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REPORT

from :	Presidency
to :	Council
No. Cion prop.:	13284/11 EF 112 ECOFIN 531 CODEC 1284 + ADD1, ADD2 13285/11 EF 113 ECOFIN 532 CODEC 1285
Subject :	Revised capital requirements rules (CRD IV) **[First Reading]** a) Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms b) Proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate = *Political endorsement*

I. INTRODUCTION

1. The European Council of December 2012 reiterated the importance of the new rules on capital requirements for banks (CRD IV), which are of the utmost priority in developing a single rule book, and called on all parties to work towards their agreement and rapid adoption.[1] The negotiations with the European Parliament on CRD IV have been ongoing since May 2012 with the objective of reaching an agreement at first reading. ECOFIN was most recently briefed in writing on progress on 4 December 2012, and since then has been briefed verbally twice.

[1] Doc. EUCO 205/12 CO EUR 19 CONCL 5, point 7.

2. Since the beginning of 2013, the Presidency has participated in **seven** political trilogues with the European Parliament and the European Commission, and reported to the Committee of Permanent Representatives[2], outlining the main elements of the provisional political agreement on some of the key issues.

3. The most recent trilogue of 27 February 2013 was devoted to five key issues on which there had been a clear divergence of views between the co-legislators.

4. The compromise package resulting from this trilogue is seen as a major breakthrough in the negotiations, although none of the constitutive parts can be considered as finally agreed until an overall accord on the package is reached.

5. In parallel to the political level work that has been progressing, technical work on further elements of the text is still ongoing and the Presidency expects to conduct further rounds of technical negotiations on this legislative package, where it will further clarify the positions of co-legislators. Therefore no fully agreed compromise text on the entire legislative package is available yet. The Presidency hopes that any concerns can be resolved at the level of the Committee of Permanent Representatives.

II. Results of the political trilogue of 27 February 2013[3]

6. *a) SII buffer (Directive, Article 124a to 124e, 151(5) and (6), 122(2), (6) and (7))*

The Council's General Approach includes a set of provisions to deal with systemic and macro-prudential risk. The Systemic Risk Buffer, where applicable, is in addition to the minimum capital requirement, the Capital Conservation Buffer and Countercyclical Capital Buffer.

[2] Doc. 6188/1/13EF 22 ECOFIN 96 CODEC 274 REV 1 + ADD1 and doc. 6703/13 EF 30 ECOFIN 130 CODEC 387 + ADD1.

[3] **NOTE:** relevant texts are reproduced in the Annex to this Report.

In the course of negotiations, the European Parliament proposed to go a number of steps further by providing for an additional capital buffer applicable to institutions that are of global systemic importance (GSII) or "other" (domestic / European) (OSII) level of systemic importance. The buffer for G-SIIs would be mandatory. The buffer for OSIIs would be optional buffer. The solution reflected in the Annex to this report has accommodated the European Parliament's proposal and also built in the following elements into the compromise text:

- the application of the "higher of" principle for the SII and Systemic Risk buffers is to be the default but additivity of the buffers is to apply in cases where the Systemic Risk buffer covers domestic exposures only;

- there is no overall cap on the buffers, but O-SII buffers are to be capped at 2%;

- where an OSII is a subsidiary of a GSII or OSII group, the upper limit is to be the higher of 1% or the G/OSII buffer rate applicable at a consolidated level.

b) Country-specific prudential measures (Recital 10c and Article 443a of the Regulation)

Respecting the substance of the Council general approach on what is one of the core elements of the agreement, the Presidency reviewed the legal aspects of Article 443a, as well as concerns expressed by the Commission and Parliament in the course of the trilogue negotiations, and made some revisions to the text. The solution set out in the Annex to this report, which in the Presidency's view provides for **appropriate inter-institutional balance and permits a compatible degree of flexibility** to address macro-prudential or systemic risks at Member State level, has been accepted by the European Parliament.

c) Own-initiative mediation powers of the European Banking Authority (Articles 41(2), 43(5), 51, 107, 111 and 112 and relevant Recitals)

The European Parliament initially proposed a provision which afforded the EBA the right to intervene, on its own initiative, in order to resolve disputes between competent authorities across a broad range of provisions in CRD IV.

The Presidency has negotiated a compromise whereby the EBA will have the power to intervene on its own initiative in six specific Articles only (Articles 41(2), 43(5), 51, 107, 111 and 112 of the Directive).

d) Country by Country Reporting (CBCR);

Throughout the negotiations the European Parliament maintained its position that institutions should disclose on an annual and consolidated basis its profit or loss before tax, tax on profit or loss, public subsidies received, as well as the number of employees on a full-time equivalent basis, turnover and name and geographical location, on a country-by-country basis.

The Presidency has negotiated a compromise that from 1 January 2015 institutions will publicly disclose these data. However, public disclosure by institutions of the number of employees on a full-time equivalent basis, turnover and name and geographical location, on a country-by-country basis will start from six months after date of application of the Directive. Profits, tax and subsidies received will be reported to the Commission on a confidential basis by G-SIIs and O-SIIs no later than six months after date of application of the Directive. The ESA's will assist the Commission in assessing the data and conduct an impact analysis looking at the potential economic consequences (such as competitiveness, credit availability and levels of investment) along with any broader financial stability implications of the public disclosure of such data. The Commission shall then submit a report to the Parliament and Council. If the Commission identifies significant negative effects it will consider making an appropriate proposal to modify the scope of the disclosure and have the right to defer application of this reporting by a delegated act. The provision in the CRD IV will cease to apply, if or when this issue is dealt with in other legislation.

e) Remuneration (capped ratio on the fixed and variable component of remuneration; shareholder involvement) - Article 90 of the Directive)

Given that the remuneration regime in the financial services industry was strengthened in the "CRD III" package, neither the Commission proposal nor the Council general approach contained provisions that would cover the issue of the difference between fixed and variable elements of pay.

The starting position of the European Parliament was to set the ratio between the fixed and variable elements at 1:1. The negotiations have evolved around finding an appropriate balance between the objective of encouraging long-term thinking and strengthening claw-back arrangements, linking the legal variable pay requirements to performance and prudential soundness of the institution in question, while maintaining the objective of sound regulation.

