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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) 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 = *General approach*

I. INTRODUCTION

1. The above-mentioned Commission proposals have been transmitted to the Council on 20 July 2011. The objectives of this legislative package are, *inter alia*, to:

   a) ensure that the effectiveness of the regulation of credit institutions and investment firms in the EU is strengthened and that financial stability is enhanced;

   b) contain the pro-cyclicality of the financial system ensuring a high level of protection of investors and depositors and for the benefit of the operators on these markets;

   c) transpose the agreements reached by the Basel Committee on Banking Supervision (i.e. the Basel III requirements), as endorsed by the G20 leaders.

2. The European Council of March 2012 concluded that the proposals should be agreed by June 2012, bearing in mind the objective of having a single rule book and of ensuring timely and consistent implementation of Basel III requirements.[1]

3. The Committee on Economic and Monetary Affairs of the European Parliament is expected to adopt its report on 14 May 2012. The Presidency has already pursued informal contacts with the European Parliament in order to facilitate reaching an agreement at first reading.

4. The European Central Bank delivered its opinion on the legislative package on 25 January 2012.[2] The opinion of the European Economic and Social Committee was issued on 18 January 2012.[3] The European Data Protection Supervisor has issued its opinion on 10 February 2012[4].

5. The Presidency has tabled three full compromise proposals to the Working Party on Financial Services in order to make progress on the file The outstanding issues have also been examined in two meetings of the Committee of Permanent Representatives (Coreper - Part 2) on 19 and 25 of April 2012.

6. Following the debate at Coreper, some outstanding issues remain. Therefore, the Presidency has further explored avenues for an agreement and has on that basis decided to submit to the Council a fourth package of compromise texts of the proposed Regulation[5] and the Directive[6]. The Presidency is of the view that these texts, to the extent possible, address the concerns raised by the Member States, to enable them to agree on the overall compromise package.

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[1] Doc. EUCO 4/1/12 REV 1 CO EUR 2 CONCL 1, point 22.
[2] Doc. 5876/12 EF 22 ECOFIN 78 CODEC 224
[3] OJ C 68, 6.3.2012, p. 39.
[4] Doc. 6808/12 ADD 1 EF 48 ECOFIN 182 DROIPEN 23 CODEC 463 ADD 1
[5] Doc. 9224/12 EF 101 ECOFIN 363 CODEC 1099
[6] Doc. 9225/12 EF 102 ECOFIN 364 CODEC 1100

II. KEY ISSUES[7]

7. The key outstanding issues in the Presidency compromise text are the following:

   a) Mechanism of the systemic risk buffer (Directive, Articles 124a, 124b and 124c); and country-specific prudential measures (Regulation, Articles 443a and 443b)

   This is the main outstanding issue, where diverging views of the Member States have to be reconciled in order to reach a compromise. The Presidency proposes the following solution:

   i) The draft Directive (Article 124a) foresees that in addition to general own fund requirements for financial institutions, Member States shall be able to impose a systemic-risk buffer of CET1 capital for domestic and third-country exposures.

      In general there is no cap on the level of the systemic-risk buffer. If the buffer requirement is set above 3%, however, the buffer is subject to *ex ante* authorisation by the Commission. The Presidency has previously suggested to raise this limit to 5 % in 2015 without prior Commission approval. However, this suggestion did not find broad support at Coreper.

      If Member States would wish the buffer to include exposures in other Member States, *ex ante* approval by the Commission is required in the current compromise text, as set out in Article 124c in the draft Directive. Following the discussion at Coreper, an alternative solution could be considered as a compromise, to allow a buffer requirement for **all exposures up to [3] %** to be introduced by Member States without prior Commission approval but with a prior notification to the Commission.

      Other Member States may voluntarily recognize the buffer requirement and apply it to domestically authorised institutions' exposures located in the Member State setting the buffer, as set out in Article 124b in the draft Directive.

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[7] **NOTE:** relevant extracts of the Presidency compromise are reproduced in the Annex to this report.

ii) Under the Regulation (Article 443a), subject to *ex ante* approval by the Commission (implementing act, with opinions of ESRB and EBA), Member States will be able to apply national measures for two years to mitigate changes in the intensity of risk as regards a) level of own funds, b) requirements for large exposures, c) public disclosure requirements and d) the level of the capital conservation buffer and.

The Presidency maintains its proposal tabled for Coreper of 25 April, to insert optional reciprocity provisions permitting Member States to recognise the measures adopted by another Member State**,** and apply those to domestically authorised branches located in the Member State applying the national measures.

Moreover, some Member States still maintain reservations related to **the design of the approval mechanism in Article 443a of the Regulation** especially as to the role of the institutions, the coordination mechanisms and the timing of the approval process.

iii) Under the Regulation (Article 443b), the Commission will be able to impose stricter prudential requirements (level of own funds, requirements for large exposures and public disclosure requirements) for one year, by way of a delegated act addressed to all Member States. This can be done where it is necessary to address changes in the intensity of micro-prudential or macro-prudential risks which have arisen from market developments in the Union or in third countries affecting the whole of the EU.

b) Leverage ratio: disclosure and mandatory nature (Regulation, Article 436 and 482)

The Presidency compromise follows the Commission proposal that the legal regime of the leverage ratio from 1 January 2018 would be determined by an ordinary legislative procedure on the basis of the Commission report due by end of 2016. Mandatory disclosure of this ratio would start in the EU from 1 January 2015.

Some delegations are against mandatory disclosure until the final decision on the calibration of the leverage ratio and whether the leverage ratio should be a binding requirement.

8. The Presidency is of the opinion that a majority of delegations supports the current compromise on the definition of CET1 items (Regulation, Article 24, 26 and 75) and the regime applicable to financial conglomerates (Regulation, Article 46(1)). The Presidency has therefore kept the text presented to Coreper unchanged.

