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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9716/12 EF 113 ECOFIN 393 CODEC 1252
No. Cion prop.:	13285/11 EF 113 ECOFIN 532 CODEC 1285
Subject:	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 - Council general approach

Delegations will find attached a consolidated text of the Council general approach.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Data Protection Supervisor[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006[3] relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006[4] on the capital

1 OJ C , , p. .
2 OJ C , , p. .
3 OJ L 177, 30.6.2006, p. 1.
4 OJ L 177, 30.6.2006, p. 201.

adequacy of investment firms and credit institutions ("institutions") have been significantly amended on several occasions. Many provisions of Directives 2006/48/EC and 2006/49/EC are applicable to both credit institutions and investment firms. For the sake of clarity and in order to ensure a coherent application of those provisions, it would be desirable to merge these provisions into new legal acts applicable to both credit institutions and investment firms: a Regulation and this Directive. For greater accessibility, the provisions of the Annexes to those Directives should be integrated into the enacting terms of these legal acts.

(2) This Directive should, inter alia, contain the provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States in this regard and the provisions governing the initial capital and the supervisory review of credit institutions and investment firms. The main objective and subject-matter of this Directive is to coordinate national provisions concerning the access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervisory framework. Apart from these provisions, Directives 2006/48/EC and 2006/49/EC also contained prudential requirements for credit institutions and investment firms. These requirements should be provided for in a Regulation establishing uniform and directly applicable prudential requirements for credit institutions and investment firms, since such requirements are closely related to the functioning of financial markets in respect of a number of assets held by credit institutions and investment firms. Therefore this Directive should be read together with that Regulation. Both legal acts together should form the legal framework governing banking activities, the supervisory framework and the prudential rules for credit institutions and investment firms.

(3) The general prudential requirements laid down in Regulation [inserted by OP] are supplemented by individual arrangements to be decided by the competent authorities as a result of their ongoing supervisory review of each individual credit institution and investment firm. The range of such supervisory arrangements should, inter alia, be set out in this Directive and the competent authorities should be able to exert their judgment as to which arrangements should be imposed. With regard to such individual arrangements concerning liquidity, competent authorities should, inter alia, take into account the principles set out in the guidelines on liquidity published by the Committee of European Banking Supervisors[5].

(4) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[6] allows investment firms authorised by the competent authorities of their home Member State and supervised by the same authorities to establish branches and provide services freely in other Member States. That Directive accordingly provides for the coordination of the rules governing the authorisation and pursuit of the business of investment firms. It does not, however, establish the amounts of the initial capital of such firms or a common framework for monitoring the risks incurred by them, which should be provided by this Directive.

(5) This Directive should constitute the essential instrument for the functioning of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services in the field of credit institutions.

(6) The smooth operation of the internal market requires not only legal rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States.

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5 Guidelines on Liquidity Cost Benefit Allocation of 27 October 2010 (http://www.eba.europa.eu).

6 OJ L 145, 30.4.2004, p. 1.

(7) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority),[7] established EBA. This Directive should take into account the role and function of EBA set out in that Regulation and the procedures to be followed when conferring tasks to EBA.

(8) Measures to coordinate the supervision of credit institutions should, both in order to protect savings and to create equal conditions of competition between these institutions, apply to all of them. Due regard should however be had to the objective differences in their statutes and their proper aims as laid down by national laws.

(9) The scope of measures should therefore be as broad as possible, covering all institutions whose business is to receive repayable funds from the public, whether in the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities and to grant credits for their own account. Exceptions should be provided for in the case of certain credit institutions to which this Directive does not apply. The provisions of this Directive should not affect the application of national laws which provide for special supplementary authorisations permitting credit institutions to carry on specific activities or undertake specific kinds of operations.

(10) It is appropriate to effect harmonisation which is necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the granting of a single licence recognised throughout the Union and the application of the principle of home Member State prudential supervision.

[7] OJ L 331 , 15.12.2010, p. 12.

(11) The principles of mutual recognition and home Member State supervision require that Member States' competent authorities should not grant or should withdraw an authorisation where factors such as the content of the activities programmes, the geographical distribution of activities or the activities actually carried on indicate clearly that a credit institution has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities. Where there is no such clear indication, but the majority of the total assets of the entities in a banking group are located in another Member State, the competent authorities of which are responsible for exercising supervision on a consolidated basis, responsibility for exercising supervision on a consolidated basis should be changed only with the agreement of those competent authorities.

(12) The competent authorities should not authorise or continue the authorisation of a credit institution where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that institution and other natural or legal persons. Credit institutions already authorised should also satisfy the competent authorities in respect of those close links.

(13) The reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which should be exercised over a credit institution or investment firm where the provisions of Union law so provide. In such cases, the authorities applied to for authorisation should be able to identify the authorities competent to exercise supervision on a consolidated basis over that credit institution or investment firm.

(14) Credit institutions authorised in their home Member States should be allowed to carry on, throughout the Union, any or all of the activities listed in Annex I to this Directive by establishing branches or by providing services.

(15) It is appropriate to extend mutual recognition to the activities listed in Annex I to this Directive when they are carried out by financial institutions which are subsidiaries of credit institutions, provided that such subsidiaries are covered by the consolidated supervision of their parent undertakings and meet certain strict conditions.

(16) The host Member State should be able, in connection with the exercise of the right of establishment and the freedom to provide services, to require compliance with specific provisions of its own national laws or regulations on the part of institutions not authorised as credit institutions in their home Member States and with regard to activities not listed in Annex I to this Directive provided that, on the one hand, such provisions are not already covered by Regulation [inserted by OP], are compatible with Union law and are intended to protect the general good and that, on the other hand, such institutions or such activities are not subject to equivalent rules under this legislation or regulations of their home Member States.

(17) Beyond Regulation [inserted by OP] that establishes directly applicable prudential rules for credit institutions and investment firms, Member States should ensure that there are no obstacles to carrying on activities receiving mutual recognition in the same manner as in the home Member State, as long as the latter do not conflict with legal provisions protecting the general good in the host Member State.

(18) The rules governing branches of credit institutions having their head office outside the Union should be analogous in all Member States. It is important to provide that such rules may not be more favourable than those for branches of credit institutions from another Member State. The Union should be able to conclude agreements with third countries providing for the application of rules which accord such branches the same treatment throughout its territory. The branches of credit institutions authorised in third countries should not enjoy the freedom to provide services or the freedom of establishment in Member States other than those in which they are established.

(19) Agreement should be reached, between the Union and third countries with a view to allowing the practical exercise of consolidated supervision over the largest possible geographical area.

(20) Responsibility for supervising the financial soundness of a credit institution, and in particular its solvency on a consolidated basis should lie with its home Member State. The supervision of EU banking groups should be the subject of close cooperation between the competent authorities of the home and host Member States.

(20a) The supervisory authorities of host Member States should have the power to carry out on a case by case basis on-the-spot verifications and inspections of the activities carried out by branches of institutions on their territory and require information from a branch about its activities and for statistical, informational, or supervisory purposes, where the host Member States consider it relevant for reasons of financial stability.

(21) Host Member State authorities should obtain information about activities carried out in their territories.

(22) The smooth operation of the internal banking market requires not only legal rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States. To this end, consideration of problems concerning individual credit institutions and the mutual exchange of information may take place through EBA. That mutual information procedure should in no case replace bilateral cooperation. Competent authorities of the host Member States should always be able, in an emergency, on their own initiative or following the initiative of the competent authorities of home Member State, to verify that the activities of a credit institution established within their territories comply with the relevant laws and with the principles of sound administrative and accounting procedures and adequate internal control.

(23) It is appropriate to allow the exchange of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, the list of addressees should remain within strict limits.

(24) Certain behaviour, such as fraud or insider trading offences, is liable to affect the stability, including the integrity, of the financial system. It is necessary to specify the conditions under which exchange of information in such cases is authorised.

(25) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these should be able to make their agreement subject to compliance with strict conditions.

(26) Exchanges of information between, the competent authorities and central banks and other bodies with a similar function in their capacity as monetary authorities and, where necessary for reasons of prudential control and preventative and curative treatment of failing institutions and in emergency situations if relevant , other public authorities and departments of central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies, as well as public authorities, responsible for supervising payment systems should also be authorised.

(27) For the purposes of strengthening the prudential supervision of institutions and the protection of clients of credit institutions, auditors should have a duty to report promptly to the competent authorities, wherever, during the performance of their tasks, they become aware of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organisation of an institution. For that same reason

Member States should also provide that such a duty applies in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a credit institution. The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning an institution which they discover during the performance of their tasks in a non-financial undertaking should not in itself change the nature of their tasks in that undertaking nor the manner in which they should perform those tasks in that undertaking.

(28) In order to ensure compliance by institutions, those who effectively control their business and the members of the institutions' management body with the obligations deriving from this Directive and from Regulation [inserted by OP] and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying an administrative sanction or measure, publication of administrative sanctions or measures, key sanctioning powers and levels of administrative pecuniary sanctions.

(29) In particular, competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.

(30) In order to ensure a consistent application of administrative sanctions across Member States, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that the competent authorities take into account all relevant circumstances.

(31) In order to ensure administrative sanctions have a dissuasive effect on the public at large, administrative sanctions should normally be published, except in certain well-defined circumstances.

(32) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches. These mechanisms should be without prejudice to adequate safeguards for accused persons.

(33) This Directive should refer to both administrative sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as an administrative sanction or a measure under national law. Member States may provide for other sanctions in addition to those mentioned in this Directive and may provide for higher levels of administrative pecuniary sanctions than those provided for in this Directive.

(34) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

(35) Member States should ensure that credit institutions and investment firms have internal capital that, having regard to the risks to which they are or may be exposed, is adequate in quantity, quality and distribution. Accordingly, Member States should ensure that credit institutions and investment firms have strategies and processes in place for assessing and maintaining the adequacy of their internal capital.

(36) Competent authorities should be entrusted with ensuring that institutions have a good organisation and adequate own funds, having regard to the risks to which the institutions are or might be exposed.

(37) To ensure that credit institutions which are active in several Member States are not disproportionately burdened as a result of the continued responsibilities of individual Member State competent authorities as regards authorisation and supervision, it is essential to significantly enhance the cooperation between competent authorities. EBA should support and enhance such cooperation.