The compromise reached at the trilogue builds on the following principles:

- A **basic ratio of 1:1 which can only increase to 1:2** with shareholder approval (with a quorum of 50% of shareholders, 66% of votes in favour would be required, and, if that quorum is not reached, 75% of votes in favour);

- In order to incentivise **deferral of bonus pay**, and **facilitate claw-back of remuneration,** the European Parliament have accepted that 25% of the total bonus can consist of long term financial instruments, discounted with reference to factors reflecting risk inherent in the instruments (guidelines on the applicable discount factor will be issued by EBA);

- The Commission shall review and report on the application of these provisions, in close cooperation with the EBA, taking into account its impact on competitiveness and financial stability;

- As part of this review, the Commission should examine whether a fixed ratio regime should continue apply to any staff working effectively and physically in subsidiaries established outside the EEA, of institutions established within the EEA.

f) Transposition deadline (of the Directive) / starting date of application (of the Regulation)

To accommodate the political objectives of both transposing Basel III and finalising this legislative package as a pre-condition of Banking Union, the Presidency has maintained that the transposition/application date of CRD IV should be **1 January 2014, provided that** not less than **6 months** are left between the date of publication of this legislative package in the Official Journal and the date of transposition/application; and if that condition is not met, the date of transposition and application would be 1 July 2014.

The objective date of 1 January 2014 is based on the assumption that Member States can transpose the Directive in 6 months. This objective is only achievable on the condition that the full text of the political agreement on CRD IV/ is confirmed by both co-legislators **by 22 March 2013 at the very latest.**[4] Should the final text of the political agreement be available any later than 22 March 2013, delegations either have to indicate their acceptance **of a shorter period than 6 months for transposition or opt for a later date** (i.e. 1 July 2014).

A number of delegations maintain their reservations and indicate that under any circumstances 12 months would be needed between publication in the Official Journal and the date of application/transposition.

[4] This is **already an accelerated procedure**. Normally the required procedures for translation, legal-linguistic revision, adoption by both co-legislators and publication of final legislative texts in all required languages in the Official Journal takes at least 5 to 6 months for a text of this size.

III. CONCLUSION

7. The Presidency encourages delegations to lift any reservations they might have on the issues outlined in Part II of this report, in view of the objective to reach a timely agreement on the overall compromise package.

8. Any further outstanding technical and timing issues will be addressed in further technical negotiations on this legislative package, where the Presidency will act in accordance with the guidance and mandate it will receive from delegations.

9. Against this background the Council is invited to:

   a) provide political endorsement to the outcome of the most recent political trilogue as outlined in Part II of this report;

   b) invite the Presidency to continue negotiations with the European Parliament, with a view to reaching an agreement at first reading as soon as possible.

   c) mandate the Committee of Permanent Representatives to finalise the discussions on the complete text of this legislative package.

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ANNEX

RELEVANT PROVISIONS OF THE CRD4/CRR PACKAGE

a) SII buffer (Directive, Article 124a to 124e, 151(5) and (6), 122(2), (6) and (7))

Recital x

Relevant authorities are expected to impose higher own funds requirements on global systemically important institutions (G-SIIs) compared to all other institutions in order to compensate for the higher risk that G-SIIs represent for the financial system and the potential impact of their failure on taxpayers. Where a relevant authority applies both a systemic risk buffer and a global systemic institution buffer on a G-SII and the two buffers do not cover the same risk, the G-SII should hold an amount of Common Equity Tier 1 capital which is equal to the sum of the two buffers.

Article 124a NEW

Global and Other Systemically Important Institutions

1. Member States shall designate the authority in charge of identifying, on a consolidated basis, Global Systemically Important Institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other Systemically Important Institutions (O-SIIs), which have been authorised within their jurisdiction. This authority shall be the competent authority or the designated authority. Member States may designate more than one authority. G-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution. G-SIIs cannot be an institution that is a subsidiary of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company. OSIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution.

1a. The identification methodology for G-SIIs shall be based on the following categories:

(a) size of the group;

(b) interconnectedness of the group, with the financial system;

(c) substitutability of the services or the financial infrastructure provided by the group;

(d) complexity of the group;

(e) cross border activity of the group, including cross border activity between Member States and between a Member State and a third country.

Each category shall receive an equal weighting and consist of quantifiable indicators.

The methodologies shall produce an overall score for each G-SII, which allows allocating the G-SII into a sub-category as described in paragraph 2a.

1b. OSIIs shall be identified according to paragraph 1. Systemic importance shall be assessed on the basis of at least any of the following criteria:

(i) size

(ii) importance for the economy of the EU, or relevant Member State ;

(iii) significance of cross-border activities;

(iv) interconnectedness of the institution or group, with the financial system.

EBA, in consultation with the ESRB, shall publish guidelines by 1 January 2015 on the criteria to determine the conditions of application of paragraph 1b in relation to the assessment of O-SIIs. These guidelines shall take into account international frameworks for domestic systemically important institutions, European and National specificities.

2. Each G-SII shall, on a consolidated basis, be subject to a Global Systemically Important Institution Buffer which shall correspond to the sub-category to which the G-SII is allocated. This buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

2.1 The competent authority or designated authority may subject each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to an Other Systemically Important Institution Buffer of up to 2% of the total risk exposure amount according to Article 87(3) of Regulation (to be inserted by OP), taking into account the criteria for the identification of the O-SII. This buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

2.1.a When requiring an Other Systemically Important Institution Risk Buffer to be maintained the competent authority or the designated authority shall respect the following principles:

a) the Other Systemically Important Institution Risk Buffer requirement may not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or of the EU as a whole forming or creating an obstacle to the functioning of the internal market;

b) the Other Systemically Important Institution Risk Buffer requirement shall be reviewed by the competent authority or the designated authority at least every year.

