencies tasked with the oversight may not necessarily be the same providing the subsidies and the guarantees.	
17	Legislative programmes should contain robust and transparent criteria and screening procedures to select the beneficiaries.	
18	The government oversight should also take place after the screening process to confirm the positive selection of the investments on an on-going basis, including via periodical monitoring of the performance of fund managers, of the investee companies, and/or the co-investment by the subsidies and guarantees providers.	No clear definition on how this point is achieved. Is a quarterly fund / company performance evolution document delivered to investors enough for this point to be fulfilled?
2.3 Restrictions on the equity investment		
19	Article 133(5)(c) CRR states that legislative programmes must contain *"restrictions on the equity investment, such as limitations on the size and types of businesses in which the institution is investing, on allowable amounts of ownership interests, on the geographical location and on other relevant factors that limit the potential risk of the investment for the investing institution"*.	
20	Therefore, restrictions that are considered compliant with Article 133(5)(c) CRR could include, for instance:	The list is not exhaustive but illustrative, therefore it is acceptable, however we have some clarifications:

	(1) absolute and relative caps to size of the investment; (2) focusing the investment to EU-based companies; (3) focusing the investment to undertakings meeting the definition of SME, small mid-cap, start-up or scale-up; (4) targeting a diversified portfolio of undertakings under the equity investment, in terms of the number of undertakings, geographic distribution and/or year of investment. (5) non-pari passu arrangements.	1) We understand restrictions and diversification are to be understood within the individual legislative programme. If this interpretation is correct, can we confirm that restrictions/diversification of a hypothetical portfolio held by the entity and composed of individual investments from legislative programmes do not need to be verified? 2) Regarding point 2 specifying that the companies have to be EU-based companies - it is unclear if this would then allow the beneficial treatment to be applied if banks provide financing to that EU-based company through one of its subsidiaries/branches. Would welcome clarification on this. 3) In addition, as previously flagged, we would ask the Commission to reconsider this point to allow legislative programmes from third countries that meet the requirements set out in the consultation to benefit from this treatment, or at least to allow it if there is reciprocity or it is an equivalent country (art 107.4 CRR3). 4) How is the diversified portfolio defined? Is there any specific rule / formula to be applied? Is this diversification measured the same way as to consider a reduced RW of CIU of 190%?
	3.MONITORING AND ENFORCEMENT	
21	Article 133(5) CRR tasks competent authorities with granting institutions the prior permission to assign a risk weight of 100% to equity exposures incurred under eligible legislative programmes. Institutions should seek the permission of the competent authority every time they intend to apply the 100% risk-weight to the equity exposures incurred under a particular legislative programme.	It would greatly enhance the efficiency of the process to allow an investment fund/vehicle to request a prior authorization so that multiple financial institutions intending to invest in the same 'legislative program' can benefit from a single authorization. Specifically: Regarding Para. 21 "Institutions should seek the permission of the competent authority **every time** they intend to apply the 100% risk-

		weight to the equity exposures incurred under a particular legislative programme” o Not clear why the Commission would make that clarification., the CRR language in Art.133(5) is a lot less prescriptive. o In the context of simplification, the Commission should leave the door open for more flexible permission arrangements, e.g. the supervisor could provide blanket approval for banks incurring exposures to specific entire programmes, or have a “safe harbour” typology that says that when exposure under a programme meeting certain criteria is assumed to be compliant. Furthermore, it is unclear what this authorization will entail and if it's only necessary that the legislative programmes are registered or some additional process is mandatory/expected. Moreover, if the investment conditions changed (for example, any change in the investment limits or the headquarters of the institution) would a new communication be necessary?
22	Article 133(5) includes the safeguard that the equity exposures benefitting from the 100% risk-weight for eligible programmes must not exceed 10% of the institutions’ own funds. In line with the definition of the CRR, the requirement is calculated as follows: the denominator are the own funds, to be understood as the sum of Tier 1 capital and Tier 2 capital of the institution; the numerator of such a requirement are all the equity exposures incurred under legislative programmes that meet the requirements of Article 133(5) CRR. The equity exposures incurred under legislative programmes beyond the 10% own funds threshold should be risk-weighted as normal.	This paragraph should enable competent authorities to take decisions in a short timeframe: e.g. frame the timeline (for instance 1 month if in the register, 3 months max if outside the register). Further, can the EC clarify how is the numerator measured? (e.g. In terms of Book Value of the investment? In terms of NAV? In terms of committed capital in the case of the funds?).
23	To provide transparency to competent authorities and market participants, the Commission will maintain a public register of	It would seem appropriate to define the methods of access/consultation and the frequency of updating the register. It

	legislative programmes. Without prejudice to the assessment of the prudential situation of each institution by competent authorities, legislative programmes listed in the register should be presumed as being compliant with the requirements set by Article 133(5)(a-c) as specified in the present Communication. This should enable competent authorities to take decisions in a short timeframe and without the need for supplementary documentation.	should be clarified whether the register relates to the legislative programs or to the individual investments admitted by them. The register per se is welcome, however the decision is in the hands of supervisors that could impose conditions that go beyond the level 1 text to accept the 100% RW. In addition, it should be clarified that if the initial investment has been validated at 100% by the supervisor, subsequent investments should be risk weighted at 100% without having to file again. This RW should also be stable over time and not be subject to changes in the future. It is not specified if a bank can ask for the registration of a legislative programme. In case an institution has asked to register a legislative programme, is this registration process similar as the equivalent regulation? In other words, if other banks in the same jurisdiction asks that a certain legislative program to be included into the registration list, is this authorization valid for all institutions in that Member State?
24	Member States should notify the legislative programmes for which they seek the inclusion in the above-mentioned register to the Commission. The Commission will provide the template for the notification, having regard to the need to keep the process simple. The notification should contain the title of the legislative programme, its main conditions and an explanation of why it meets the requirements set by Article 133(5) as specified by the present Communication.	More clarity on the process for how to be included on the register is needed.
ADDITIONAL AFME COMMENTS:		
1	Regardless of the possibility offered by paragraph 5, Article 133 to apply a favourable prudential treatment, we suggest that, in addition to the guidelines on legislative programs, a general review of the prudential treatment of equity exposures provided for by the CRR be carried	

	out as it penalizes the activity of banks as institutional investors. The introduction of CRR3 has had a notable impact, introducing equity RWs of 250% and 400% vs the previous application of IRB models permitted under CRR2.
2	We would also request a provision that grandfathers existing/already approved arrangements, i.e. for cases where ECB or national supervisors have approved banks to use lower RW under existing legislative programmes should be explicitly protected by the Commission guide.
3	This guidance is welcome but potentially trying to regulate a space that hasn't developed yet. This has the upside that it provides a framework for people to explore it. But the downside is that it may jump the gun and constrain potential future programmes or other opportunities. Consequently, the Commission should include a review clause when they issue their first final guidance. Member States and banks should know that, even when this guidance is issued, they can have the chance to see it revised and potentially expanded if relevant new programmes emerge that are not in scope.
4	Since the target of the guidance is to support the financing of innovative companies, it would be interesting to set a similar scheme of favourable treatment on credit facilities, since these type of companies, as mentioned on the paper, have poor rating scores due to their negative cash-flow and EBITDA figures, with almost inexistent track record in terms of revenues. A scheme like art 501a would be helpful to increase credit financing to these innovative companies.
5	Network companies often operate in a legal entity being a member of a group. Bank investment in the holding level should also be possible if there is a confirmation that the holding will use the money exclusively for the relevant subsidiary that is part of the relevant government programme.