(38) In order to ensure comprehensive market discipline across the Union, it is appropriate that competent authorities publish information concerning the carrying on of the business of credit institutions and investment firms. Such information should be sufficient to enable a comparison of the approaches adopted by the different competent authorities of the Member States and complement requirements found in the Regulation [inserted by OP] regarding disclosure of technical information by institutions.

(39) Supervision of institutions on a consolidated basis aims at protecting the interests of the depositors and investors of institutions and at ensuring the stability of the financial system. In order to be effective, supervision on a consolidated basis should therefore be applied to all banking groups, including those the parent undertakings of which are not credit institutions or investment firms. Member States should provide competent authorities with the necessary legal instruments to enable them to exercise such supervision.

(40) In the case of groups with diversified activities where parent undertakings control at least one subsidiary, the competent authorities should be able to assess the financial situation of a credit institution or investment firm in such a group. The competent authorities should at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function. Cooperation between the authorities responsible for the supervision of different financial sectors should be established in the case of groups of undertakings carrying on a range of financial activities.

(41) The Member States should be able to refuse or withdraw a banking authorisation in the case of certain group structures considered inappropriate for carrying on banking activities, because such structures cannot be supervised effectively. In this respect the competent authorities should have the necessary powers to ensure the sound and prudent management of credit institutions.

(42) The mandates of competent authorities should take into account, in an appropriate way, the Union dimension. Competent authorities should therefore duly consider the effect of their decisions not only on the stability of the financial system in their jurisdiction but also in all other Member States concerned. Subject to national law, that principle should serve to promote financial stability across the Union and should not legally bind competent authorities to achieve a specific result.

(43) Weaknesses in corporate governance in a number of institutions have contributed to excessive and imprudent risk-taking in the banking sector which led to the failure of individual institutions and systemic problems in Member States and globally. The very general provisions on governance of institutions and the non-binding nature of a substantial part of the corporate governance framework, based essentially on voluntary codes of conduct, did not sufficiently facilitate the effective implementation of sound corporate governance practices by institutions. In some cases the absence of effective checks and balances within institutions resulted in a lack of effective oversight of management decision-making, which exacerbated short-term and excessively risky management strategies. The unclear role of the competent authorities in overseeing corporate governance systems in institutions did not allow for sufficient supervision of the effectiveness of the internal governance processes.

(44) In order to address the potentially detrimental effect of poorly designed corporate governance arrangements on the sound management of risk, Member States should introduce principles and standards to ensure effective oversight by the management body, promote a sound risk culture at all levels of credit institutions and investment firms and enable competent authorities to monitor the adequacy of internal governance arrangements. These principles and standards should apply taking into account the nature, scale and complexity of institutions' activities. Member States should be able to impose corporate governance principles and standards additional to those required by this Directive.

(44a) Within Member States different governance structures are used, in most cases a unitary and/or a dual board structure. The definitions used in the Directive intend to embrace all existing structures without advocating any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions shall therefore not interfere with the general allocation of competencies according to the national company law.

(45) In order to effectively monitor management actions and decisions, the management body of an institution should commit sufficient time to perform its functions and to be able to understand the business of the institution, its main risk exposures and the implications of the business and the risk strategy. Combining a too high number of directorships at the same time would preclude a member of the management body to spend adequate time for the performance of this oversight role. Therefore, it is necessary to limit the number of mandates a member of the management body of an institution may hold at the same time in different entities.

(46) [deleted]

(47) Remuneration policies which encourage excessive risk-taking behaviour can undermine sound and effective risk management of credit institutions and investment firms. G-20 committed to implement the Financial Stability Board (FSB) Principles for Sound Compensation Practices and Implementing Standards (the FSB principles and standards) which address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risk and control of risk-taking behaviour by individuals. This Directive aims at implementing international principles and standards at European level by introducing an express obligation for credit institutions and investment firms to establish and maintain, for categories of staff whose professional activities have a material impact on the risk profile of credit institutions and investment firms, remuneration policies and practices that are consistent with effective risk management.

(48) 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 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.

(49) Since poorly designed remuneration policies and incentive schemes are capable of increasing to an unacceptable extent the risks to which credit institutions and investment firms are exposed, prompt remedial action and, if necessary, appropriate corrective measures should be taken. Consequently, it is appropriate to ensure that competent authorities have the power to impose qualitative or quantitative measures on the relevant entities that are designed to address problems that have been identified in relation to remuneration policies in the supervisory review.

(50) The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) of the TFEU, general principles of national contract and labour law, legislation regarding shareholders' rights and involvement and the general responsibilities of the management bodies of the institution concerned, as well as the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.

(51) Capital requirements for credit risk and market risk should be based on external credit ratings only to the extent necessary. Where credit risk is material, and where it is appropriate in view of the nature, scale, and complexity of the institution's activities, large institutions should therefore generally be encouraged to implement internal ratings based approaches or internal models. However, developing internal ratings based approaches and internal models requires considerable expertise and resources as well as data of high quality and sufficient volume and it is important that competent authorities do not lower the standards for recognition of such approaches and models. Thus, standardised approaches that rely on external ratings could be used where credit risk is less material or where it is appropriate in view of the nature, scale, and complexity of the institution's activities.

(52) With respect to the supervision of liquidity, responsibility should lie with home Member States as soon as detailed criteria for the liquidity coverage requirement apply. It is therefore necessary to accomplish the coordination of supervision in this field in order to introduce supervision by the home Member State by that time. In order to ensure effective supervision, home and host country authorities should further cooperate in the field of liquidity.

(53) Where within a group liquid assets in one institution will under stress circumstances match liquidity needs of another member of that group, competent authorities may exempt an institution from liquidity coverage requirements and may apply those requirements on a consolidated basis instead.

(54) Measures taken on the basis of this Directive should be without prejudice to measures taken according to Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions[8] . Supervisory measures should not lead to discrimination among creditors from different Member States.

[8] OJ L 125, 5.5.2001, p. 15.

(55) In the light of the financial crisis and the pro-cyclical mechanisms that contributed to its origin and aggravated its effect, the FSB, the BCBS, and the G20 made recommendations to mitigate the pro-cyclical effects of financial regulation. In December 2010, BCBS issued new global regulatory standards on bank capital adequacy, including rules requiring the maintenance of capital conservation and countercyclical capital buffers.

(56) It is therefore appropriate to require credit institutions and investment firms to hold, in addition to other own fund requirements, a Capital Conservation Buffer and a Countercyclical Capital Buffer to ensure that credit institutions and investment firms accumulate during periods of economic growth a sufficient capital base to absorb losses in stressed periods. The Countercyclical Capital Buffer would be built up when aggregate credit growth is judged to be associated with a build-up of system-wide risk, and drawn down during stressed periods.

(57) In order to ensure that countercyclical buffers properly reflect the risk to the banking sector of excessive credit growth, credit institutions and investment firms should calculate their institution specific buffers as a weighted average of the counter-cyclical buffer rates that apply for the countries where their credit exposures are located. Every Member State should therefore designate an authority responsible for quarterly setting the level of the Countercyclical Capital Buffer rate for exposures located in that Member State. That buffer rate should take into account the growth of credit levels and changes to the ratio of credit to GDP in that Member State, and any other variables relevant to the risks to financial stability.

(58) In order to promote international consistency in setting Countercyclical Capital Buffer rates, BCBS has developed a methodology on the basis of the ratio between credits and GDP. This should serve as a common starting point for decisions on buffer rates by the relevant national authorities, but should not give rise to an automatic buffer setting or bind the designated authority. The buffer shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Member State and shall duly take into account specificities of the national economy.

(58a) Restrictions on variable remuneration are an important element in ensuring that credit institutions and investment firms rebuild their capital levels when operating within the buffer range. Credit institutions and investment firms are already subject to the principle that awards and discretionary payments of variable remuneration to those categories of staff whose professional activities have a material impact on the risk profile of the institution have to be sustainable, having regard to the financial situation of the institution. In order to ensure that an institution restores its levels of own funds in a timely manner, it is appropriate to align the award of variable remuneration and discretionary pension benefits with the profit situation of the institution during any period in which the combined buffer requirement is not met, taking into account the long-term health of the institution.

(58b) Member States may require credit institutions to hold, in addition to a Capital Conservation Buffer and a Countercyclical Capital Buffer, a Systemic Risk Buffer 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. The Systemic Risk Buffer Rate shall apply to all institutions, or one or more subsets of those institutions , in the meaning of institutions that exhibit similar risk profiles in their business activities, or to the exposures to one or several domestic economic or geographic sectors across the banking sector.

(59a) Member States may recognise the Systemic Risk buffer rate set by another Member State and apply that buffer rate to domestically authorised institutions for the exposures located in the Member State setting the buffer. The Member State setting the buffer may also ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No. 1092/2010 addressed to one or more Member States which are in a position to recognise the Systemic Risk Buffer recommending that they do so. This recommendation will be subject to the conditions in Articles 3 (2) and 17 if the said Regulation (comply or explain).

(59) In order to achieve coherent application and to assure macro-prudential oversight across the Union, it is appropriate that the European Systemic Risk Board (ESRB) develops principles tailored for the Union economy and is responsible for monitoring their application. This Directive should not prevent the ESRB from taking any actions it deems necessary under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.[9]

(60) It is appropriate that decisions of Member States on countercyclical buffer rates are coordinated as far as possible. In this regard, the ESRB, if requested by national authorities, could facilitate discussions among them about their proposed buffer settings.

(61) Where a credit institution or investment firm fails to meet in full the requirements for a Capital Conservation Buffer and any additional countercyclical buffer, it should be subject to measures designed to ensure that it restores its levels of own funds in a timely manner. In order to conserve capital, it is appropriate to impose proportionate restrictions on discretionary distributions of profits, including dividend payments and payments of variable remuneration. So as to ensure that such institutions or firms have a credible strategy to restore levels of own funds, they should be required to draw up and agree with the competent authorities a capital conservation plan that sets out how the restrictions on distributions will be applied and other measures that the institution or firm intends to take to ensure compliance with the full buffer requirements.

(62) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust EBA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.

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[9] OJ L 331, 15.12.2010, p. 1.