2.1.b Before setting or resetting an Other Systemically Important Institution Risk Buffer requirement, the competent authority or the designated authority shall notify the Commission, EBA, the ESRB and competent and designated authorities of concerned Member States one month prior to the publication of the decision referred to in paragraph 2.1. This notification shall describe in detail the following elements:

a) the justification for why the Other Systemically Important Institution Risk Buffer is considered likely to be effective and proportionate to mitigate the risk;

b) an assessment of the likely positive or negative impact of the Other Systemically Important Institution Risk Buffer on the single market, based on information which is available to the Member State;

c) the Other Systemically Important Institution Risk Buffer rate that the Member State wishes to require.

2.1.c Without prejudice to Article 124d, where an OSII is a subsidiary of a GSII or of and OSII which is an EU parent institution, the buffer that applies at individual or sub-consolidated level for OSII shall be subject to the following limit, the higher of:

(a) 1% or

(b) the GSII or OSII buffer rate applicable to the group at consolidated level.

2a. There shall be five sub-categories of G-SIIs. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a comparable linear increase of systemic relevance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 Capital. For the purposes of this paragraph, systemic relevance is the expected impact exerted by the G-SII's distress on the global financial market. The lowest sub-category shall be assigned a Global Systemically Important Institution Buffer of 1% of total risk exposure amount calculated in accordance with Article 87 (3) of regulation (insert by OP) and the buffer requirement assigned to each sub-category shall increase in gradients of 0.5% of total risk exposure amount calculated in accordance with Article 87 (3) up to and including the fourth sub-category. The highest sub-category of the Global Systemically Important Institution Buffer shall subject to a buffer requirement of be 3.5% of the total risk exposure amount according to Article 87(3) of Regulation (to be inserted by OP).

2b. Without prejudice to paragraphs 1 and 2a, the competent authority or the designated authority may, in the exercise of sound supervisory judgment:

i) re- allocate a G-SII from a lower sub-category to a higher sub-category;

ii) allocate a GSII that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category;

2c. If the competent authority or the designated authority take a decision in accordance with paragraph 2b(ii), it shall report this decision and its reasons to the EBA.

3. The competent authority or the designated authority shall notify the names of the G-SIIs and O-SIIs and the respective sub-category into which G-SIIs are allocated, to the ESRB, EBA and the Commission, and disclose the name of the SII to the public. The competent authorities or designated authorities shall disclose to the public the sub-category where the G-SII is allocated.

The competent authority or the designated authority shall review every year the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the SII concerned, to ESRB, EBA and the Commission and disclose the name of newly identified SIIs to the public and shall disclose to the public the sub-category into which each identified SII is allocated.

5. SIIs shall not use Common Equity Tier 1 capital that is maintained to meet the requirements under paragraph 2 to meet any requirements imposed under Article 87 of Regulation [Inserted by OP] and Articles 123, 124 and any requirements imposed under Articles 99 and 100.

6. Where a group, on a consolidated basis, is subject to a Global Systemically Important Institution Buffer requirement and an Other Systemically Important Institution Buffer requirement, the higher of the two requirements shall apply. Where a group, on a consolidated basis, is subject to a Global Systemically Important Institution Buffer requirement, an Other Systemically Important Institution Buffer requirement, or a Systemic Risk Buffer requirement in accordance with Article 124d, the higher of the requirements shall apply. Where an institution, on an individual or sub-consolidated basis is subject to an Other Systemically Important Institution Buffer requirement and a Systemic Risk Buffer requirement in accordance with Article 124d, the higher of the two shall apply.

6.a Notwithstanding Article 124a(6), where the Systemic Risk buffer requirement only applies to all exposures located in the Member State that sets the buffer to address the macro-prudential risk of that Member State, that Systemic Risk buffer requirement shall be additive to the O-SII or G-SII buffer requirement that is applied in accordance with Article 124a. Where the systemic risk buffer applies to all exposures held by an institution irrespective of where the exposures are located, the systemic risk buffer may not be additive to the O-SII or G-SII buffer.

7. The fact that an institution is part of a G-SII or an O-SII group shall never imply that that institution is, on the individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

Where the systemic risk buffer applicable on an individual basis to an institution which is part of a G-SII or O-SII group also applies to exposures located in third countries or located in other Member States, the fact that an institution is part of a G-SII or an O-SII group shall never imply that that institution is, on the individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the higher of the O-SII buffer and systemic risk buffer, applicable to it on an individual basis.

8. EBA shall develop draft regulatory technical standards to specify the following for the purposes of this Article:

the methodology according to which the competent authority or the designated authority shall identify an EU parent institution or financial holding company or mixed financial holding company as a Global Systemically Important Institution and to specify the methodology for the definition of the sub-categories and the allocation of GSIIs in sub-categories based on their systemic relevance, taking into account any internationally agreed standards;

EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2014.

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first and second sub-paragraphs in accordance with the procedure laid down in Articles 10-14 of Regulation 1093/2010.

Article 124b NEW

(not used)

Article 124c NEW

Recommendations, guidance and reporting

1. The European Commission shall be invited, by 31 December 2015 to report to Council and European Parliament on the basis of international developments and EBA opinion, on the possibility of extending the framework for G-SIIs to further institutions systemically important within the Union. Where appropriate, the report shall be accompanied by a legislative proposal.

2. The European Commission shall be invited, by 31 December 2016 and after consulting with EBA and ESRB, to report to Council and European Parliament, together with any appropriate proposals, whether the treatment set out in Article 124a should to be modified. Any such proposal should take due account of international regulatory developments and should review, where appropriate, the process of allocating institution specific O-SII buffers within a group taking into consideration any possible undue impact on the implementation of Structural Separation within Member States.

Article 124d NEW

Requirement to maintain a Systemic Risk Buffer

1. Each Member State may introduce a Systemic Risk Buffer of Common Equity Tier 1 for the financial sector or one or more subsets of the sector, in order to prevent and mitigate long term non-cyclical systemic or macroprudential risks not covered by Regulation [inserted by OP], in the meaning of a risk of disruption 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.

2. For the purpose of paragraph 1, the Member State shall designate the authority in charge of setting the Systemic Risk Buffer and of identifying the sets of institutions to which it should apply. This authority shall be the competent authority or the designated authority.