9. Moreover, with a view to an agreement on the overall compromise, the Presidency suggests further amendments that are set out in the compromise text tabled for the Council. These possible solutions accommodating issues specific to certain Member States could be summarised as follows:

a) *Deduction of holdings on a stand-alone or sub-consolidated basis (Regulation, Article 46(2))*

Modification of this provision to the effect that institutions shall deduct holdings in financial sector entities, if the competent authorities determine those deductions to be required for the purposes of supervision on a stand-alone or sub-consolidated basis.

b) *Scope of exemption to deduction requirement and scope of requirements for institutional protection schemes (Regulation, Article 46(3) and Recital 19*)

Deletion of the requirement that institutional protection scheme participants together (on a consolidated basis) have to meet capital buffer and additional own fund requirements in order to include holdings in financial sector entities.

c) *Eligible asset for collateralization of covered bonds under strict conditions (Regulation, Article 124(1)(da))*

Residential loans guaranteed by an eligible protection provider could be an eligible asset for collateralization of covered bonds under strict conditions.

d) *Exposures to central governments denominated and funded in another currency (Regulation, Article 109)*

Prolonging of the exemption until 2020 for the calculation of risk weighted exposure amounts in relation to exposures to central governments and central banks of Member States denominated and funded in another currency.

e) State aid (Regulation, Article 462)

Changing the cut-off date to "the date of application" for none privately subscribed state-aid and to introduce the possibility for Member States under an Economic Programme to deviate from the national transposition measures.

III. OTHER ISSUES

10. The Presidency has addressed a large number of issues specific to certain Member states between Coreper of 18 April and Coreper of 25 April. These issues can be summarized as follows;

- Directive, Article 115 (qualifications of directors);
- Directive, Article 147 (significant branches);
- Directive, Article 21 and Regulation, Article 9 (cooperative networks);
- Regulation, Recital 53 (multiple dividends);
- Regulation, Article 9 (possible waiver-model for central body);
- Regulation, Articles 109 and 472 (exposures to central governments or central banks);
- Regulation, Article 391(3) (independent mortgage liens);
- Regulation, Article 481(2a)(vii) and a new recital (grandfathering mechanism);
- Regulation, Article 481(2) (specification reporting on assets).

A number of delegations maintain reservations relating to specific national issues where no solution has been found. The Presidency encourages delegations to lift these reservations in view of the agreement on the overall compromise package.

11. The Presidency will address any further outstanding technical and timing issues in the following stages of negotiations on these texts, where the Presidency will act in accordance with the guidance and mandate it will receive from Member States.

IV. CONCLUSION

12. Against this background the Council is invited to:

    a) agree on the general approach;

    b) invite the Presidency to start negotiations with the European Parliament, as soon as possible, on the basis of this general approach with a view to reaching an agreement at first reading.

ANNEX:

EXTRACTS OF RELEVANT PROVISIONS OF THE PRESIDENCY COMPROMISE (DIRECTIVE AND REGULATION)

Directive (extracts from doc. 9225/12 EF 102 ECOFIN 364 CODEC 1100)

Article 21

Exemptions for credit institutions permanently affiliated to a central body

1. Competent authorities may exempt a credit institution that meets the conditions laid down in Article 9 of Regulation [inserted by OP] from Article 10, 12 and 13(1) of this Directive, under the conditions set out in Article 9 of that Regulation.

   Member States may maintain and make use of existing national legislation regarding the application of this waiver as long as it does not conflict with the provisions set in this Directive and in Regulation [insert by OP].

2. In case of exemptions exercised by the competent authorities in accordance with Article 9 of Regulation [inserted by OP], Articles 17, 33, 34, 35, 36(1)-(3) and 39-46, Section II of Chapter 2 of Title VII and Chapter 4 of Title VII of this Directive shall apply to the whole as constituted by the central body together with its affiliated institutions.

Article 115

Qualification of directors

The Member States shall require that the members of the management body of a financial holding company or mixed financial holding company be of sufficiently good repute and have sufficient experience as referred to in art. 87 (1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

Article 124a

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.

1a. For the purpose of paragraph 1, the Member State shall designate the authority in charge of the application of this Article. This authority shall be the competent authority or the designated authority.

2. For the purpose of paragraph 1, the authority determined according to paragraph 1a may require institutions to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 87 of Regulation [insert by OP], a Systemic Risk Buffer of Common Equity Tier 1 capital.

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

3. The Systemic Risk Buffer requirement shall apply to exposures located in that Member State, and may also apply to exposures located in third-countries, in accordance with the methodology laid down in accordance with Article 130(4) and 130(5) including exposures under Article 107 (f) of the Regulation [insert by OP] in order to prevent and mitigate long term non cyclical systemic or macroprudential risk not covered by Regulation [insert 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. 3b. The Systemic Risk Buffer Rate 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.

4. [...]

5. When requiring a Systemic Risk Buffer the authority determined according to paragraph 1a 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)

   c) the Systemic Risk Buffer requirement shall be reviewed by the authority determined according to paragraph 1a at least every second year.

6. Before setting or resetting a Systemic Risk Buffer requirement of up to 3 %, the authority determined according to paragraph 1a shall notify the Commission, EBA, the ESRB and competent authorities of concerned Member States 1 months prior to the publication of the decision referred to in paragraph 10. If the buffer requirement apply to exposures located in third-countries the authority determined according to paragraph 1a 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 systemic and macro-prudential risks poses a threat to financial stability at national level;

   c) the justification for why the measures proposed are deemed effective and proportionate to mitigate the intensity of risk;

d) an assessment of the likely impact of the measures on the single market based on information which is available to the Member State;

e) the justification for why any of the existing measures in the Regulation, excluding Article 443A and 443B, or the Directive [insert by OP] alone or in a combination will not be sufficient to address the identified macro-prudential or systemic risk taking into account the relative effectiveness of these measures;

ei) the Systemic Risk Buffer rate that the Member State wish to require.

7. Before setting or resetting a Systemic Risk Buffer requirement of above 3 %, the authority determined according to paragraph 1a shall notify the Commission, EBA, the ESRB and competent authorities of concerned Member States. If the buffer requirement apply to exposures located in third-countries the authority determined according to paragraph 1a 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 measures proposed are deemed effective to mitigate the intensity of risk;

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

e) the justification for why any of the existing measures in the Regulation excluding Article 443A and 443B or the Directive [insert by OP] alone or in a combination will not be sufficient to address the identified macro-prudential or systemic risk taking into account the relative effectiveness of these measures;

ei) the Systemic Risk Buffer rate that the Member State wish to require.