(63) The Commission should adopt the draft regulatory technical standards developed by EBA in the areas of authorisation of and acquisitions of significant holdings in credit institutions, information exchange between competent authorities, exercise of the freedom of establishment and the freedom of services, supervisory collaboration, , remuneration policies of credit institutions and investment firms and Supervision of mixed financial holding companies by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(64) The Commission should also be empowered to adopt implementing technical standards in the areas of authorisation of and acquisitions of significant holdings in credit institutions, information exchange between competent authorities, supervisory collaboration, specific prudential requirements, and disclosure of information by supervisory authorities by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. EBA should be entrusted with drafting implementing technical standards for submission to the Commission.

(65) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council on laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[10].

(66) In order to specify the requirements set out in this Directive, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of clarifying the definitions and the terminology used in this Directive, expanding the list of activities subject to mutual recognition in the Annex, and improving the exchange of information concerning branches of credit institutions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

10 OJ L 55, 28.2.2011, p. 13.

(67) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

(68) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)[11] is relevant when qualifying holdings in a credit institution are acquired;

(69) References in existing national laws, regulations and administrative provisions to the Directives repealed by this Directive should be construed as references to this Directive and Regulation [inserted by the OP].

(70) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC[12], 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)[13], Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC[14], Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate[15], and Directive [AIFMD] of the European Parliament and of the Council on

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11 OJ L 335, 17.12.2009, p. 1.
12 OJ L 319, 5.12.2007, p. 1.
13 OJ L 302, 17.11.2009, p. 32.
14 OJ L 267, 10.10.2009, p. 7.
15 OJ L 35, 11.2.2003, p. 1.

Alternative Investment Fund Managers and amending directives 2003/41/EC and 2009/65/EC refer to provisions of Directives 2006/48/EC and 2006/49/EC that deal with own funds requirements and are now set out in this Directive and Regulation [inserted by OP]. Consequently, references in those Directives to Directives 2006/48/EC and 2006/49/EC should be construed as references to the provisions governing own funds requirements in these legal acts.

(71) In order to allow for technical standards to be developed in order to ensure that institutions that are part of a financial conglomerate apply the appropriate calculation methods for the determination of required capital on a consolidated basis, Directive 2002/87/EC needs to be amended accordingly.

(72) In order for the internal banking market to operate with increasing effectiveness and for citizens of the Union to be afforded adequate levels of transparency, it is necessary that competent authorities publish in a way which allows for meaningful comparison the manner in which this Directive is implemented.

(73) With respect to the supervision of liquidity, there should be a period of time within which Member States effect transition towards the regulatory regime under which detailed criteria for the liquidity coverage requirement apply.

(74) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[16] and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data[17], should be fully applicable to the processing of personal data for the purposes of this Directive.

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16 OJ L 281, 23.11.1995, p. 31.
17 OJ L 8, 12.1.2001, p. 1.

(75) Since the objectives of this Directive, namely the introduction of rules concerning the access to the activity of the business of credit institutions, and the prudential supervision of credit institutions and investment firms, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(76) The obligation to transpose this Directive into national law should be confined to those provisions which represent a change as compared with the Directives 2006/48//EC and 2006/49/EC.

(77) Directive 2006/48/EC and Directive 2006/49/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

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Title I

Subject matter, scope and definitions

Article 1

Subject matter

This Directive lays down rules concerning:

(a) access to the activity of credit institutions and investment firms (hereinafter referred to as institutions);

(b) supervisory powers and tools for the prudential supervision of institutions by competent authorities;

(c) the prudential supervision of institutions by competent authorities in relation to risks not addressed by the uniform rules set out in Regulation [inserted by OP].

(d) publication requirements for competent authorities in the field of prudential regulation and supervision of institutions.

Article 2

Scope

1. Article 34 and Title VII, Chapter 3 shall apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head offices in the Union.

2. The institutions to which this Directive does not apply pursuant to Paragraph 3 of this Article, with the exception, however, of the central banks, shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3.

3. This Directive shall not apply to the following:

(1) access to the activity of investment firms in so far as it is regulated by Directive 2004/39/EC;

(2) central banks,

(3) post office giro institutions,

(4) in Belgium, the 'Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut',

(5) in Denmark, the 'Eksport Kredit Fonden', the 'Eksport Kredit Fonden A/S' , the 'Danmarks Skibskredit A/S' and the 'KommuneKredit',

(6) in Germany, the 'Kreditanstalt für Wiederaufbau', undertakings which are recognised under the 'Wohnungsgemeinnützigkeitsgesetz' as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings,

(7) in Greece, the 'Ταμείο Παρακαταθηκών και Δανείων' (Tamio Parakatathikon kai Danion),

(8) in Spain, the 'Instituto de Crédito Oficial',

(9) in France, the 'Caisse des dépôts et consignations',

(10) in Ireland, credit unions and the friendly societies,

(11) in Italy, the 'Cassa depositi e prestiti',

(12) in Latvia, the 'krājaizdevu sabiedrības', undertakings that are recognised under the 'krājaizdevu sabiedrību likums' as cooperative undertakings rendering financial services solely to their members,

(13) in Lithuania, the 'kredito unijos' other than the 'Centrinė kredito unija',

(14) in Hungary, the ‘Magyar Fejlesztési Bank Rt.’ and the ‘Magyar Export-Import Bank Rt.’,

(15) in the Netherlands, the ‘Nederlandse Investeringsbank voor Ontwikkelingslanden NV’, the ‘NV Noordelijke Ontwikkelingsmaatschappij’, the ‘NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering’ and the ‘Overijsselse Ontwikkelingsmaatschappij NV’,

(16) in Austria, undertakings recognised as housing associations in the public interest and the ‘Österreichische Kontrollbank AG’,

(17) in Poland, the ‘Spółdzielcze Kasy Oszczędnościowo — Kredytowe’ and the ‘Bank Gospodarstwa Krajowego’,

(18) in Portugal, ‘Caixas Económicas’ existing on 1 January 1986 with the exception of those incorporated as limited companies and of the ‘Caixa Económica Montepio Geral’,

(19) in Finland, the ‘Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB’, and the ‘Finnvera Oyj/Finnvera Abp’,

(20) in Sweden, the ‘Svenska Skeppshypotekskassan’,

(21) in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks;

(22) in Slovenia, the “SID-Slovenska izvozna in razvojna banka, d.d. Ljubljana”.

Article 3

Prohibition for undertakings other than credit institutions from carrying on the business of taking deposits or other repayable funds from the public

1. Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of taking deposits or other repayable funds from the public.

2. Paragraph 1 shall not apply to the taking of deposits or other funds repayable by a Member State or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or Union legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

Article 4

Definitions

1. The definitions referred to in Article 4 of Regulation [inserted by OP] shall apply.

2. For the purposes of this Directive, the following definitions shall also apply:

(a) ‘ancillary services undertaking’ means an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more institutions;

(b) 'risk of excessive leverage’ means the risk resulting from an institution’s vulnerability due to leverage or contingent leverage that may require unintended corrective measures to its business plan, including distressed selling of assets which might result in losses or in valuation adjustments to its remaining assets;

(c) 'internal approaches' means the approaches referred to in Articles 138 (1), 216, 220, 301 (2), 277, 352, and 254 (3) of Regulation [inserted by OP].

(d) ‘management body’ means the body or bodies of an institution, appointed in accordance with the national law, which is empowered to set the institution's strategy, objectives and overall direction, and which oversees and monitors management decision-making. This shall include persons who effectively direct the business of the institution.

Where, according to national law, management body comprises different bodies with specific functions, the requirements of this Directive shall apply only to those members of the management body to whom the applicable national law assigns the respective responsibility,

(e) [deleted]

(f) [deleted]

(g) ‘senior management’ means those individuals who exercise executive functions within an institution and who are responsible and accountable to the management body for the day-to-day management of the institution;

Title II

Competent authorities

Article 5

Designation and powers of the competent authorities

1. Member States shall designate competent authorities that carry out the functions and duties provided for in this Directive and the Regulation [inserted by OP]. They shall inform the Commission and EBA thereof, indicating any division of duties.

2. Member States shall ensure that the competent authorities monitor the activities of institutions, and where applicable, of financial holding companies and mixed financial holding companies, so as to assess compliance with the requirements of this Directive and Regulation [inserted by OP].

3. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of institutions and where applicable, of financial holding companies and mixed financial holding companies, with the requirements referred to in paragraph 2 and to investigate possible breaches of those requirements.

4. Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, power and independence necessary to carry out the supervisory, investigative and sanctioning functions set out in this Directive and Regulation [inserted by OP].

5. Member States shall require that institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive and Regulation [inserted by OP]. Member States shall also ensure that internal control mechanisms and administrative and accounting procedures of the institutions permit the verification of their compliance with such rules at all times.

6. Member States shall ensure that institutions shall record all their transactions and document all their systems and processes, which are subject to this Directive and Regulation [inserted by OP] in such a manner that the competent authorities are able to verify compliance with the requirements of this Directive and Regulation [inserted by OP] at all times.

Article 6

Coordination within Member States

Where Member States have more than one competent authority for the prudential supervision of credit institutions, investment firms and financial institutions, Member States shall take the requisite measures to organise coordination between such authorities.

Article 7

Cooperation with EBA and within the European System of Financial Supervision (ESFS)

In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive and Regulation [inserted by OP]. For that purpose, Member States shall ensure that:

(a0) competent authorities, as parties to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS in accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union;

(a) the competent authorities participate in the activities of EBA;

(b) competent authorities make every effort to comply with those guidelines and recommendations issued by EBA in accordance with Article 16 of Regulation (EU) No. 1093/2010;

In the event that a competent authority does not comply or does not intend to comply, it shall inform the EBA, stating its reasons.

(ba) the competent authorities cooperate closely with the ESRB;

(c) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA, of the ESRB where appropriate or under this Directive and Regulation [inserted by OP].

Article 8

European dimension of supervision

The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Title III

Requirements for access to the activity of credit institutions

Chapter 1

General requirements for access to the activity of credit institutions

Article 9

Authorisation

1. Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 10 to 14, they shall lay down the requirements for such authorisation and notify EBA.

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

   (a) the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10;

   (b) [deleted]

   (c) the requirements applicable to shareholders and members with qualifying holdings pursuant to Article 14;

   (d) obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 14.

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

3. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for such provision of information.

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

4. EBA shall submit the draft technical standards referred to in paragraphs 2 and 3 to the Commission by 31 December 2015.

Article 10

Programme of operations and structural organisation

Member States shall require applications for authorisation to be accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the credit institution.

Article 11

Economic needs

Member States shall not require the application for authorisation to be examined in terms of the economic needs of the market.