3. For the purpose of paragraph 1, institutions may be required to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 87 of Regulation [inserted by OP], a Systemic Risk Buffer of at least 1% Common Equity Tier 1 capital based on the total risk exposures calculated in accordance with Article 87(3) of Regulation [inserted by OP], on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Part One, Title II of that Regulation. The relevant competent or designated authority may require institutions to maintain the Systemic Risk Buffer on an individual as well as on a consolidated level.

4. Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 3 to meet any requirements imposed under Article 87 of Regulation [inserted by OP] and Articles 123, 124 and any requirements imposed under Articles 99 and 100. Where a group which has been identified as a SII which is subject to a Systemically Important Institution Buffer requirement on a consolidated basis in accordance with Article 124a is also subject to a Systemic Risk Buffer requirement on a consolidated basis in accordance with this Article, the higher of the buffer requirements shall apply. Where an institution, on an individual or sub-consolidated basis is subject to an Other Systemically Important Institution Buffer requirement in accordance with Article 124a and a Systemic Risk Buffer requirement in accordance with this Article, the higher of the two shall apply.

4a. Notwithstanding Article 124a(6), where the Systemic Risk buffer requirement only applies to all exposures located in the Member State that sets the buffer to address the macro-prudential risk of that Member State, that Systemic Risk buffer requirement shall be additive to the O-SII or G-SII buffer requirement that is applied in accordance with Article 124a. Where the systemic risk buffer applies to all exposures held by an institution irrespective of where the exposures are located, the systemic risk buffer may not be additive to the O-SII or G-SII buffer.

4b. The fact that an institution is part of a G-SII or an O-SII group shall never imply that that institution is, on the individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

Where the systemic risk buffer applicable on an individual basis to an institution which is part of a G-SII or O-SII group also applies to exposures located in third countries or located in other Member States, the fact that an institution is part of a G-SII or an O-SII group shall never imply that that institution is, on the individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the higher of the O-SII buffer and systemic risk buffer, applicable to it on an individual basis.

5. The Systemic Risk Buffer requirement may apply to exposures located in the Member State that sets the buffer and may also apply to exposures in third countries. The Systemic Risk Buffer requirement may also apply to exposures located in other Member States, subject to paragraphs 12 and 15.

6. The Systemic Risk Buffer requirement shall apply to all institutions, or one or more subsets of those institutions, for which the authorities of the Member State concerned are competent in accordance with this Directive and shall be set in gradual or accelerated steps of adjustment of 0,5 percentage point. There can be introduced different requirements for different subsets of the sector.

7. When requiring a Systemic Risk Buffer to be maintained the competent authority or the designated authority shall respect the following principles:

a) the Systemic Risk Buffer requirement may not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or of the EU as a whole forming or creating an obstacle to the functioning of the internal market;

b) the Systemic Risk Buffer requirement shall be reviewed by the competent authority or the designated authority at least every second year.

8. Before setting or resetting a Systemic Risk Buffer requirement of up to 3 %, the competent authority or the designated authority shall notify the Commission, EBA, the ESRB and competent and designated authorities of concerned Member States one month prior to the publication of the decision referred to in paragraph 13. If the buffer requirement applies to exposures located in third-countries the competent authority or the designated authority shall also notify the competent authorities of those third-countries. This notification shall describe in detail the following elements:

a) the systemic or macro-prudential risk in the Member State;

b) the reasons why the dimension of the systemic or macro-prudential risks poses a threat to financial stability at national level justifying the level of the Systemic Risk Buffer requirement;

c) the justification for why the Systemic Risk Buffer is considered likely to be effective and proportionate to mitigate the risk;

d) an assessment of the likely positive or negative impact of the Systemic Risk Buffer on the single market, based on information which is available to the Member State;

e) the justification for why none of the existing measures in the Regulation, excluding Article 443A and 443B, or this Directive] alone or in combination will be sufficient to address the identified macro-prudential or systemic risk taking into account the relative effectiveness of these measures;

f) the Systemic Risk Buffer rate that the Member State wishes to require.

9. Before setting or resetting a Systemic Risk Buffer requirement of above 3 %, the competent authority or the designated authority shall notify the Commission, EBA, the ESRB and competent and designated authorities of concerned Member States. If the buffer requirement applies to exposures located in third-countries the competent authority or the designated authority shall also notify the competent authorities of those third-countries. This notification shall describe in detail the following elements:

a) the systemic or macro-prudential risk in the Member State;

b) the reasons why the dimension of the systemic or macro-prudential risks poses a threat to financial stability at national level justifying the level of the Systemic Risk Buffer requirement;

c) the justification for why the Systemic Risk Buffer is considered likely to be effective and proportionate to mitigate the risk;

d) an assessment of the likely positive or negative impact of the Systemic Risk Buffer on the single market, based on information which is available to the Member State;

e) the justification for why none of the existing measures in the Regulation, excluding Article 443a and 443b, or this Directive alone or in combination will be sufficient to address the identified macro-prudential or systemic risk taking into account the relative effectiveness of these measures;

f) the Systemic Risk Buffer rate that the Member State wishes to require.

10. The competent authority or the designated authority may from the 1st January 2015 set or reset a Systemic Risk Buffer requirement that applies to exposures located in that Member State and may also apply to exposures in third-countries of up to 5 % and follow the procedures in paragraph 8. When setting or resetting a Systemic Risk Buffer requirement above 5 % the procedures in paragraph 9 shall be respected.

11. Where the Systemic Risk Buffer is to be set between 3% and 5% according to paragraph 10, the competent authority or the designated authority of the Member State setting the buffer shall always notify the Commission thereof and shall await the opinion of the Commission before adopting the measures in question.

Where an opinion of the Commission is negative, the competent authority or the designated authority of the Member State setting the buffer shall comply with this opinion or explain the reasons for not doing so.

Where one subset of the financial sector is a subsidiary whose parent is established in another Member State, the competent authority or the designated authority shall notify the authorities of those Member States as well as the Commission and the ESRB. Within one month the Commission and the ESRB shall issue a recommendation on the measures taken in accordance with this paragraph. Where the authorities disagree and in case of a negative opinion of both the Commission and the ESRB, the designated authority may refer the matter to EBA for binding mediation in accordance with Article 19 in the EBA regulation (1093/2010). The decision to set the buffer for these exposures shall be suspended until EBA has taken a decision.