8. Within [4 weeks] from the notification referred to in paragraph 7, 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 month 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 authority determined according to paragraph 1a to adopt the proposed measure.

9.

10. Each authority determined according to paragraph 1a 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 applicable Systemic Risk Buffer;

ai) the institutions which shall comply with the buffer requirement;

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;

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 10 point b could jeopardise financial stability, the required information in paragraph 10 point b shall not be included in the announcement.

11. 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.

Article 124b

Recognition of a Systemic Risk Buffer

1. Other Member States may recognise the Systemic Risk buffer rate set according to Article 124a 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 the Member State shall notify the Commission, EBA, the 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 paragraph 10 of Article 124a.
4. The Member State setting the buffer according to Article 124a 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 124c

Exposures located in other Member States in the Systemic Risk Buffer

1. When setting or resetting a Systemic Risk Buffer according to Article 124a the authority determined according to paragraph 1a in Article 124a may include exposures located in other Member States.
2. Before setting or resetting a Systemic Risk Buffer where exposures in other Member States are included, the authority determined according to paragraph 1a in Article 124a shall follow the procedure specified in paragraph 1-5 and 7-11 of Article 124a regardless of the size of the buffer requirement.
3. If exposures are subject to different Systemic Risk Buffer requirements according to this Article and Article 124b, the requirements set accordingly to this Article will prevail.

Article 147

Significant branches

1. The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 107(1) applies or to the competent authorities of the home Member State, for a branch of a credit institution to be considered as significant.

2. That request shall provide reasons for considering the branch to be significant with particular regard to the following:

   (a) whether the market share of the branch of a credit institution in terms of deposit exceeds 2 % in the host Member State;

   (b) the likely impact of a suspension or closure of the operations of the credit institution on systemic liquidity and the payment and clearing and settlement systems in the host Member State;

   (c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

   The competent authorities of the home and host Member States, and the consolidating supervisor where Article 107(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

   If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

The decisions referred to in the third and fourth subparagraph shall be set out in a document containing the fully reasoned decision and transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

3. The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 112(1)(c) and (d) and carry out the tasks referred to in Article 107(1)(c) in cooperation with the competent authorities of the host Member State.

4. If a competent authority of a home Member State becomes aware of an emergency situation within a credit institution as referred to in Article 109(1), it shall alert as soon as practicable the authorities referred to in the fourth paragraph of Article 59 and in Article 60.

5. Where Article 111 does not apply, the competent authorities supervising a credit institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and Article 61. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

6. The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 144(3) and the obligations referred to in paragraph 2 of this Article.

7. The competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

Regulation (extracts from doc. 9224/12 EF 101 ECOFIN 363 CODEC 1099)

Regulation: recitals

(19) Whenever in the course of supervision it is necessary to determine the amount of the consolidated own funds of a group of credit institutions and investment firms, the calculation should be effected in accordance with this Regulation. Where this Regulation refers to the consolidated basis of institutions of the same institutional protection scheme the legal structure of this scheme shall be taken into account. Institutional protection schemes that are not organized as a group with a common parent undertaking can meet the consolidation requirement e.g. with an extended aggregated calculation that is equivalent to the provisions of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, which incorporates certain adaptations of the provisions of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts or of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, governing the consolidated accounts of groups of credit institutions.

(53) In light of the nature and magnitude of unexpected losses experienced by credit institutions and investment firms during the financial and economic crisis, it is necessary to improve further the quality and harmonisation of own funds that credit institutions and investment firms are required to hold. This should include the introduction of a new definition of the core elements of capital available to absorb unexpected losses as they arise, enhancements to the definition of hybrid capital and uniform prudential adjustments to own funds. It is also necessary to raise significantly the level of own funds, including new capital ratios focusing on the core elements of own funds available to absorb losses as they arise. It is expected that credit institutions or investment firms whose shares are listed on an EU regulated market should meet their capital requirements regarding the core elements of capital with these listed common shares that meet a strict set of criteria for the core capital instruments and the disclosed reserves of the institution only. In order to adequately take into account the diversity of legal forms credit institutions and investment firms in the European Union are operating under, the strict set of criteria for the core capital instruments will ensure that core capital instruments for institutions not listed on an EU regulated market are of highest quality. . This should not prevent institutions from paying, on shares that have differentiated or no voting rights, distributions that are a multiple of those paid on shares which have relatively higher levels of voting rights~~,~~ provided that, irrespective of the level of voting rights, the strict criteria for Common Equity Tier 1 instruments are met including those relating to the flexibility of payments, and provided that in case a distribution is paid it is to be paid on all shares issued by the institution.

Regulation: provisions

Article 9

Waiver for credit institutions permanently affiliated to a central body

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

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

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

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

   Member States may maintain and make use of existing national legislation regarding the application of this waiver as long as it does not conflict with the provisions set in this Regulation and in Directive [insert by OP].

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

Article 24

Common Equity Tier 1 items

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

   (a) capital instruments, provided the conditions laid down in Article 26 are met;

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

   (c) retained earnings;

   (d) accumulated other comprehensive income;

   (e) other reserves;

   (f) funds for general banking risk.

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

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

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

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

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

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2013.

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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

4. On the basis of information from each Member State, EBA shall establish, maintain and publish a list of the forms of capital instruments, which the competent authorities in each Member State consider to qualify as Common Equity Tier 1 instruments in accordance with Article 26, and Article 27 as applicable. EBA shall establish and publish this list for the first time by 1 January 2013.