Article 12

Initial capital

1. Without prejudice to other general conditions laid down by national law, the competent authorities shall not grant authorisation when the credit institution does not possess separate own funds or in cases where initial capital is less than EUR 5 million.

2. Initial capital shall comprise capital and reserves as referred to in Article 24(1) (a) to (e) of Regulation [inserted by OP].

3. Member States may decide that credit institutions which do not fulfil the requirement of separate own funds and which were in existence on 15 December 1979 may continue to carry on their business. They may exempt such credit institutions from complying with the requirement contained in the first subparagraph of Article 13(1).

4. Member States may, subject to the following conditions, grant authorisation to particular categories of credit institutions the initial capital of which is less than that specified in paragraph 1:

   (a) the initial capital shall be no less than EUR 1 million;

   (b) the Member States concerned shall notify the Commission and EBA of their reasons for exercising that option.

Article 13

Effective direction of the business and place of the head office

1. Competent authorities shall grant an authorisation to the credit institution only when there are at least two persons who effectively direct the business of the institution.

   They shall not grant authorisation if the members of the management body do not meet the requirements laid down in Article 87(1).

2. Each Member State shall require that:

(a) any credit institution which is a legal person and which, under its national law, has a registered office shall have its head office in the same Member State as its registered office;

(b) any other credit institution shall have its head office in the Member State which granted its authorisation and in which it actually carries on its business.

Article 14

Shareholders and members

1. The competent authorities shall not grant authorisation for commencing the activity of credit institutions unless they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings, and of the amounts of those holdings and in case there are no qualifying holdings, of the twenty largest shareholders or members.

In determining whether the criteria for a qualifying holding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC[1], as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer, and disposed of within one year of acquisition.

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 390, 31.12.2004, p. 38).

2. The competent authorities shall not grant authorisation if the conditions laid down in Article 23(1) and (2) are not met. Article 23(2) and (3) and Article 24 shall apply.

3. Where close links exist between the credit institution and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall not grant authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

The competent authorities shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

Article 15

Refusal of the authorisation

Where a competent authority decides not to grant an authorisation, it shall notify the applicant of the decision and the reasons thereof within six months of receipt of the application or, should the application be incomplete, within six months of the applicant sending the information required for the decision.

A decision shall, in any case, be taken within 12 months of the receipt of the application.

Article 16

Prior consultation with the competent authorities of other Member States

1. The competent authority shall, before granting authorisation to a credit institution, consult the competent authorities of the other Member State involved in the following cases:

   (a) the credit institution concerned is a subsidiary of a credit institution authorised in another Member State;

   (b) the credit institution concerned is a subsidiary of the parent undertaking of a credit institution authorised in another Member State;

   (c) the credit institution concerned is controlled by the same persons, whether natural or legal, as control a credit institution authorised in another Member State.

2. The competent authority shall, before granting authorisation to a credit institution, consult the competent authority of a Member State involved, responsible for the supervision of insurance undertakings or investment firms in the following cases:

   (a) the credit institution concerned is a subsidiary of an insurance undertaking or investment firm authorised in the Union;

   (b) the credit institution concerned is a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Union;

   (c) the credit institution concerned is controlled by the same person, whether natural or legal, as controls an insurance undertaking or investment firm authorised in the Union.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of members of the management body involved in the management of another entity of the same group. They shall exchange any information regarding the suitability of shareholders and the reputation and experience of members of the management body which is of relevance for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Article 17

Branches of credit institutions authorised in another Member State

Host Member States shall not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with Articles 35, 36(1)-(3), 37, 40 to 46 and 49, 73 and 74.

Article 18

Withdrawal of authorisation

1. The competent authorities may only withdraw the authorisation granted to a credit institution in any of the following cases where such an institution:

   (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorisation to lapse in such cases;

   (b) has obtained the authorisation through false statements or any other irregular means;

   (c) no longer fulfils the conditions under which authorisation was granted;

   (d) no longer meets the prudential requirements laid down in Parts three, four and six of the Regulation [inserted by OP] or Article 100 (1)(a) or Article 100a of this Directive or can no longer be relied on to fulfil its obligations towards its creditors .

   (e) falls within one of the other cases where national law provides for withdrawal of authorisation;

   (f) commits one of the breaches referred to in Article 67(1).

2. Withdrawal shall be notified to the Commission and EBA. Reasons shall be given for any withdrawal of authorisation and those concerned informed thereof.

Article 19

Name of credit institutions

For the purposes of exercising their activities, credit institutions may, notwithstanding any provisions in the host Member State concerning the use of the words 'bank', 'savings bank' or other banking names, use throughout the territory of the Union the same name that they use in the Member State in which their head office is situated. In the event of there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Article 20

Notification of the authorisation and withdrawal of authorisation to EBA

1. Competent authorities shall notify to EBA every authorisation granted under Article 9.

2. A list containing the name of each credit institution to which authorisation has been granted shall be published on EBA's website and updated regularly.

3. The consolidating supervisor shall provide the competent authorities concerned and EBA with all information regarding the group of institutions in accordance with Articles 14(3), 73(1) and 104(2), in particular regarding the legal and organisational structure of the group and its governance.

4. The name of each credit institution that does not have the capital specified in Article 12(1) shall be mentioned to that effect in the list referred to in paragraph 2.

5. The competent authorities shall notify each withdrawal of authorisation to EBA together with the reasons for such a decision.

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 [inserted 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.

Chapter 2

Qualifying holding in a credit institution

Article 22

Notification and assessment of proposed acquisitions

1. Member States shall require any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the credit institution would become its subsidiary (hereinafter referred to as the proposed acquisition), first to notify in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 23(4). Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

2. The competent authorities shall, promptly and in any event within two working days following receipt of the notification, as well as following the possible subsequent receipt of the information referred to in paragraph 3, acknowledge receipt thereof in writing to the proposed acquirer.

   The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 23(4) (hereinafter referred to as the assessment period), to carry out the assessment provided for in Article 23(1) (hereinafter referred to as the assessment).

The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. The competent authorities may, during the assessment period, if necessary, and no later than on the fiftieth working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed twenty working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

4. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 3 up to thirty working days if the proposed acquirer is situated or regulated outside the Union or a natural or legal person not subject to supervision under this Directive or Directives 2009/65/EC, 2009/138/EC, or 2004/39/EC.

5. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the proposed acquirer.

6. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

7. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8. Member States may not impose requirements for notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

9. EBA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 23(4), to be included by proposed acquirers in their notification, without prejudice to paragraph 3 of this Article.

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

10. EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24.

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

11. EBA shall submit the draft technical standards referred to in paragraphs 9 and 10 to the Commission by 31 December 2015.

Article 23

Assessment criteria

1. In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3), the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition according to the following criteria:

   (a) the reputation of the proposed acquirer;

   (b) the reputation and experience, as set out in Article 87(1), of any member of the management body and any member of senior management, who will direct the business of the credit institution as a result of the proposed acquisition;

   (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

   (d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and Regulation [inserted by OP], and where applicable, other Directives, notably, Directives 2009/110/EC and 2002/87/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC[1] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 22(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 22(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

[1] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

Article 24

Cooperation between competent authorities

1. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment if the proposed acquirer is one of the following:

   (a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 2(1), point b of Directive 2009/65/EC (hereinafter referred to as the UCITS management company) authorised in another Member State or in a sector other than that in which the acquisition is proposed;

   (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

   (c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the credit institution in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 25

Notification in case of divestiture

The Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a credit institution first to notify in writing the competent authorities, indicating the size of his intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the credit institution would cease to be his subsidiary. Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

Article 26

Information obligations and sanctions

1. Credit institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) and Article 25, inform the competent authorities of those acquisitions or disposals.

   Credit institutions listed on a regulated market as referred to in the list to be published by the European Securities and Markets Authority (ESMA) according to Article 47 of Directive 2004/39/EC shall, at least once a year, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

2. The Member States shall require that, where the influence exercised by the persons referred to in Article 22(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, sanctions, subject to Articles 65 to 69, against members of the management body and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members of the credit institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information, as laid down in Article 22(1) and subject to Articles 65 to 69.

If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 27

Criteria for qualifying holdings

In determining whether the criteria for a qualifying holding in the context of Articles 22, 25 and 26 are fulfilled, the voting rights referred to in Articles 9, 10 and 11 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

In determining whether the criteria for a qualifying holding referred to in Article 26 are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or

placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

Title IV

Initial capital of investment firms

Article 28

Initial capital of investment firms

1. Initial capital of investment firms shall only comprise the items referred to in points (a) to (e) of paragraph 1 in Article 24 of Regulation [inserted by OP].

2. All investment firms other than those referred to in Articles 29 to 31 shall have initial capital of EUR 730 000.

Article 29

Initial capital of particular types of investment firms

1. An investment firm that does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis, but which holds clients' money or securities and which offers one or more of the following services, shall have initial capital of EUR 125 000:

   (a) the reception and transmission of investors' orders for financial instruments;

   (b) the execution of investors' orders for financial instruments;

   (c) the management of individual portfolios of investments in financial instruments.

2. The competent authorities may allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if the following conditions are met:

(a) such positions arise only as a result of the firm's failure to match investors' orders precisely;

(b) the total market value of all such positions is subject to a ceiling of 15 % of the firm's initial capital;

(c) the firm meets the requirements laid down in Articles 87 to 90 and Part Four of Regulation [inserted by OP];

(d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

3. Member States may reduce the amount referred to in paragraph 1 to EUR 50 000 where a firm is not authorised to hold clients' money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

4. The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing in relation to the services set out in paragraph 1 or for the purposes of paragraph 3.

Article 30

Initial capital of local firms

Local firms referred to in Article 4(7) of Regulation [inserted by OP] shall have initial capital of EUR 50 000 insofar as they benefit from the freedom of establishment or to provide services specified in Articles 31 and 32 of Directive 2004/39/EC.

Article 31

Firms that are not authorised to hold money or securities belonging to their clients

1. Coverage for the firms referred to in points (c) and (d) of Article 4(8) of Regulation [inserted by OP] shall take one of the following forms:

   (a) initial capital of EUR 50 000;

   (b) professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per year for all claims;

   (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

   The amounts referred to in the first sub-paragraph shall be periodically reviewed by the Commission in order to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with and at the same time as the adjustments made under Article 4(7) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation[1].