12. Within [4 weeks] from the notification referred to in paragraph 9, the ESRB shall provide the Commission with an opinion as to whether the Systemic Risk Buffer requirement is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No. 1093/2010.

Within two months following the notification, the Commission, taking into account the assessment of ESRB and EBA, if relevant, and if it is satisfied that the Systemic Risk Buffer requirement does not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or of the EU as a whole forming or creating an obstacle to the functioning of the internal market, shall adopt an implementing act authorising the competent authority or the designated authority to adopt the proposed measure.

13. Each competent authority or designated authority shall announce the setting of the Systemic Risk Buffer requirement by publication on an appropriate web site. The announcement shall at least include the following information:

a) the level of the Systemic Risk Buffer;

(ai) the institutions to which the Systemic Risk Buffer applies

b) a justification for the Systemic Risk Buffer requirement

c) the date from which the institutions must apply the setting or resetting of the Systemic Risk Buffer; and

d) the names of the countries where exposures located in these countries are recognised in the systemic buffer.

If the publication referred to in paragraph 13 point b could jeopardise financial stability, the required information in paragraph 13 point b shall not be included in the announcement.

14. Where an institution fails to meet fully the requirement under paragraph 1, it shall be subject to the restrictions on distributions set out in paragraphs 2 and 3 of Article 131.

Where the application of these restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 of the institution in the light of the relevant systemic risk, the competent authorities may take additional measures according to Article 64 of this Directive.

15. Following the notification in paragraph 8, Member states may apply the buffer to all exposures. In case the competent authority or the designated authority decides to set the buffer up to 3 % on the basis of exposures in other Member States then the buffer must be set equally on all exposures located within the Union.

Article 124e NEW

Recognition of a Systemic Risk Buffer

1. Other Member States may recognise the Systemic Risk buffer rate set according to Article 124d and apply that buffer rate to domestically authorised institutions for the exposures located in the Member State setting the buffer.

2. If Member States recognise the Systemic Risk Buffer requirement for domestically authorised institutions they shall notify the Commission, EBA, ESRB and the Member State setting the Systemic Buffer requirement.

3. When deciding whether to recognise a Systemic Risk Buffer the Member State shall take into consideration the information presented by the Member State setting the buffer according to paragraphs 8, 9 or 10 of Article 124d.

4. The Member State setting the buffer according to Article 124d 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 may recognise the Systemic Risk Buffer.

Article 151(5) and (6)

Transposition

5. By way of derogation from paragraph 1, Article 124a shall apply from 1 January 2016. Member States shall implement paragraph 1 from 1 January 2016 in the following manner;

   (a) 25% of the Global Systemically Important Institution Buffer, set in accordance with Article 124a paragraph 2, in 2016;

   (b) 50% of the Global Systemically Important Institution Buffer, set in accordance with Article 124a paragraph 2, in 2017;

(c) 75% of the Global Systemically Important Institution Buffer, set in accordance with Article 124a paragraph 2, in 2018; and

(d) 100% of the Global Systemically Important Institution Buffer, set in accordance with Article 124a paragraph 2, in 2019.

6. By way of derogation from paragraph 2, Article 124d shall apply from the date of application of this Directive [to be inserted by OP].

Article 122

Capital Conservation Measures

(2) "Combined Buffer Requirement" means the total Common Equity Tier 1 capital required to meet the requirement for the Capital Conservation Buffer extended by either or both of the following:

(a) an institution specific Countercyclical Capital Buffer, if the latter is more than 0% of the total risk exposure amount; and

(b) the higher of the Systemic Risk Buffer and the Systemically Important Institution Buffer.

(6) "Systemic Risk Buffer" means the own funds that an institution is or may be required to maintain in accordance with Article 124d.

(7) "Systemically Important Institution Buffer" means the own funds that an institution is or may be required to maintain in accordance with Article 124a.

b) Country-specific prudential measures (Recital 10c and Article 443a of the Regulation)

(10c) Beyond the systemic risk buffer tool as included in the Directive, where macro-prudential or systemic risks concern a Member State, the competent or designated authorities of the relevant Member State should have the possibility to address those risks by certain specific national macro-prudential measures, when this is considered more effective to tackle those risks. The ESRB, EBA should have the opportunity to provide their opinions on whether the conditions for such national macro-prudential measures are met and there should be a Union mechanism to prevent national measures from proceeding, where there is very strong evidence that the relevant conditions are not satisfied. Whilst this Regulation establishes uniform micro-prudential rules for institutions, Member States retain a leading role in macro-prudential oversight because of their expertise and their existing responsibilities in relation to financial stability. In this specific case, since the decision to adopt any national macro-prudential measures includes certain assessments in relation to risks which may ultimately affect the macroeconomic, fiscal and budgetary situation of the relevant Member State, it is necessary that the power to reject the national proposed macro-prudential measures is conferred on the Council in accordance with Article 291 TFEU, acting on proposal by the Commission.

Where the Commission has submitted to the Council a proposal to reject these national measures, the Council should examine without delay that proposal and decide whether or not to reject the national measures; a vote could be taken in accordance with the Council Rules of Procedure at the request of a Member State or of the Commission. In accordance with Article 296 TFEU, the Council should state the reasons for its decision in relation with the respect to the conditions laid in this Regulation for its intervention.

Considering the importance of the macro prudential and systemic risk for the financial market of the Member State concerned and therefore the need for rapid reaction, it is important that the time limit for the Council decision is set to one month.

If the Council, after having examined in depth the proposal by the Commission to reject the proposed national measure, comes to the conclusion that the conditions laid down in this Regulation for the rejection of the national measures were not fulfilled, it should always provide its reasons in a clear and unambiguous manner.

Article 443a

Macro-prudential or systemic risk identified at the level of a Member State

0. 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.