Article 26

Common Equity Tier 1 instruments

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

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

   (b) the instruments are paid up and their purchase is not funded directly or indirectly by the institution;

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

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

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

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

   (d) the instruments are clearly and separately disclosed on the balance sheet in the financial statements of the institution , which in the case of institutions subject to statutory audit shall be the balance sheet subject to that audit; ;

   (e) the instruments are perpetual;

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

      (i) the liquidation of the institution;

(ii) discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior consent of the competent authority in accordance with Article 72;

(g) the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments, except in the case of instruments referred to in Article 25 where the refusal by the institution to redeem such instruments is prohibited under applicable national law;

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

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

(ii) distributions to holders of the instruments may be paid only out of distributable items, which are limited to the profit of the period for which the distribution is paid plus any reserves which according to national company law may be distributed following a decision of the owners of the institution;

(iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 25;

(iv) the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 25;

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

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

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

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

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

(k) the instruments entitle their owners to a claim on the residual assets of the institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except in the case of the capital instruments referred to in Article 25;

(l) the instruments are not secured, or subject to a guarantee that enhances the seniority of the claim by any of the following:

(i) the institution or its subsidiaries;

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

(iii)

(iv)

(v)

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

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

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

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

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

(b)

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2013.

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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 46

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

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

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

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

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

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

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

      (i) the parent credit institution;

      (ii) the parent financial holding company;

      (iii) the parent mixed financial holding company;

(iv) the institution;

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

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

2. For the purposes of calculating own funds on a stand-alone basis and a sub-consolidated basis, institutions subject to supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One shall not deduct holdings referred to in points (h) and (i) of Article 33(1) in financial sector entities included in the scope of consolidated supervision unless the competent authorities determine those deductions to be required for the purposes of supervision on a stand-alone or sub-consolidated basis.

3. Competent authorities may permit institutions not to deduct a holding of an item referred to in points (h) and (i) of Article 33(1) in the following cases:

(a)

(b) where an institution referred to in Article 25 has a holding in another such institution, or in its central or regional credit institution, and the following conditions are met:

(ii) the institutions fall within the same institutional protection scheme referred to in Article 108(7);

(iii) the competent authorities have granted the permission referred to in Article 108(7);

(iv) the conditions laid down in Article 108(7) are satisfied;

(v) the institution draws up and reports to the competent authorities the consolidated balance sheet referred to in point (e) of Article 108(7) no less frequently than own funds requirements are required to be reported under Article 95.

(vi) the institutions included in each institutional protection scheme meet together on a consolidated basis the requirements laid down in Article 87 and carry out reporting of compliance with those requirements in accordance with Article 95.

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

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

4. EBA, EIOPA and ESMA shall, through the Joint Committee, develop draft regulatory technical standards to specify for the purposes of this Article the conditions of application of the calculation methods listed in Annex I, Part II and Article 228(1) of Directive 2002/87/EC for the purposes of the alternatives to deduction referred to in paragraph 1 and point (a) of paragraph 3.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2013.

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

5. EBA shall develop draft regulatory technical standards to specify the conditions of application of paragraph 3 to specify the conditions of application of points (v) and (vi) of paragraph 3(b).

EBA shall submit those draft regulatory technical standards to the Commission by 31 January 2013.

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

Article 75

Continuing review of quality of own funds

1. EBA shall monitor the quality of own funds instruments issued by institutions across the Union and shall notify the Commission immediately where there is significant evidence of material deterioration in the quality of those instruments.

2. For own fund instruments, where the fulfilment of the criteria in Article 26 is materially complex to ascertain by the competent authority and where the instrument is considered as Common Equity Tier 1 instrument, the competent authorities shall explain its reasoning for considering the instrument as Common Equity Tier 1 instrument according to Article 24(1)(a) upon request to EBA.

2a. Taking into account paragraph 1 and 2a notification shall include the following:

   (a) a detailed explanation of the nature and extent of the deterioration identified;

   (b) technical advice on the action by the Commission that EBA considers to be necessary.

3. EBA shall provide technical advice to the Commission on any significant changes it considers to be required to the definition of own funds as a result of any of the following:

   (a) relevant developments in market standards or practice;

   (b) changes in relevant legal or accounting standards;

   (c) significant developments in the methodology of EBA for stress testing the solvency of institutions.

4. EBA shall provide technical advice to the Commission by 31 December 2013 on possible treatments of unrealised gains measured at fair value other than including them in Common Equity Tier 1 without adjustment. Such recommendations shall take into account relevant developments in international accounting standards and in international agreements on prudential standards for banks.

Article 109

Exposures to central governments or central banks

1. Exposures to central governments and central banks shall be assigned a 100 % risk weight, unless the treatments set out in paragraphs 2 to 5 apply.

2. Exposures to central governments and central banks for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 1 which corresponds to the credit assessment of the ECAI in accordance with Article 131.

Table 1						
Credit quality step	1	2	3	4	5	6
Risk weight	0 %	20 %	50 %	100 %	100 %	150 %

3. Exposures to the European Central Bank shall be assigned a 0 % risk weight.

4. Exposures to Member States' central governments and central banks denominated and funded in the domestic currency of that central government and central bank shall be assigned a risk weight of 0 %.

4a. Until 31 December 2015, the same risk weight shall be assigned in relation to exposures to the central governments or central banks of Member States denominated and funded in the domestic currency of any Member State as would be applied to such exposures denominated and funded in their domestic currency.

4b. In the calculation of risk weighted exposure amounts for the purposes of paragraph 4, until 31 December 2017 the same risk weight shall be assigned in relation to exposures to the central governments or central banks of Member States denominated and funded in the domestic currency of any Member State as would be applied to such exposures denominated and funded in their domestic currency.

In 2018 the calculated risk weighted exposure amounts shall be 20% of the risk weight assigned to these exposures in accordance with Article 109(2).

In 2019 the calculated risk weighted exposure amounts shall be 50% of the risk weight assigned to these exposures in accordance with Article 109(2).

In 2020 and onwards the calculated risk weighted exposure amounts shall be 100% of the risk weight assigned to these exposures in accordance with Article 109(2).