2. If a firm referred to in points (c) and (d) of Article 4(8) of Regulation [inserted by OP] is also registered under Directive 2002/92/EC[2], it shall comply with Article 4(3) of that Directive and have coverage in one of the following forms:

   (a) initial capital of EUR 25 000;

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1 OJ L 9, 15.1.2003, p. 3.

2 Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, OJ L 9, 15.1.2003, p. 3.

(b) professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 500 000 applying to each claim and in aggregate EUR 750 000 per year for all claims;

(c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

Article 32

Grandfathering clause

1. By way of derogation from Articles 28(2), 29(1), 29(3) and 30, Member States may continue an authorisation of investment firms and firms covered by Article 30 which was in existence before 31 December 1995, the own funds of which firms or investment firms are less than the initial capital levels specified for them in Articles 28(2), 29(1), 29(3), and 30.

The own funds of such firms or investment firms shall not fall below the highest reference level calculated after 23 March 1993. That reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

2. If control of a firm covered by paragraph 1 is taken by a natural or legal person other than the person who controlled it previously, the own funds of that firm shall attain at least the level specified for them in Articles 28(2), 29(1), 29(3), and 30, except in the case of a first transfer by inheritance made after 31 December 1995, subject to the competent authorities' approval and for a period of not more than 10 years from the date of that transfer.

3. Where there is a merger of two or more investment firms and/or firms covered by Article 30, the own funds of the firm resulting from the merger need not attain the level specified in Articles 28(2), 29(1), 29(3) and 30. Nevertheless, during any period when the level specified in Articles 28(2), 29(1), 29(3) and 30 has not been attained, the own funds of the new firm shall not fall below the total own funds of the merged firms at the time of the merger.

4. The own funds of investment firms and firms covered by Article 30 shall not fall below the level specified in Articles 28(2), 29(1), 29(3) and 30 and paragraphs 1 and 3 of this Article.

5. Where competent authorities consider it necessary to ensure the solvency of such firms and investment firms that the requirements laid down in paragraph 4 is met, the provisions laid down in paragraph 1 to 3 shall not apply.

Title V

Provisions concerning the freedom of establishment and the freedom to provide services

Chapter 1

General Principles

Article 33

Credit institutions

The Member States shall provide that the activities listed in Annex I to this Directive may be carried on within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46 either by the establishment of a branch or by way of the provision of services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.

Article 34

Financial institutions

1. The Member States shall provide that the activities listed in Annex I to this Directive may be carried on within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46, either by the establishment of a branch or by way of the provision of services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying on of those activities and which fulfils each of the following conditions:

   (a) the parent undertaking or undertakings shall be authorised as credit institutions in the Member State by the law of which the financial institution is governed;

   (b) the activities in question shall actually be carried on within the territory of the same Member State;

(c) the parent undertaking or undertakings shall hold 90 % or more of the voting rights attaching to shares in the capital of the financial institution;

(d) the parent undertaking or undertakings shall satisfy the competent authorities regarding the prudent management of the financial institution and shall have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;

(e) the financial institution shall be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title VII, Chapter 3 of this Directive and Part One, Title II, Chapter 2 of Regulation [inserted by OP](prudential consolidation), in particular for the purposes of the own funds requirements set out in Article 87 of Regulation [inserted by OP], for the control of large exposures provided for in Part Four of that Regulation and for purposes of the limitation of holdings provided for in Articles 84 and 85 of that Regulation.

Compliance with these conditions shall be verified by the competent authorities of the home Member State and the latter shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in Articles 35 and 39.

2. If a financial institution as referred to in the first subparagraph of paragraph 1 ceases to fulfil any of the conditions imposed, the home Member State shall notify the competent authorities of the host Member State and the activities carried on by that financial institution in the host Member State shall become subject to the legislation of the host Member State.

3. Paragraphs 1 and 2 shall apply accordingly to subsidiaries of a financial institution as referred to in the first subparagraph of paragraph 1.

Chapter 2

The right of establishment of credit institutions

Article 35

Notification requirement and interaction between competent authorities

1. A credit institution wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. Member States shall require every credit institution wishing to establish a branch in another Member State to provide all the following information when effecting the notification referred to in paragraph 1:

   (a) the Member State within the territory of which it plans to establish a branch;

   (b) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;

   (c) the address in the host Member State from which documents may be obtained;

   (d) the names of those to be responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged, they shall within three months of receipt of the information referred to in paragraph 2 communicate that information to the competent authorities of the host Member State and shall inform the credit institution accordingly.

   The home Member State's competent authorities shall also communicate the amount and composition of own funds and the sum of the own funds requirements under Article 87 of Regulation [inserted by OP] of the credit institution.

By way of derogation from the second subparagraph, in the case referred to in Article 34, the home Member State's competent authorities shall communicate the amount and composition of own funds of the financial institution and the total risk exposure amounts under Article 87 of Regulation [inserted by OP]of the credit institution which is its parent undertaking.

4. Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the credit institution concerned within three months of receipt of all the information.

That refusal or a failure to reply shall be subject to a right to apply to the courts in the home Member State.

5. EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article with regard to Articles 36 and 39.

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.

6. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification with regard to Articles 36 and 39.

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

7. EBA shall submit the draft technical standards referred to in paragraphs 5 and 6 to the Commission by 1 January 2014.

Article 36

Commencement of activities

1. Before the branch of a credit institution commences its activities the competent authorities of the host Member State shall, within two months of receiving the information referred to in Article 35, prepare for the supervision of the credit institution in accordance with Chapter 4 and if necessary indicate the conditions under which, in the interest of the general good, those activities shall be carried on in the host Member State.

2. On receipt of a communication from the competent authorities of the host Member State, or in the event of the expiry of the period provided for in paragraph 1 without receipt of any communication from the latter, the branch may be established and may commence its activities.

3. In the event of a change in any of the particulars communicated pursuant to points (b), (c) or (d) of Article 35(2), a credit institution shall give written notice of the change in question to the competent authorities of the home and host Member States at least one month before making the change so as to enable the competent authorities of the home Member State to take a decision pursuant to Article 35 and the competent authorities of the host Member State to take a decision setting out the conditions for the change pursuant to paragraph 1 of this Article.

4. Branches which have commenced their activities, in accordance with the provisions in force in their host Member States, before 1 January 1993, shall be presumed to have been subject to the procedure laid down in Article 35 and in paragraphs 1 and 2 of this Article. They shall be governed, from 1 January 1993, by paragraph 3 of this Article and by Articles 33, Article 53 and Chapter 4.

5. EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article with regard to Articles 35 and 39.

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.

6. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification with regard to Articles 35 and 39.

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

7. EBA shall submit the draft technical standards referred to in paragraphs 5 and 6 to the Commission by 1 January 2014.

Article 37

Information about refusals

The Member States shall inform the Commission and EBA of the number and type of cases in which there has been a refusal pursuant to Article 35 and Article 36 (3).

Article 38

Aggregation of branches

Any number of places of business set up in the same Member State by a credit institution with headquarters in another Member State shall be regarded as a single branch.

Chapter 3

Exercise of the freedom to provide services

Article 39

Notification procedure

1. Any credit institution wishing to exercise the freedom to provide services by carrying on its activities within the territory of another Member State for the first time shall notify the competent authorities of the home Member State, of the activities on the list in Annex I to this Directive which it intends to carry on.

2. The competent authorities of the home Member State shall, within one month of receipt of the notification provided for in paragraph 1, send that notification to the competent authorities of the host Member State.

3. This Article shall not affect rights acquired by credit institutions providing services before 1 January 1993.

4. EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article with regard to Articles 35 and 36.

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

5. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification with regard to Articles 35 and 36.

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

6. EBA shall submit the draft technical standards referred to in paragraphs 4 and 5 to the Commission by 1 January 2014.

Chapter 4

Powers of the competent authorities of the host Member State

Article 40

Reporting requirements

The competent authorities of the host Member States may require that all credit institutions having branches within their territories shall report to them periodically on their activities in those host Member States.

Such reports may only be required for statistical or information purposes or for supervisory purposes according to this chapter.

The competent authorities of the host Member States may in particular require information from the credit institutions referred to in the first subparagraph in order to allow those competent authorities to assess whether a branch is significant according to Article 52(1).

Article 41

Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State

1. Where the competent authorities of the host Member State ascertain that a credit institution having a branch or providing services within its territory fulfils one of the following conditions in relation to the activities carried out in that host Member State, they shall inform the competent authorities of the home Member State:

   (a) The credit institution does not comply with the national provisions implementing this Directive or with Regulation [inserted by OP];

   (b) There is a material risk that the credit institution does not comply with the national provisions implementing this Directive or with Regulation [inserted by OP].

The competent authorities of the home Member State shall, without undue delay, take all appropriate measures to ensure that the credit institution concerned puts an end to that irregular situation or takes measures to avert the risk of non-compliance. Those measures shall be communicated to the competent authorities of the host Member State without undue delay.

2. Where the competent authorities of the host Member State allege that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligation pursuant to paragraph 1, 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. EBA shall take any decision under Article 19(3) of Regulation (EU) No 1093/2010 within 24 hours.

Article 42

Justification

Any measure taken pursuant to Articles 41(1), 43 or 44 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly justified and communicated to the credit institution concerned.

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 or financial stability in the host Member State.

2. Precautionary measures shall be proportionate to their purpose, which is to precautionarily protect against a detrimental impact on the collective interests of depositors, investors and clients or financial stability in the host Member State. 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 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.

6. [deleted]

Article 44

Powers of host Member States

Host Member States may, without being affected by Articles 40 and 41, exercise the powers conferred on them under this Directive to take appropriate measures to prevent or to punish irregularities committed within their territories which are contrary to the legal rules they have adopted pursuant to this Directive or in the interests of the general good. This shall include the possibility of preventing offending credit institutions from initiating further transactions within their territories.

Article 45

Measures following the withdrawal of authorisation

In the event of the withdrawal of authorisation, the competent authorities of the home member state shall inform the competent authorities of the host Member State without undue delay. The competent authorities of the host Member State shall take appropriate measures to prevent the credit institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors.

Article 46

Advertising

Nothing in this Chapter shall prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interests of the general good.

Title VI

Relations with third countries

Article 47

Notification in relation to third countries' branches and conditions of access for credit institutions having those branches

1. Member States shall not apply to branches of credit institutions having their head office outside the Union, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Union.