1. If the authority determined according to paragraph 0 identifies changes in the intensity of macro-prudential 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 the authority determined according to paragraph 0 considers would better be addressed by means of stricter national measures, it shall notify the European Parliament, the Commission, the Council, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence of all of the following:

   a) the changes in the intensity of macro-prudential or systemic risk;

   b) the reasons why such changes could pose a threat to financial stability at national level;

   be) a justification of why Articles 119 and 160 of this Regulation and Articles 98, 99a, 100, 100a, 124d, and 126 of Directive [inserted by OP] cannot adequately address the identified macro-prudential or systemic risk, taking account of the relative effectiveness of these measures.

   c) 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 87;

      (ii) the requirements for large exposures laid down in Article 381 and Article 384 to 392;

      (iii) the public disclosure requirements laid down in articles 418 to 440; or

      (iv) the level of the conservation buffer as set out in Article 123 of Directive [inserted by OP].

(v) Liquidity requirements as set out in Part Six

(vi) Risk weights for targeting asset bubbles in the residential and commercial property sector.

(vii) Intra financial sector exposures

d) an explanation as to why such draft measures are deemed by the authority determined according to paragraph 0 to be suitable, effective and proportionate to address the situation; and

e) an assessment of the likely positive or negative impact of the measures on the single market based on information which is available to the Member State.

1a. When authorised to apply national measures in accordance with this Article, the authorities determined in accordance with paragraph 0 shall provide relevant competent authorities in other countries with all relevant information.

2. The power to adopt an implementing act to reject the proposed national measures referred to in paragraph 1 is conferred on the Council, acting by qualified majority, on proposal from the Commission.

Within one month of receiving the notification referred to in paragraph 1, the ESRB and the EBA shall provide their opinions on the points mentioned in paragraph 1 to the Commission, the Council and the Member State in question.

Taking utmost account of the opinions mentioned above and if there is robust, strong and detailed evidence that the measure will have a negative impact on the single market that outweighs the financial stability benefits resulting for a reduction in the systemic risks identified, the Commission may, within one month, propose to the Council an implementing act to reject the proposed national measures.

In the absence of a Commission proposal within that period of one month, the Member State may immediately adopt the measures for a period of up to two years or until the macro-prudential 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 the national measures.

The Council shall only reject the proposed national measures if it considers that the following conditions are not complied with:

a) the changes in the intensity of macro-prudential or systemic risk are of such nature as to pose risk to financial stability at national level;

b) Articles 119 and 160 of this Regulation and Articles 98, 99a, 100, 100a, 124d, and 126 of Directive [inserted by OP] cannot adequately address the identified macro-prudential or systemic risk, account taken of the relative effectiveness of these measures;

c) the proposed national measures are more suitable to address the identified macro-prudential or systemic risk and do not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or of the Union as a whole, thus forming or creating an obstacle to the functioning of the internal market;

d) the issue concerns only one Member State; and

e) the risks have not already been addressed by other measures in this Regulation or in Directive [inserted by OP]

The assessment of the Council shall take account of the opinion of the ESRB and EBA and shall be based on the evidence presented in accordance with paragraph 1 by the authority determined according to paragraph 0.

In the absence of a Council decision to reject the proposed national measures within one month after receipt of the proposal by the Commission, the Member State may adopt the measures for a period of up to two years or until the macro-prudential or systemic risk ceases to exist if that occurs sooner.

2a. Other Member States may recognise the measure set in accordance with this Article and apply the measures to domestically authorised branches located in the Member State authorised to apply the measures.

2b. If Member States recognise the measures set in accordance with this article, they shall notify the Commission, the Council, EBA, the ESRB and the Member State authorised to apply the measures.

2c. 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 2.

2d. 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.

3. Before the expiry of the authorisation issued in accordance with paragraph 2, the Member State shall, in consultation with the ESRB and EBA, review the situation and may accordingly adopt, in accordance with the procedure referred to in paragraph 2, a new decision for the extension of the period of application of national measures for one additional year each time. After the first extension, the Commission shall in consultation with the ESRB and EBA review at least every year the situation.

3x. Notwithstanding the procedure as set out in paragraph 1a to 3, Member States shall be allowed to increase the risk weights beyond those provided in the Regulation by up to 25 %, for those exposures identified in paragraph 1(c) (vi) and (vii) above and tighten the large exposure limit provided in Article 384 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 in paragraph 1 are met.

c) Own-initiative mediation powers of the European Banking Authority (Articles 41(2), 43(5), 51, 107, 111 and 112 and relevant Recitals)

Recital on the Banking Union

As a first step towards a banking union, a single supervisory mechanism should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective way, that the single rulebook for financial services is applied equally to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that any introduction of common intervention mechanisms in case of crises should be preceded by common controls to reduce the likelihood that intervention mechanisms will have to be used. The European Council noted in its conclusions of 14 December 2012 "The Commission will submit in the course of 2013 a proposal for a single resolution mechanism for Member States participating in the SSM, to be examined by co-legislators as a matter of priority with the intention of adopting it during the current parliamentary cycle" To this end, the integration of the financial framework could be enhanced through the setting up of a common resolution authority and an appropriate and effective common backstop to ensure that bank resolution decisions are taken swiftly, impartially and to the best interest of all.

Recital on the Single Supervisory Mechanism and its links with the EBA

The conferral of supervisory tasks on the ECB for some of the Member States should be consistent with the framework of the European System of Financial Supervision (ESFS) set up in 2010 and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. The ECB should carry out its tasks subject to and in compliance with any relevant legislation including the whole of primary and secondary Union law, Commission decisions in the area of State aids, competition rules and merger control and the single rulebook applying to all Member States. The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of these tasks by the EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 TFEU in compliance with Union acts adopted by the European Commission upon drafts developed by the EBA and subject to Article 16 of Regulation (EU) No. 1093/2010 on guidelines and recommendations issued by the EBA.

Recital to incentivise MS to ask for EBA mediation in case of disagreement regarding Articles 52.2 and 108:

The mediation power of the EBA is one key element of the promotion of coordination, supervisory consistency and convergence of supervisory practices. An EBA mediation procedure can be initiated either on its own initiative where specifically provided for, either following a request of one or more competent authorities part to the disagreement. The range of situations in which EBA can mediate on its own initiative and have binding mediation powers has been extended under several Articles of this Directive and of the Regulation [inserted OP] in view of contributing to consistency in supervisory practices. Regarding the designation of significant branches as referred to in Article 52.2 and the determination of institution-specific prudential requirements as referred to in Article 108 of this Directive, the EBA does not have an own-initiative power. However, in order to promote coordination and enhance consistent supervisory practices in these sensitive areas, competent authorities should have recourse to EBA mediation at an early stage of the process in case of disagreement. This early EBA mediation should help settling the disagreement and reaching an agreement.