Article 124

Exposures in the form of covered bonds

1. To be eligible for the preferential treatment set out in paragraph 3 and 4, 'covered bonds' shall mean bonds as defined in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[8] and collateralised by any of the following eligible assets:

   (a) exposures to or guaranteed by central governments, ESCB central banks, public sector entities, regional governments and local authorities in the Union;

   (b) exposures to or guaranteed by third country central governments, non-EU central banks, multilateral development banks, international organisations that qualify for the credit quality step 1 as set out in this Chapter, and exposures to or guaranteed by non-EU public sector entities, non-EU regional governments and non-EU local authorities that are risk weighted as exposures to institutions or central governments and central banks according to Articles 110(1), 110(2), 111(1), 111(2) or 111(4) respectively and that qualify for the credit quality step 1 as set out in this Chapter, and exposures in the sense of this point that qualify as a minimum for the credit quality step 2 as set out in this Chapter, provided that they do not exceed 20 % of the nominal amount of outstanding covered bonds of issuing institutions;

   (c) exposures to institutions that qualify for the credit quality step 1 as set out in this Chapter. The total exposure of this kind shall not exceed 15 % of the nominal amount of outstanding covered bonds of the issuing institution. Exposures caused by transmission and management of payments of the obligors of, or liquidation proceeds in respect of, loans secured by immovable property to the holders of covered bonds shall not be comprised by the 15 % limit. Exposures to institutions in the EU with a maturity not exceeding 100 days shall not be comprised by the step 1 requirement but those institutions shall as a minimum qualify for credit quality step 2 as set out in this Chapter;

[8] OJ L 02, 17.11.2009, p. 2.

The competent authorities may, after having consulted EBA, partly waive the application of (c) and allow credit quality step 2 for up to 10 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing institution, provided that significant potential concentration problems in the Member States concerned can be documented due to the application of the credit quality step 1 requirement referred to in (c);

(d) loans secured by residential property up to the lesser of the principal amount of the liens that are combined with any prior liens and 80 % of the value of the pledged properties or by senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities governed by the laws of a Member State securitising residential property exposures. In the event of such senior units being used as collateral, the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) shall ensure that the assets underlying such units shall, at any time while they are included in the cover pool be at least 90 % composed of residential mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 80 % of the value of the pledged properties, that the units qualify for the credit quality step 1 as set out in this Chapter and that such units do not exceed 10 % of the nominal amount of the outstanding issue;

Exposures caused by transmission and management of payments of the obligors of, or liquidation proceeds in respect of, loans secured by pledged properties of the senior units or debt securities shall not be comprised in calculating the 90 % limit;

(da) residential loans fully guaranteed by an eligible protection provider referred to in Article 197 qualifying for the credit quality step 2 or above as set out in this Chapter, where the portion of each of the loans that is used to meet the requirement according to this paragraph for collateralisation of the covered bond does not represent more than 80% of the value of the corresponding residential property located in France, and where a loan-to-income ratio respects at most 33% when the loan has been granted. There shall be no mortgage liens on the residential property when the loan is granted and the borrower shall be committed not to grant such liens without the consent of the issuer. The loan-to-income ratio represents the share of the gross income of the borrower that covers the reimbursement of the loan, including the interests. The protection provider shall be either a financial institution authorised and supervised by the competent authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness or an institution or an insurance undertaking. It shall establish a mutual guarantee fund or equivalent protection for insurance undertakings to absorb credit risk losses, whose calibration shall be periodically reviewed by the competent authorities. Both the credit institution and the protection provider shall carry out a creditworthiness assessment of the borrower.(e) loans secured by commercial immovable property up to the lesser of the principal amount of the liens that are combined with any prior liens and 60 % of the value of the pledged properties or by senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities governed by the laws of a Member State securitising commercial immovable property exposures. In the event of such senior units being used as collateral, the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC shall ensure that the assets underlying such units shall, at any time while they are included in the cover pool be at least 90 % composed of commercial mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 60 % of the value of the pledged properties, that the units qualify for the credit quality step 1 as set out in this Chapter and that such units do not exceed 10 % of the nominal amount of the outstanding issue. Loans secured by commercial immovable property are eligible where the Loan to Value ratio of 60 % is exceeded up to a maximum level of 70 % if the value of the total assets pledged as collateral for the covered bonds exceed the nominal amount

outstanding on the covered bond by at least 10 %, and the bondholders' claim meets the legal certainty requirements set out in Chapter 4. The bondholders' claim shall take priority over all other claims on the collateral. Exposures caused by transmission and management of payments of the obligors of, or liquidation proceeds in respect of, loans secured by pledged properties of the senior units or debt securities shall not be comprised in calculating the 90 % limit;

(f) loans secured by ships (maritime liens) up to 60 % of the value of the pledged ship minus any prior maritime lien.

The situations in points (a) to (f) also include collateral that is exclusively restricted by legislation to the protection of the bond-holders against losses.

2. Institutions shall for immovable property collateralising covered bonds meet the requirements set out in Article 203 and the valuation rules set out in Article 224(1).

3. Covered bonds for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight according to Table 6a which corresponds to the credit assessment of the ECAI in accordance with Article 131.

Table 6a						
Credit quality step	1	2	3	4	5	6
Risk weight	10 %	20 %	20 %	50 %	50 %	100 %

4. Covered bonds for which a credit assessment by a nominated ECAI is not available shall be assigned a risk weight on the basis of the risk weight assigned to senior unsecured exposures to the institution which issues them. The following correspondence between risk weights shall apply:

(a) if the exposures to the institution are assigned a risk weight of 20 %, the covered bond shall be assigned a risk weight of 10 %;

(b) if the exposures to the institution are assigned a risk weight of 50 %, the covered bond shall be assigned a risk weight of 20 %;

(c) if the exposures to the institution are assigned a risk weight of 100 %, the covered bond shall be assigned a risk weight of 50 %;

(d) if the exposures to the institution are assigned a risk weight of 150 %, the covered bond shall be assigned a risk weight of 100 %.

5. Covered bonds issued before 31 December 2007 are not subject to the requirements of paragraph 1 and 2. They are eligible for the preferential treatment under paragraph 3 and 4 until their maturity.

Article 391

Exposures arising from mortgage lending

1. For the calculation of exposure values for the purposes of Article 384, an institution may reduce the value of an exposure or any part of an exposure fully secured by real estate property in accordance with Article 120(1) by the pledged amount of the market or mortgage lending value of the property concerned but not more than 50 % of the market or 60% of the mortgage lending value in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, if all of the following conditions are met:

   (a) The competent authority of the Member State has not set a higher risk weight than 35% for exposures or parts of exposures secured by residential real estate in accordance with Article 119(2);

   (b) the exposure or part of the exposure is fully secured by

      (i) mortgages on residential property; or

      (ii) residential properties which are leased for as long as the lessee has not exercised his option to purchase and the exposure relates to a leasing transaction under which the lessor retains full ownership of the residential property

   (c) The requirements in Articles 203 and 224(1) are met.