2. The competent authorities shall notify the Commission, EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office in a third country.

3. The Union may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office outside the Union identical treatment throughout the territory of the Union.

Article 48

Cooperation with third countries' competent authorities regarding supervision on a consolidated basis

1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:

   (a) institutions the parent undertakings of which have their head offices in a third country;

(b) institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in the Union.

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure all of the following:

(a) that the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of institutions, financial holding companies mixed financial holding companies situated in the Union and which have as subsidiaries institutions or financial institutions situated outside the Union, or holding participation in such entities;

(b) that the competent authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries institutions or financial institutions situated in one or more Member States or holding participation in such entities;

(c) that EBA is able to obtain the information from the competent authorities of the Member States received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

3. Without prejudice to Article 218 of the Treaty, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

4. EBA shall assist the Commission for the purposes of this Article in accordance with Article 33 of Regulation (EU) No 1093/2010.

Title VII

Prudential supervision

Chapter 1

Principles of prudential supervision

SECTION I

HOME AND HOST MEMBER STATE

Article 49

Competence of control of the home and host Member State

1. The prudential supervision of an institution, including that of the activities it carries on in accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2. Paragraph 1 shall not prevent supervision on a consolidated basis.

3. Measures taken by the host Member State may not provide for discriminatory or restrictive treatment based on the fact that an institution is authorised in another Member State.

Article 50

[deleted]

Article 51

Cooperation between home and host Member States

1. The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such institutions that is likely to facilitate the safeguarding of financial stability, their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

2. The competent authorities of the home Member State shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of Regulation [inserted by OP]and Title VII, Chapter 3 of this Directive of the activities performed by the institution through the branch, to the extent that such information is relevant for the protection of depositors or investors in the host Member State or its financial stability.

3. The competent authorities of the home Member State shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. This information shall also include details about the planning and implementation of a recovery plan and about any prudential measures taken in that context.

4. The competent authorities of the home Member State shall communicate and explain upon request to the competent authorities of the host Member State how information and findings provided by the latter have been taken into account. Where, following communication of information and findings, the competent authorities of the host Member State maintains that no appropriate measures have been taken by the competent authorities of the home Member State, the competent authorities of the host Member State may after informing the competent authorities of the home Member State and the EBA take appropriate measures to prevent further irregularities to protect the interests of depositors, investors and others to whom services are provided or to protect financial stability.

Where the competent authorities of the home member state disagree with the action to be taken by the host member state, the competent authorities of the home Member State may refer the matter to EBA 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 within one month.

5. The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty, EBA may, in those situations, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

6. EBA shall develop draft regulatory technical standards to specify the information contained in this Article with regard to Articles 111 and 112.

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.

7. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of institutions.

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

8. EBA shall submit the draft technical standards referred to in paragraphs 6 and 7 to the Commission by 1 January 2014.

Article 52

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 an institution other than an investment firm subject to Article 90 of Regulation [inserted by OP] to be considered as significant.

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 an 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 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 Articles 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.

If, at the end of the initial two-month period any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities of the host Member State shall defer their decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The competent authorities of the host Member State shall take their decision in conformity with that of EBA. The two-month period shall be deemed to be the conciliation phase within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.

The decisions referred to in the third to fifth 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.

2. 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.

If a competent authority of a home Member State becomes aware of an emergency situation within an institution as referred to in Article 109(1), it shall alert without delay the authorities referred to in Articles 59(4) and 60.

The competent authorities of the home Member State shall communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments of institutions with such branches referred to in Article 92 and, where applicable, Article 108(1). They shall also communicate decisions under Articles 64, 100 and 100a in so far as those assessments and decisions are relevant to those branches.

The competent authorities of the home Member States shall consult the competent authorities of the host Member States where significant branches are established about operational steps required by Article 84(10), where this is relevant for liquidity risks in the host Member State's currency.

Where the competent authorities of the home Member State have not consulted the competent authorities of the host Member State, or where, following consultation, the competent authorities of the host Member State maintain that operational steps referred to in Article 84(10) taken by the competent authorities of the home Member State are not adequate, the competent authorities of the host Member State may refer the matter to EBA 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.

3. Where Article 111 does not apply, the competent authorities supervising an 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 51. The establishment and functioning of the college shall be based on written arrangements to be 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.

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 8 and the obligations referred to in paragraph 2 of this Article.

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.

4. [deleted]

5. EBA shall develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.

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

6. EBA shall develop draft implementing technical standards in order to determine the operational functioning of colleges of supervisors.

Power is conferred on the Commission to adopt these implementing technical standards in accordance with Article 15 of Regulation (EU) No 1093/2010.

7. EBA shall submit the draft technical standards referred to in paragraphs 5 and 6 to the Commission by 31 December 2015.

Article 53

On-the-spot verification and inspection of branches established in another Member State

1. Host Member States shall provide that, where an institution authorised in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification and inspection of the information referred to in Article 51.

2. The competent authorities of the home Member State may also, for purposes of the inspection of branches, have recourse to one of the other procedures laid down in Article 113.

3. The competent authorities of the host Member State shall have the power to carry out on a case by case basis on-the-spot inspections of the activities carried out by branches of institutions on their territory and require information from a branch about its activities and for supervisory purposes, where they consider it relevant for reasons of financial stability in the host Member State. Before the inspection, the competent authorities of the home

Member State shall be consulted. After the inspection, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the institution or the stability of the financial system in the host Member State. The competent authorities of the home Member State shall duly take into account this information and these findings in determining their supervisory examination programme referred to in Article 96, having regard also to the stability of the financial system in the host member State.

SECTION II

EXCHANGE OF INFORMATION AND PROFESSIONAL SECRECY

Article 54

Professional secrecy

1. Member States shall provide that all persons working for or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy.

No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that institution may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to EBA, ESMA and ESRB in accordance with this Directive, Regulation [inserted by OP], with Article 15 of Regulation (EU) No 1092/2010, with Articles 31 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1.

3. Paragraph 1 shall not prevent the competent authorities from publishing the outcome of stress tests carried out in accordance with Article 97 or Article 32 of Regulation (EU) No 1093/2010 and from transmitting the outcome of stress tests to EBA for the purpose of the publication by EBA of the results of EU-wide stress tests.

Article 55

Use of confidential information

Competent authorities receiving confidential information under Article 54 may use it only in the course of their duties and only for any of the following purposes:

(a) to check that the conditions governing the access to the activity of institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;

(b) to impose sanctions;

(c) in an appeal against a decision of the competent authority including court proceedings pursuant to Article 71;

(d) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of institutions.

Article 56

Cooperation agreements

Member States and EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Article 57 and Article 58(1) of this Directive only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 54(1) of this Directive. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

Where the information originates in another Member State, it shall not be disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 57

Exchange of information between authorities

Articles 54(1) and 55 shall not preclude the exchange of information between competent authorities within a Member State, or between competent authorities in different Member States and or between competent authorities and the following, in the discharge of their supervisory functions:

(a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;

(aa) authorities or bodies charged with responsibility for maintaining financial stability in Member States through the use of macro-prudential regulation;

(aaa) reorganisation bodies or authorities aiming at preserving financial stability;

(b) bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(c) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertaking and financial institutions.

Articles 54(1) and 55 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary to the exercise of their functions.

In all cases, the information received shall be subject to the conditions of professional secrecy specified in Article 54(1).

Article 58

Exchange of information with oversight bodies

1. Notwithstanding Articles 54 to 56, Member States may authorise exchange of information between the competent authorities and the following:

   (a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

   (b) the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

2. In the cases referred to in paragraph 1, Member States shall require fulfilment of at least the following conditions:

(a) the information shall be for the purpose of performing the supervisory task referred to in paragraph 1;

(b) information received in this context shall be subject to the conditions of professional secrecy specified in Article 54(1);

(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

3. Notwithstanding Articles 54 to 56, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

In such cases Member States shall require fulfilment of at least the following conditions:

(a) the information shall be for the purpose of performing the task referred to in the first subparagraph;

(b) information received in this context shall be subject to the conditions of professional secrecy specified in Article 54(1);

(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

4. Where, in a Member State, the authorities or bodies referred to in the paragraph 1 perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph of paragraph 3 may be extended to such persons under the conditions specified in the second sub paragraph of paragraph 3.

5. Competent authorities shall communicate to EBA the names of the authorities or bodies which may receive information pursuant to this Article.

6. In order to implement paragraph 4, the authorities or bodies referred to in paragraph 3 shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Article 59

Transmission of information concerning monetary, systemic and payment aspects

1. Nothing in this Chapter shall prevent a competent authority from transmitting information to the following for the purposes of their tasks:

   (a) ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;

   (b) where appropriate, other public authorities responsible for overseeing payment systems;

(c) the European Systemic Risk Board (ESRB), where that information is relevant for the exercise of its statutory tasks under Regulation (EU) No 1092/2010[1].

2. Nothing in this Chapter shall prevent the authorities or bodies referred to in paragraph 1 from communicating to the competent authorities such information as they may need for the purposes of Article 55.

3. Information received in this context shall be subject to the conditions of professional secrecy specified in Article 54(1).

4. Member States shall take the necessary measures to ensure that, in an emergency situation as referred to in Article 109(1), the competent authorities communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks.

Article 60

Transmission of information to other entities

1. Notwithstanding Articles 54(1) and 55, the Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

[1] Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L 331, 15.12.2010, p. 1.

However, such disclosures may be made only where necessary for reasons of prudential control and preventative and curative treatment of failing institutions. Without prejudice to paragraph 2 of this Article, persons having access to the information are subject to guarantees of professional secrecy at least equivalent to those referred to in Article 54(1).

In an emergency situation as referred to in Article 109(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first subparagraph in all Member States concerned.

2. Member States may authorise the disclosure of certain information related to the prudential supervision of institutions to parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under the following conditions:

(a) Such entities have a precise mandate defined by national law to investigate or scrutinize the actions of authorities responsible for the supervision of institutions or for legislation on such supervision;

(b) The information is strictly necessary for fulfilling the mandate referred to in point (a);

(c) The persons having access to the information are subject to secrecy requirements under national law at least equivalent to those referred to in Article 54(1);

(d) Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and solely for the purposes for which those authorities gave their agreement.

To the extent that the disclosure of information related to prudential supervision involves processing of personal data, any processing by the entities mentioned above shall respect the applicable national laws implementing Directive 95/46/EC.