CRR: Recital on EBA Review in relation to Articles 18 and 19:

After the observation period and the full implementation of a liquidity requirement in accordance with Article 444, it should be assessed whether granting the EBA a power of self-initiative to intervene with binding mediation in relation to the reaching of joint decisions by the competent authorities under Articles 18 and 19 of this Regulation would facilitate the practical formation and operation of single liquidity sub-groups as well as the determination of whether criteria for a specific intra-group treatment for cross-border institutions are met. Therefore, at that time, as part of one of the regular reports on the operation of EBA under Article 81 of Regulation 1093/2010, the Commission should specifically examine the need to grant EBA such powers and include the results of this examination in its report accompanied by any appropriate proposals.

CRDIV Article 43

Precautionary measures

1. Before following the procedure in Article 41, the competent authorities of the host Member State may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 2 of Directive 2001/24/EC, take any precautionary measures necessary to protect the collective interests of depositors, investors and clients in the host Member State against financial instability that would [seriously] threaten such collective interests.

2. Precautionary measures shall be proportionate to their purpose, which is to protect collective interests of depositors, investors and clients in the host Member State against financial instability that would [seriously] threaten such collective interests. Measures may include a suspension of payment. They shall not result in a preference for the creditors of the credit institution in the host Member State over creditors in other Member States.

3. Precautionary measures may only be taken before a reorganisation measure referred to in Article 3 of Directive 2001/24/EC has been taken. Any precautionary measure shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures within the meaning of Article 3 of Directive 2001/24/EC.

4. The competent authorities of the host Member State shall terminate precautionary measures where in its opinion they have become obsolete under Article 41 unless they cease to have effect according to paragraph 3.

5. The Commission, EBA and the competent authorities of the other Member States concerned shall be informed of precautionary measures without undue delay.

Where competent authorities of the home or any other affected Member State have objections against measures taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In that case, EBA may act in accordance with the powers conferred on it by that Article. Where it acts, EBA shall take any decision under Article 19(3) of Regulation (EU) No 1093/2010 within 24 hours.

EBA may assist the competent authorities in reaching an agreement also on its own initiative in accordance with Article 19(1) second sub paragraph of Regulation No (EC) 1093/2010.

d) Country by country reporting (CBCR - CRD IV new Article 86a);

Article 86a

1. From 1st January 2015 Member States shall require each institution to disclose annually, specifying by Member State and by third country in which it has [an establishment/operations], the following information on a consolidated basis for the financial year:

   (a) name and geographical location;

   (b) turnover;

   (c) number of employees on a full time equivalent basis;

   (d) profit or loss before tax;

   (e) tax on profit or loss;

   (f) public subsidies received.

2. Notwithstanding paragraph 1, Member States shall require institutions to disclose the information referred to in paragraph 1, a) to c) for the first time six months after the date of application referred to in Article 151(1) of this Directive.

3. The information referred to in paragraph 1, d), to f), shall be submitted to the Commission on a confidential basis by all European G-SIIs and OS-IIs no later than six months after date of application of this Directive. The Commission, in consultation with the relevant ESAs, shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of this type of information, including the impact on competitiveness, investment and credit availability and financial stability. The Commission shall submit its report to the Council and the European Parliament at the latest by 31 December 2014.

In the event that the Commission report identifies significant negative effects, it shall consider making an appropriate legislative proposal for a modification of the reporting obligations laid down in paragraph 1. In this case the Commission shall be empowered to adopt a delegated act to defer the disclosure obligation laid down in paragraph 1. The Commission shall announce publically that the conditions for adopting a delegate act are fulfilled. The Commission shall review every year the necessity to extend this deferral.

4. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.

5. To the extent the reporting obligation laid down in paragraph 1 is provided for in future EU legislation beyond those laid down in this Article, the obligation of this Article shall cease to apply.

e) Remuneration (capped ratio on the fixed and variable component of remuneration; shareholder involvement - Article 90 of the Directive)

Rec (48a) new	In order to ensure that credit institutions and investment firms have in place sound remuneration policies, it is appropriate to specify clear principles on governance and on the structure of remuneration policies. In particular, remuneration policies should be aligned with the risk appetite, values and long-term interests of the credit institution or investment firm. For this purpose, the assessment of the performance-based components of remuneration should be based on longer-term performance and take into account the current and future risks associated with that performance. In any event, in order to avoid excessive risk taking, a maximum ratio between the fixed and the variable component of the total remuneration should be set. It is appropriate to provide for a certain role for the shareholders, owners or members of the institutions in this respect. Member States may set stricter requirements as regards the relationship between the fixed and the variable components of the total remuneration. In order to ensure that the design of remuneration policies is integrated in the risk management of the credit institution, the management body, should adopt and periodically review the remuneration policies in place. The provisions on remuneration reflect differences between different types of credit institutions and investment firms in a proportionate manner, according to their size, internal organisation and the nature, scope and complexity of their activities and, in particular, it could not be proportionate for certain types of investment firms to comply with all of the principles.

Art 88	1. The application of Articles 88(2) to 91 shall be ensured by competent authorities for institutions at group, parent company and subsidiary levels, including those established in offshore financial centres.
	2. Competent authorities shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, institutions comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities:
Art 88(2)(fa)	(fa) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting: - basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and - variable remuneration (including amongst others any employee benefits beyond those required by law) which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

Art 90, para 1, point a	1. For variable elements of remuneration, the following principles shall apply in addition to and under the same conditions as those set out in Article 88(2): (a) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the institution and when assessing individual performance, financial and non-financial criteria are taken into account;
Art 90, para 1, point b	(b) the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;
Art 90, para 1, point c	(c) the total variable remuneration does not limit the ability of the institution to strengthen its capital base;
Art 90, para 1, point c a (new)	(ca) guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective compensation plans;
Art 90, para 1, point d	(d) guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the institution has a sound and strong capital base and is limited to the first year of employment;

Art 90, para 1, point e	(e) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
Art 90, para 1, point f	(f) institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply for each individual: (I) The variable component shall not exceed 100 % of the fixed component of the total remuneration.
Art 90, para 1, point f (II)	(II) With 50% of the shares or equivalent ownership rights being represented and acting by a majority of at least 66%, or failing that, acting by a majority of 75% of the ownership rights represented, the shareholders or owners or members of the institution, may approve a maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration.