2. For the calculation of exposure values for the purposes of Article 384, an institution may reduce the value of an exposure or any part of an exposure fully secured by real estate property in accordance with Article 121(1) by the pledged amount of the market or mortgage lending value of the property concerned but not more than 50 % of the market or 60% of the mortgage lending value in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, if all of the following conditions are met:

(a) The competent authority of the Member State has not set a higher risk weight than 50% for exposures or parts of exposures secured by commercial real estate in accordance with Article 119(2);

(b) the exposure is fully secured by:

(i) mortgages on offices or other commercial premises; or

(ii) offices or other commercial premises and the exposures related to property leasing transactions.

(c) The requirements in Articles 121(2)(a), 203 and 224(1) are met;

(d) the commercial property shall be fully constructed.

3. An institution may treat an exposure to a counterparty that results from a reverse repurchase agreement under which the institution has purchased from the counterparty non-accessory independent mortgage liens on immovable property of third parties as a number of individual exposures to each of those third parties, provided that all of the following conditions are met:

(a) the counterparty is an institution;

(b) the exposure is fully secured by liens on the immovable property of those third parties that have been purchased by the institution and the institution is able to exercise those liens;

(c) the institution has ensured that the requirements of Articles 203 and 224(1) are met;

(d) the institution becomes beneficiary of the claims that the counterparty has against the third parties in the event of default, insolvency and liquidation of the counterparty;

(e) the institution reports to the competent authorities in accordance with Article 383(2) the total amount of exposures to each other institution that are treated in accordance with this paragraph.

For these purposes, the institution shall assume that it has an exposure to each single one of those third parties for the amount of the claim that the counterparty has on the third party instead of the corresponding amount of the exposure to the counterparty. The remainder of the exposure to the counter party, if any, shall continue to be treated as an exposure to the counter party.

Article 436

Leverage

1. Institutions shall disclose the following information regarding their leverage ratio as defined in Article 416 and their management of the risk of excessive leverage as defined in point (B) of Article 4(2) of Directive [inserted by OP]:

   (a) the leverage ratio and how the institution applied Article 475, paragraph 2 and 3;

   (b) a breakdown of the total exposure measure

   (ba) where applicable, the amount of derecognised fiduciary items according to Article 416 paragraph 11;

   (c) a description of the processes used to manage the risk of excessive leverage;

   (d) a description of the factors that had an impact on the leverage ratio during the period to which the disclosed leverage ratio refers.

2. EBA shall develop draft implementing technical standards to determine the uniform disclosure template for the disclosure referred to in paragraph 1 and the instructions on how to use such template.

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

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

Article 443a

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

0. Member State 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 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 wants which the authority determined according to paragraph 0 considers would better be addressed by means of national measures, it shall notify the Commission, the Council, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence :

   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, 124a, and 126 of Directive [inserted by OP] cannot adequately address the identified macro-prudential or systemic risk taken into account the relative effectiveness of these measures.

   c) draft national measures for domestically authorised institutions, or a subset of those institutions, to mitigate the changes in the intensity of risk:

      (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;

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

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.

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 Member States shall provide relevant competent authorities in other countries with all relevant information.

2. Within one month of receiving the notification referred to in paragraph 1 the ESRB and EBA shall provide its opinion on the points mentioned in paragraph 1 to the Commission. After receiving the opinion, the Commission shall within one month adopt an implementing act to allow the relevant authority determined according to paragraph 0 to address the threat by an individual measure as set out in paragraph (1)(c) for a period of up to two years if it is satisfied that:

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 the Articles 98, 99a, 100, 100a, 124a, and 126 of Directive [inserted by OP] cannot adequately address the identified macro-prudential or systemic risk taken into account 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 EU as a whole, thus forming or creating an obstacle to the functioning of the internal market;

d) the issue concerns only one Member State

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

The assessment of the Commission 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.

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 the Member State 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 may recognise the measures.

3. Before the expiry of the authorisation issued in accordance with paragraph 2, the Commission 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.

Article 443b

Prudential requirements

The Commission shall be empowered to adopt delegated acts in accordance with Article 445, to impose, for a period of one year, stricter prudential requirements for exposures where this is necessary to address changes in the intensity of micro-prudential and macro-prudential risks which arise from market developments in the Union or outside the Union affecting all Member States, and where the instruments of this Regulation and the Directive [inserted by OP] are not sufficient to address these risks, in particular upon the recommendation or opinion of the ESRB or EBA, concerning

(a) the level of own funds laid down in Article 87;

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

(c) the public disclosure requirements laid down in articles 418 to 440.

This delegation of power shall be subject to the procedure referred to in Article 445.

The Commission, assisted by the ESRB shall, at least on an annual basis, submit to the European Parliament and the Council, a report on market developments potentially requiring the use of Article 443B.

Article 462

Grandfathering of State aid instruments

1. By way of derogation from Articles 24 to 27, 48, 49, 59 and 60 during the period from 1 January 2013 to 31 December 201 7 this Article applies to capital instruments where the following conditions are met:

   (a) the instruments were issued prior to the application of this Regulation;

   (b) the instruments were issued within the context of a recapitalisation measures pursuant to State aid-rules. Insofar as part of the instruments are privately subscribed, they must be issued prior to 30 June 2012 and in conjunction with those parts that are subscribed by the State;

   (c) the instruments were considered compatible with the internal market by the Commission under Article 107 TFEU.

   (d) in the case the instruments are subscribed by both the State and private investors, where there is a partly redemption of the instruments subscribed by the State, a corresponding share of the privately subscribed part of the instruments shall be grandfathered according to Article 463. When all the instruments subscribed by the State have been redeemed, the remaining instruments subscribed by private investors shall be grandfathered according to Article 463.

2. Instruments that qualified in accordance with the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 instruments notwithstanding either of the following:

   (a) the conditions laid down in Article 26 are not met;

   (b) the instruments were issued by an undertaking referred to in Article 25 and the conditions laid down in Articles 26, or Article 27 as applicable, are not met.