Article 61

Information obtained by on-the-spot verifications

Member States shall provide that information received under Articles 52(4), 54(2) and 57 and information obtained by means of the on-the-spot verification referred to in Article 53(1) and (2) may never be disclosed in the cases referred to in Article 60 except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Article 62

Information concerning clearing and settlement services

1. Nothing in this Chapter shall prevent the competent authorities of a Member State from communicating the information referred to in Articles 54 to 56 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy specified in Article 54(1).

2. The Member States shall, however, ensure that information received under Article 54(2) may not be disclosed in the circumstances referred to in paragraph 1 without the express consent of the competent authorities which disclosed it.

SECTION III

DUTY OF PERSONS RESPONSIBLE FOR THE LEGAL CONTROL OF ANNUAL AND CONSOLIDATED ACCOUNTS

Article 63

Duty of persons responsible for the legal control of annual and consolidated accounts

1. Member States shall provide at least that any person authorised within the meaning of Directive 2006/43/EEC[1] performing in an institution the task described in Article 51 of Directive 78/660/EEC[2], Article 37 of Directive 83/349/EEC[3] or Article 73 of Directive 2009/65/EC, or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that institution of which that person has become aware while carrying out that task, which is liable to:

   (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of institutions;

   (b) affect the continuous functioning of the institution;

   (c) lead to refusal to certify the accounts or to the expression of reservations.

   Member States shall provide at least that that person shall likewise have a duty to report any fact or decision of which he becomes aware in the course of carrying out a task as described in the first sub-paragraph in an undertaking having close links resulting from a control relationship with the institution within which he is carrying out that task.

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1 Directive 2006/43 of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts (OJ L 157, 9.6.2006, p. 87).

2 Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11.

3 Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in any liability.

SECTION IV

SUPERVISORY POWERS, POWER OF SANCTION AND RIGHT OF APPEAL

Article 64

Supervisory powers

Competent authorities shall be given all supervisory powers to intervene in the activity of institutions that are necessary for the exercise of their function, including in particular the right to withdraw the authorisation in accordance with Article 18, the powers required according to Article 99 and the powers laid down in Article 100 and 100a.

Article 65

Administrative sanctions and measures

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 64 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and measures applicable to the infringements of Regulation [inserted by OP] and the national provisions adopted in the implementation of this Directive and shall take all measures necessary to ensure that they are implemented. Member States may decide not to lay down rules for administrative sanctions on infringements, which are subject to national criminal law. The administrative sanctions and measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that where the obligations referred to in the first paragraph apply to institutions, financial holding companies and mixed financial holding companies in case of a breach sanctions can be applied, subject to the conditions laid down in national law, to the members of the management body, and to other individuals who under national law are responsible for the breach.

3. Competent authorities shall be given all investigatory powers that are necessary and adequate for the exercise of their functions, including administrative sanctioning powers. Competent authorities shall cooperate closely to ensure that administrative sanctions and measures produce the desired results and coordinate their action when dealing with cross border cases.

Article 66

Sanctions and measures for breaches of authorisation requirements and requirements for acquisitions of qualifying holdings

1. Member states shall ensure that their laws, regulations and administrative provisions provide for sanctions and measures in respect of:

   (a) carrying on the business of taking deposits or other repayable funds from the public without being a credit institution in breach of Article 3;

   (b) commencing activities as a credit institution without obtaining authorisation in breach of Article 9;

   (c) acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or so that the credit institution would become its subsidiary (hereinafter referred to as the proposed acquisition), without notifying in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of Article 22(1);

(d) disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25(1) or so that the credit institution would cease to be a subsidiary, without notifying in writing the competent authorities.

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

(a) a public statement which indicates the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach ;

(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(c) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, positive income from shares and other variable/fixed-yield securities, and commissions/fees receivable as reflected in Article 305 of Regulation [inserted... by OP] of the undertaking in the preceding business year ; where the undertaking is a subsidiary of a parent undertaking, the relevant turnover shall be the turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

(d) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of adoption of this Directive;

(e) administrative pecuniary sanctions of up to twice the amount of the benefit derived from the breach where that benefit can be determined;

(f) suspension of the voting rights by the shareholder or shareholders held responsible for the breach.

Article 67

Sanctions and measures for breaches of other provisions

1. This Article shall apply in the following circumstances:

(a) an institution has obtained an authorisation through false statements or any other irregular means;

(b) an institution, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) and Article 25, fails to inform the competent authorities of those acquisitions or disposals in breach of the first subparagraph of Article 26(1).

(c) An institution listed on a regulated market as referred to in the list to be published by ESMA according to Article 47 of Directive 2004/39/EC does not, at least once a year, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of the second subparagraph of Article 26(1).

(d) an institution fails to have in place governance arrangements required by the competent authorities in accordance with the national provisions implementing Article 73;

(e) an institution fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 87 of Regulation [inserted by OP] to the competent authorities as required by the first subparagraph of Article 95(1) of that Regulation;

(f) an institution fails to report or provides incomplete or inaccurate information to the competent authorities the data on capital requirements required by Article 96 of Regulation [inserted by OP];

(g) an institution fails to report information or provides incomplete or inaccurate information about a large exposure to the competent authorities as required by Article 383(1) of Regulation [inserted by OP];

(h) an institution fails to report information or provides incomplete or inaccurate information on liquidity to the competent authorities as required by Article 403(1) and 403(2) of Regulation [inserted by OP];

(i) 401 of Regulation [inserted by OP];

(k) an institution incurs an exposure in excess of the limits laid down in Article 384 of Regulation [inserted by OP];

(l) an institution fails to report information or provides incomplete or inaccurate information on the leverage ratio to the competent authorities as required by Article 417(1) of Regulation [inserted by OP];

(j) an institution repeatedly or continuously fails to hold liquid assets as required by Article institution which is exposed to the credit risk of a securitisation position without satisfying the conditions laid down in Article 394 of Regulation [inserted by OP];

(m) an institution fails to disclose information or provides incomplete or inaccurate information in accordance with Articles 418(1) to (3) or 436(1) of Regulation [inserted by OP].

(ma) an institution makes payment to holders of instruments included in the own funds of the institution in breach of Article 131 of this Directive or in cases where Articles 26, 48 or 60 of Regulation [inserted by OP] does not allow such payments on holders of instruments included in own funds.

(mb) an institution has been found liable for a serious infringement of the national provisions adopted pursuant to Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

(a) a public statement which indicates the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;

(d) subject to Article 65.2, a temporary ban against member of the institution's management body or any other natural person, who is held responsible, to exercise functions in institutions;

(e) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, positive income from shares and other variable/fixed-yield securities, and commissions/fees receivable as reflected in Article 305 of Regulation [inserted... by OP] of the undertaking in the preceding business year ; where the undertaking is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

(f) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;

(g) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined).

(h) [deleted]

Article 68

Publication of administrative sanctions

Member States shall provide that the competent authorities publish administrative sanctions referred to in Article 66(2) or 67 (2) or by national law imposed for breach of the provisions of Regulation [inserted by OP] or of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach. If such publication would jeopardise financial stability within one or more Member States, cause a disproportionate damage to the parties, institutions or individuals involved, would be disproportionate in the light of the infringement which is sanctioned, jeopardise an on-going criminal investigation or jeopardise the viability of the institution, competent authorities shall publish the sanctions on an anonymous basis, in a manner which is in conformity with national law.

Article 69

Effective application of sanctions and exercise of sanctioning powers by competent authorities

1. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including where appropriate:

   (a) the gravity and the duration of the breach;

   (b) the degree of responsibility of the responsible natural or legal person;

   (c) the financial strength of the responsible natural or legal person, for example as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

   (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;

   (e) the losses for third parties caused by the breach, insofar as they can be determined;

   (f) the level of cooperation of the responsible natural or legal person with the competent authority;

(g) previous breaches by the responsible natural or legal person;

(h) any potential systemic consequences of the breach.

2. [deleted]

Article 70

Reporting of breaches

1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of actual or potential breaches of the provisions of Regulation [inserted by OP] and of national provisions implementing this Directive to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports on breaches and their follow-up;

(b) appropriate protection for employees of institutions who reports breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;

(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.

3. Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

Article 71

Right of appeal

Member States shall ensure that decisions and measures taken in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive or Regulation [inserted by OP] are subject to the right of appeal. The same shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

Chapter 2

Review Processes

SECTION I

INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS

Article 72

Internal Capital

Institutions shall have in place sound, effective and complete strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

These strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned.

SECTION II

ARRANGEMENTS, PROCESSES AND MECHANISMS OF INSTITUTIONS

SUB-SECTION 1

GENERAL PRINCIPLES

Article 73

Procedures and internal control mechanisms

1. Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

2. The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the institution's activities.

3. [deleted]

Article 74

Oversight of remuneration policies

1. Competent authorities shall use the information collected in accordance with the criteria for disclosure established in points (f), (g) and (h) of Article 435 (1) of Regulation [inserted by OP] to benchmark remuneration trends and practices. The competent authorities shall provide EBA with that information, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected.

2. EBA shall issue guidelines on sound remuneration policies which comply with the principles set out in Articles 88 to 91. The guidelines shall take into account the principles on sound remuneration policies set out in the Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector[1].

   ESMA shall cooperate closely with EBA to develop guidelines on remuneration policies for categories of staff involved in the provision of investment services and activities within the meaning of point 2 of Article 4(1) of Directive 2004/39/EC.

   EBA shall use the information received from the competent authorities in accordance with paragraph 1 to benchmark remuneration trends and practices at Union level.

3. [deleted]

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1 C(2009) 3159.

SUB-SECTION 2

TECHNICAL CRITERIA CONCERNING THE ORGANISATION AND TREATMENT OF RISKS

Article 75

Treatment of risks

1. Member States shall ensure that the management body approves and periodically reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

2. Member States shall ensure that the management body devotes sufficient time to consideration of risk issues. It shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Directive and in the Regulation [inserted by OP] as well as in the valuation of assets, the use of external ratings and internal models related to those risks. The institution must establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

3. Member States shall ensure that institutions that are significant in terms of size, internal organisation and nature, scope and complexity of their activities establish a risk committee composed of members of the management body who do not perform any executive function in the institution concerned. Members of the risk committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the institution.