Art 90, para 1, point f (III)	(III) Institutions may apply the discount rate referred to in para IIIa to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than 5 years. (IIIa) (i) EBA shall prepare guidelines on the applicable notional discount rate. EBA shall take into account all relevant factors including inflation rate and risk. The EBA guidelines on the discount rate shall specifically consider how to incentivise the use of instruments which are deferred for a period of not less than 5 years. (ii) EBA shall publish these guidelines by 31 March 2014.
Art 90, para 1, point f (IV)	(IV) Any approval of a higher ratio according to point f (II) shall be carried out in accordance with the procedure set out in the following subparagraphs.
Art 90, para 1, point f, (IV) sub paragraph a)	a) the shareholders or owners or members of the institution shall act upon a detailed recommendation by the institution justifying the reasons for and the scope of an approval sought, including the number of staff affected, their functions as well as the expected impact on the requirement to maintain a sound capital base.
Art 90, para 1, point f, (IV) sub paragraph aa) new	aa) the institution shall notify all shareholders or owners or members of the institution, and providing a reasonable notice period in advance, that an approval under this paragraph will be sought.

Art 90, para 1, point f **(IV) sub paragraph b)**	b)	the institution shall, without delay, inform the competent authority of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore, and shall,[if requested], demonstrate to the competent authority that the proposed higher ratio does not conflict with the institution's obligations under [CRR] and this Directive, having regard in particular to the institution's own funds obligations.
Art 90, para 1, point f **(IV) sub paragraph c)**	c)	the institution shall, without delay, inform the competent authority of the decisions by its shareholders or members referred to above, including any approved higher maximum ratio pursuant to Article 90(1)(f)(II), and the competent authorities shall use the information received to benchmark the practices of institutions in this regard. The competent authorities shall provide the EBA with this information and the EBA shall publish it on an aggregate home Member State basis in a common reporting format. The EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected.
Art 90, para 1, point f **(IV) sub paragraph d)**	(d)	Staff who are directly concerned by the higher maximum levels of variable remuneration referred to above shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the institution.
Art 90, para 1, point g	(g)	payments related to the early termination of a contract reflect performance achieved over time and do not reward failure, or misconduct;

Art. 90, para 1, point g a (new)	(ga)	remuneration packages related to compensation or buy out from contracts in previous employment must align with the long term interests of the institution including retention, deferment, performance and claw back arrangements;.
Art 90, para 1, point h	(h)	the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required;
Art 90, pr 1, point i	(i)	the allocation of the variable remuneration components within the credit institution shall also take into account all types of current and future risks;
Art 90, pr. 1, pt. j	(j)	a substantial portion, and in any event at least 50 %, of any variable remuneration shall consist of a balance of the following:
		(i) shares or equivalent ownership interests, subject to the legal structure of the institution concerned or share-linked instruments or equivalent non-cash instruments, in case of a non-listed institution;
		(ii) where appropriate, other instruments within the meaning of Article 49 or Article 60 of the Regulation [inserted by OP] that adequately reflect the credit quality of the institution as a going concern or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down.
		The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in accordance with point (k) and the portion of the variable remuneration component not deferred;

Art 90, para 1, point k	(k)	a substantial portion, and in any event at least 40 %, of the variable remuneration component is deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question. Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question;
Art 90, para 1, point l	(l)	the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the institutions as a whole, and justified according to the performance of the institution, the business unit and the individual concerned.
Art 90, para 1, point l **(ii)**	(ii)	Without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;
Art 90, para 1, point l **(iii)**	(iii)	Up to 100% of the total variable remuneration shall be subject to malus or clawback arrangements. Institutions shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member : a. participated in or was responsible for conduct which resulted in significant losses to the institution b. failed to meet appropriate standards of fitness and propriety.

Art 90, para 1, point m	(m) the pension policy is in line with the business strategy, objectives, values and long-term interests of the institution; If the employee leaves the institution before retirement, discretionary pension benefits shall be held by the institution for a period of 5 years in the form of instruments referred to in point (j). In case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j) subject to a five-year retention period;
Art 90, para 1, point n	(n) staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
Art 90, para 1, point o	(o) variable remuneration is not paid through vehicles or methods that facilitate the non-compliance with the requirements of this Directive or Regulation [inserted by OP].
Art 90, para 2, first subpara	2. EBA shall develop draft regulatory technical standards with respect to specifying the classes of instruments that satisfy the conditions laid down in point (j)(ii) and with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on the institutions risk profile as referred to in article 88(2).
Art 90, para 2, second subpara	EBA shall submit those draft regulatory technical standards to the Commission by 31 March 2014.
Art 90, para 2, third subpara	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 10 to 14 of Regulation (EU) No 1093/2010.

Article 150 "Review"	1. By 30 June 2016 the Commission, in close cooperation with EBA, shall review and report on the provisions on remuneration in this Directive and Regulation [inserted by OP], taking into account international developments and with particular regard to: (a) their efficiency, implementation and enforcement. That review shall identify any lacunae arising from the application of the principle of proportionality to those provisions. (b) the impact of compliance with the principle in Article 90(1)(f) in respect of (i) competitiveness and financial stability, and (ii) any staff working effectively and physically in subsidiaries established outside the EEA of institutions established within the EEA. That review shall consider in particular whether the principle set out in Article 90(1)(f) of this Directive should continue to apply to any staff covered by the first subparagraph of point (ii). The Commission shall submit its report to the European Parliament and the Council together with, if appropriate, a legislative proposal.