2a. Instruments referred to in point (c) of paragraph 1 that do not qualify under national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 instruments notwithstanding the requirements of points (a) or (b) of paragraph 2 of this Article not being met, provided that the requirements of paragraph 6 are met.

Instruments that qualify as Common Equity Tier 1 pursuant to the first sub-paragraph may not qualify as Additional Tier 1 instruments or Tier 2 instruments under paragraph 3a or 5.

3. Instruments that qualified in accordance with the national transposition measures for point (ca) of Article 57 and for Article 154 (8) and (9) of Directive 2006/48/EC shall qualify as Additional Tier 1 instruments notwithstanding the conditions laid down in Article 49(1) not being met.

3a. Instruments referred to in point (c) of paragraph 1 that do not qualify under the national transposition measures for point (ca) of Article 57 of Directive 2006/48/EC shall qualify as Additional Tier 1 instruments notwithstanding the conditions laid down in Article 49(1) not being met, provided that the requirements of paragraph 6 are met.

Instruments that qualify as Additional Tier 1 instruments pursuant to the first sub-paragraph may not qualify as Common Equity Tier 1 instruments or Tier 2 instruments under paragraph 2a or 5.

4. Items that qualified in accordance with national transposition measures for points (f), (g) or (h) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Tier 2 instruments notwithstanding the items not being referred to in Article 59 or the conditions laid down in Article 60 not being met.

5. Instruments referred to in point (c) of paragraph 1 that do not qualify under the national transposition measures for points (f), (g) or (h) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Tier 2 instruments notwithstanding the items not being referred to in Article 59 or the conditions laid down in Article 60 not being met, provided the conditions of paragraph 6 are met.

   Instruments that qualify as Tier 2 instruments pursuant to the first sub-paragraph may not qualify as Common Equity Tier 1 instruments or Additional Tier 1 instruments under paragraph 2a or 3a.

6. Instruments referred to paragraphs 2a, 3a and 5 may qualify as own funds instruments referred to in those paragraphs only where the condition in paragraph 1a is met and where they are issued by institutions that are incorporated in a Member State that is subject to an Economic Adjustment Programme, and the issuance of those instruments is agreed under that programme.

Article 472

Treatment of equity exposures under the IRB approach

1. By way of derogation from Chapter 3 of Part Three, until 31 December 2017, the competent authority may exempt from the IRB treatment certain categories of equity exposures held by institutions and EU subsidiaries of institutions in that Member State as at 31 December 2007. The competent authority shall publish the categories of equity exposures which benefit from this treatment in accordance with Article 133 of Directive [inserted by OP].

   The exempted position shall be measured as the number of shares as at 31 December 2007 and any additional share arising directly as a result of owning those holdings, provided they do not increase the proportional share of ownership in a portfolio company.

   If an acquisition increases the proportional share of ownership in a specific holding the exceeding Part of the holding shall not be subject to the exemption. Nor shall the exemption apply to holdings that were originally subject to the exemption, but have been sold and then bought back.

   Equity exposures subject to this provision shall be subject to the capital requirements calculated in accordance with the Standardised Approach under Part III, Title 2, Chapter II and the requirements set out in Title IV of Part Three, as applicable.

   Competent authorities shall notify the Commission and EBA of the implementation of this paragraph.

Article 481

Liquidity requirements

1. EBA shall monitor and evaluate the reports made in accordance with Article 403(1), across currencies and across different business models. EBA shall, after consulting the ESRB, annually and for the first time by 30 September 2013, report to the Commission on whether a specification of the general liquidity coverage requirement in Part Six based on the criteria for liquidity reporting in Part Six Title II, considered either individually or cumulatively, is likely to have a material detrimental impact on the business and risk profile of Union institutions or on financial markets or the economy and bank lending, with a particular focus on lending to small and medium enterprises and on trade financing, including lending under official export credit insurance schemes.

   EBA shall in its report assess in particular the appropriateness of

   (a) providing mechanisms restricting the value of liquidity inflows, in particular assessing whether an inflow cap of 75 % of the outflows is appropriate; taking into account different business models including pass through financing models;

   (b) the calibration of the outflows in accordance with Article 410(5);

   (c)

   (d) providing mechanisms restricting the coverage of liquidity requirements by certain categories of liquid assets

   (e) providing for specific lower outflow and/or higher inflow rates for intragroup flows. The report shall specify under which conditions such specific in- or outflows rates would b e justified from a prudential point of view and shall set out the high level outline of a methodology using objective criteria and parameters in order to determine specific levels of inflows and outflows between the institution and the counterparty when they are not established in the same member state.

(f) requirements on the composition of liquid assets that an individual bank should hold, such as for example a requirement for the share of the assets referred in Article 404(1)(a) and (b) to constitute a certain minimum share of an institution's liquid assets

(g) derogations from requirements on the composition of the liquid assets institutions will be required to hold, where in a given currency the institutions' collective justified needs for liquid assets are exceeding the availability of those liquid assets and conditions such derogations should be subject to;

(h) defining circumstances of stress, including principles for the use possible use of the stock of liquid assets and the necessary supervisory reactions under which institutions would be able to use their liquid assets to meet liquidity outflows and how to address non-compliance;

2. EBA shall, by 30 June 2013, report to the Commission on appropriate uniform definitions of high and of extremely high liquidity and credit quality of transferable assets for purposes of Article 404 and appropriate haircuts. The report should also consider other categories of central bank eligible assets, for example RMBS of high liquid and credit quality and local government bonds, and other non-central bank eligible but tradable assets, for example equities listed on a recognised exchange and gold. EBA shall in particular test the adequacy of the following criteria and the appropriate levels for such definitions:

(a) minimum trade volume of the assets

(b) minimum outstanding volume of the assets

(c) transparent pricing and post-trade information

(d) credit quality steps referred to in Part Three, Title II, Chapter 2;

(e) proven record of price stability

(f) average volume traded and average trade size

(g) maximum bid/ask spread

(h) remaining time to maturity

(i) minimum turnover ratio

EBA shall furthermore report about the appropriateness of treating assets referred to in Article 404(1)(c) as equivalent to assets of extremely high liquidity and credit quality.

2a. By 31 December 2013, *taking into account the reports by EBA mentioned in paragraphs 1 and 2,* the Commission shall report together with a legislative proposal as appropriate to the European Parliament and to the Council to introduce by January 1st 2015 a liquidity coverage requirement under which institutions shall at all times hold liquid assets, the sum of the values of which equals, or is greater than, the liquidity outflows less the liquidity inflows under stressed conditions so as to ensure that institutions maintain levels of liquidity buffers which are adequate to face any possible imbalance between liquidity inflows and outflows under stressed conditions over a short period of time . The Commission shall take into account the final Basel III framework as well as European specificities together with any connected flexibility measures if necessary, including the possible introduction of liquidity requirements in Articles 443A and 443B. The report shall be accompanied, as appropriate, by a legislative proposal. In particular, the Commission shall address in its report:

(i) any appropriate changes to the categories and calibration of the inflows and outflows referred to in Part Six Title II, taking into account the report referred to in the first paragraph and international developments;

(ii) the need to limit the coverage of liquidity requirements by liquid assets referred to in points (d) of Article 404(1);

(iii) uniform definitions of high and extremely high liquidity;

(iv) the definition of established operational relationship for corporate clients as referred to in article 410(4)(c).

(v) specific treatments for intra-group flows where appropriate, taking into account the report referred to in paragraph 1.

(vi) the need to limit the liquidity inflows as a cap on outflow taking into account the report referred to in the first paragraph and international developments.

(vii) Mechanisms for grandfathering of government guaranteed bonds issued to credit institutions as part of Government support measures, with EU state aid approval, designed to remove problem assets from the balance sheets of credit institutions, as assets of extremely high liquidity and credit quality, until December 2019.

3. By 31 December 2015, EBA shall report to the Commission on whether and how it would be appropriate to ensure that institutions use stable sources of funding, including an assessment of the impact on the business and risk profile of Union institutions or on financial markets or the economy and bank lending, with a particular focus on lending to small and medium enterprises and on trade financing, including lending under official export credit insurance schemes and pass through financing models.

By 31 December 2016, the Commission shall, on the basis of the reports *mentioned in paragraphs 2 and 3*, submit a report and, if appropriate, a legislative proposal to the European Parliament and to the Council.

Article 482

Leverage

1. Based on the results of the report in paragraph 2, the Commission shall submit by 31 December 2016 a report on the impact and effectiveness of the leverage ratio to the European Parliament and the Council. Where appropriate, the report shall be accompanied by a legislative proposal on the introduction of one or more levels of the leverage ratio that different types of institutions would be required to meet , suggesting an adequate calibration for those levels and any appropriate adjustments to the capital measure and the total exposure measure as defined in Article 416*, together with any connected flexibility measures if necessary, including the possible introduction of those leverage ratio levels in Articles 443A and 443B*.

2. For the purposes of paragraph 1, the EBA shall report to the Commission by 31 October 2016 on at least the following:

a0) Whether the leverage ratio framework provided by this Regulation and article 85 and article 94 of the Directive [inserted by OP] is the appropriate tool to suppress the risk of excessive leverage on the part of the institutions in a satisfactory manner and degree;

(a) whether the requirements laid out in Articles 75 and 85 of Directive [inserted by OP] in accordance with Articles 72 and 92 of Directive [inserted by OP] for addressing the risk of excessive leverage ensure sound management of this risk by institutions and, if not, which further enhancement they need in order to ensure these objectives;

(b) whether – and if so, which - changes to the calculation methodology detailed in Article 416 would be necessary to ensure that the leverage ratio can be used as an appropriate indicator of an institution's risk of excessive leverage;

(c) whether, in the context of the calculation of the total exposure measure of the leverage ratio, the exposure value of items listed in Annex II determined by using the Original Exposure Method differs in a material way from the exposure value determined by using the Mark-to-Market Method;

(d) whether using either own funds or Common Equity Tier 1 capital as the capital measure of the leverage ratio could be more appropriate for the intended purpose of tracking the risk of excessive leverage and, if so, what would be the appropriate calibration of the leverage ratio;

(e) whether the percentage referred to in point (a) of article 416(8) for undrawn credit facilities, which may be cancelled unconditionally at any time without notice, is appropriately conservative based on the evidence collected during the observation period;

(f) whether the frequency and format of the disclosure of items referred to in Article 436 are adequate;

(g) whether 3% would be an appropriate level for the leverage ratio based on Tier 1 capital and, if not, what level would be the appropriate one;

(h) whether introducing the leverage ratio as a requirement for institutions would necessitate any changes to the leverage ratio framework provided by this Regulation and, if so, which ones;

(i) whether introducing the leverage ratio as a requirement for institutions would effectively constrain the risk of excessive leverage on the part of those institutions and, if so, whether the level for the leverage ratio should be the same for all institutions or should differ for different types of institution and, in the latter case, what additional calibrations would be required.

3. The report referred to in paragraph 2 shall cover at least the period from 1 January 2013 until 30 June 2016 and shall take account of at least the following:

(a) the impact of introducing the leverage ratio, determined in accordance with Article 416, as a requirement that institutions would have to meet on:

(i) financial markets in general and markets for repurchase transactions, derivatives and covered bonds in particular;

(ii) the robustness of institutions;

(iii) business models and balance-sheet structures of institutions;

(iv) the migration of exposures to entities which are not subject to prudential supervision;

(v) financial innovation, in particular the development of instruments with embedded leverage;

(vi) institutions' risk-taking behaviour;

(vii) clearing, settlement and custody activities;

(viii) cyclicality of the capital measure and the total exposure measure of the leverage ratio;

(ix) bank lending, with a particular focus on lending to small and medium enterprises and on trade financing, including lending under official export credit insurance schemes;

(b) the interaction of the leverage ratio with the risk-based own funds requirements and the liquidity requirements as specified in this Regulation;

(c) the impact of accounting differences between accounting standards applicable under Regulation (EC) No 1606/2002, accounting standards applicable under Directive 86/635/EC and other applicable accounting standards on the comparability of the leverage ratio.