   The risk committee shall advise the management body on the institution's overall current and future risk appetite and strategy and assist the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for risks.

The competent authorities may allow an institution to establish a combined risk and audit committee, cf. Directive 2006/43/EC, Article 41. The competent authorities shall take into account whether the nature, scale and complexity of the institution's activities will make it unreasonable or unnecessary to establish a separate risk committee without other responsibilities than those related to risk management.

Member States may allow types of institutions to establish a combined risk and audit committee, cf. Directive 2006/43/EC, Article 41, taking into account the nature, scale and complexity of the institutions' activities.

Members of a combined committee shall have the knowledge, skills and expertise required for the risk committee as well as for the audit committee.

4. Member States shall ensure that the management body and, when a risk committee has been established, the risk committee, have adequate access to information on the risk situation of the institution and, if necessary and appropriate, to the risk management function and to external expert advice.

The management body, and, when a risk committee has been established, the risk committee, shall determine the nature, the amount, the format, and the frequency of the information on risk it shall receive.

5. Member States shall, in line with the proportionality principle laid down in Article 7(2) of Directive 2006/73/EC, ensure that institutions have a risk management function independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body

The risk management function shall ensure each key risk the institution faces is identified and properly managed by the relevant units in the institution. The risk management function shall be actively involved in elaborating institution‘s risk strategy and in all material risk management decisions. The risk management function shall be able to deliver a complete view on the whole range of risks of the institution.

In cases where the management body would not receive adequate information about material risks through the regular risk reporting process, the risk management function shall be able to report directly to the management body

The head of the risk management function shall be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the institution do not justify a specially appointed person, another senior person within the institution may fulfil this function, provided there is no conflict of interest.

The head of the risk management function shall not be removed without prior approval of the management body and shall be able to have direct access to the management body when necessary.

The application of this Directive shall be without prejudice to the application of the Directive 2006/73/EC to investment firms.

Article 76

Internal Approaches for calculating own funds requirements

1. Competent authorities shall encourage large institutions, taking into account the nature, scale and complexity of an institution's activities, to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach for calculating own funds requirements for credit risk where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties. The provisions of this Article shall be without prejudice to the fulfilment of criteria laid out in Title 1, Chapter 3, Section 1 of Regulation (OP).

2. Competent authorities shall encourage large institutions, taking into account the nature, scale and complexity of an institution's activities, to develop internal specific risk assessment capacity and to increase use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers. The provisions of this article shall be without prejudice to the fulfilment of criteria laid out in Part Three, Title IV, Chapter 5 Section 1-5 of Regulation (OP).

3. [deleted]

Article 77

Credit and counterparty risk

Competent authorities shall ensure the following:

(a) Credit-granting is based on sound and well-defined criteria. The process for approving, amending, renewing, and re-financing credits is clearly established;

(b) Institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitization positions as well as credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external ratings. Where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital;

(c) The ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems;

(d) Diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.

Article 78

Residual risk

Competent authorities shall ensure that the risk that recognised credit risk mitigation techniques used by institutions prove less effective than expected is addressed and controlled including by means of written policies and procedures.

Article 79

Concentration risk

Competent authorities shall ensure that the concentration risk arising from exposures to counterparties, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures.

Article 80

Securitisation risk

1. Competent authorities shall ensure that the risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor, including reputational risks, such as arise in relation to complex structures or products, are evaluated and addressed through appropriate policies and procedures, to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

2. Competent authorities shall ensure that liquidity plans to address the implications of both scheduled and early amortisation exist at institutions which are originators of revolving securitisation transactions involving early amortisation provisions.

Article 81

Market risk

1. Competent authorities shall ensure that policies and processes for the identification, measurement and management of all material sources and effects of market risks are implemented.

2. When the short position falls due before the long position, competent authorities shall ensure that institutions also take measures against the risk of a shortage of liquidity.

3. Institutions, which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2 of Regulation [inserted by OP], netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate

internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities; institutions shall also do this when they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

Where using the treatment in Article 334 of Regulation [inserted by OP], institutions shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the next working day.

Article 82

Interest risk arising from non-trading book activities

Competent authorities shall ensure that institutions implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect an institution's non-trading activities.

Article 83

Operational risk

1. Competent authorities shall ensure that institutions implement policies and processes to identify, evaluate and manage the exposure to operational risk, including to low-frequency high-severity events. Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures.

2. Competent authorities shall ensure that contingency and business continuity plans are in place to ensure an institution's ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

Article 84

Liquidity risk

1. Competent authorities shall ensure that institutions have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

2. The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the management body and reflect the institution's importance in each Member State in which it carries on business. Institutions shall communicate risk tolerance to all relevant business lines.

3. Competent authorities shall ensure that institutions develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

4. Competent authorities shall ensure that institutions distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also ensure that institutions take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account as well as their eligibility and shall monitor how assets can be mobilised in a timely manner.

5. Competent authorities shall ensure that institutions also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the EEA.

6. Competent authorities shall ensure that institutions consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.

7. Competent authorities shall ensure that institutions consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. For these purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation [inserted by OP], in relation to which the institution acts as sponsor or provides material liquidity support.

8. Competent authorities shall ensure that institutions consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stress conditions shall be considered.

9. Competent authorities shall ensure that institutions adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraph 7.

10. Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually , updated on the basis of the outcome of the alternative scenarios set out in paragraph 7, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. For credit institutions, such operational

steps shall include holding collateral immediately available for central bank funding. This includes holding collateral where necessary in the currency of another Member State, or currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or third country whose currency it is exposed to.

Article 85

Risk of excessive leverage

1. Competent authorities shall ensure that the institution has policies and processes in place for the identification, management and monitoring of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 416 of Regulation [inserted by OP] and mismatches between assets and obligations.

2. Competent authorities shall ensure that institutions address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the institution's own funds through expected or realised losses, depending on the applicable accounting rules. To this end, institutions shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

SUB-SECTION 3

GOVERNANCE

Article 86

Governance arrangements

1. Member States shall ensure that the management body defines and oversees the implementation of the governance arrangements that ensure effective and prudent management of an institution, including the segregation of duties in the organisation and the prevention of conflicts of interest.

   Those arrangements shall comply with the following principles:

   (a) the management body shall approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance;

   (b) the management body shall carry out effective oversight of senior management;

   (c) the chairman of the management body which is responsible for the supervisory function of an institution shall not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by competent authorities.

   Member States shall ensure that the management body monitors and periodically assesses the effectiveness of the institution's governance arrangements and takes appropriate steps to address any deficiencies.

2. Member States shall ensure that institutions, which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a nomination committee composed of members of the management body.

   The nomination committee shall carry out the following:

(a) identify and recommend, for the approval of the management body or for approval of the general meeting candidates to fill management body vacancies. In doing so, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the management body. Further, the committee shall prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected;

(b) periodically assess the structure, size, composition and performance of the management body, and make recommendations to the management body with regard to any changes;

(c) periodically assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report this to the management body;

(d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

In performing its duties, the nomination committee shall be able to use any forms of resources it deems appropriate, including external advice.

Where, under national law, the management body does not have any competence in the process of selection and appointment of any of its members, this paragraph shall not apply.

Article 87

Management body

1. All members of the management body shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience. Members of the management body shall, in particular, fulfil the following requirements:

(a) All members of the management body shall commit sufficient time to perform their functions in the institution. The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Members of the management body of institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not combine at the same time more than one of the following combinations unless otherwise authorised by the competent authority:

(i) one executive directorship with three non-executive directorships;

(ii) five non-executive directorships.

Executive or non-executive directorships held within (i) the same group, or (ii) are members of the same institutional protection scheme if the conditions of Article 108 paragraph 7 CRR are fulfilled, or (iii) within undertakings (including non-financial institutions) where the institution owns a qualifying holding shall count as one single directorship.

(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.

(c) Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

2. Institutions shall devote adequate human and financial resources to the induction and training of members of the management body.

3. [deleted]

4. [deleted]

5. [deleted]

Article 88

Remuneration policies

1. The application of Articles 88(2) to 91 shall be ensured by competent authorities for institutions at 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:

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution;

(b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest;

(c) the management body of the institution adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body;

(e) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

(f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 91 or, if such a committee has not been established, by the management body.

Article 89

Institutions that benefit from government intervention

In the case of institutions that benefit from exceptional government intervention, the following principles shall apply in addition to and under the same conditions as those set out in Article 88(2):

(a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(b) the relevant competent authorities require institutions to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the institution;

(c) no variable remuneration is paid to members of the management body of the institution unless justified.

Article 90

Variable elements of remuneration

1. For variable elements of remunerations, 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;

(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 institution and its business risks;

(c) the total variable remuneration does not limit the ability of the institution to strengthen its capital base;

(d) guaranteed variable remuneration is exceptional and occurs only when hiring new staff and is limited to the first year of employment;

(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;

(f) institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration;

(g) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

(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;

(i) the allocation of the variable remuneration components within the institution shall also take into account all types of current and future risks;

(j) a substantial portion, and in any event at least 50 %, of any variable remuneration shall consist of an appropriate 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 of Regulation [inserted by OP] that adequately reflect the credit quality of the institution as a going concern.

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;

(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 5 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;

(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.

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;

(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;

(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;

(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].

2. EBA shall develop draft regulatory technical standards with respect to criteria to determine the appropriate ratios between the fixed and the variable component of the total remuneration referred to in sub-paragraphs (e) and (f), 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).

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

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

Article 91

Remuneration Committee

1. Competent authorities shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

2. Competent authorities shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the institution concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the institution concerned. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the institution.

SECTION III

SUPERVISORY REVIEW AND EVALUATION PROCESS

Article 92

Supervisory review and evaluation

1. Taking into account the technical criteria set out in Article 94, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation [inserted by OP] and evaluate the following risks:

   a) Risks to which the institutions are or might be exposed and

   b) Risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010, or recommendations of the ESRB, where appropriate.

   c) risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.

2. The scope of the review and evaluation referred to in paragraph 1 shall cover all requirements of this Directive.

3. On the basis of the review and evaluation referred to in paragraph 1, the competent authorities shall determine whether the arrangements, strategies, processes and mechanisms implemented by the institutions and the own funds and liquidity held by these ensure a sound management and coverage of their risks.

4. Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 96(2).

Article 114a

Supervision of mixed financial holding companies

1. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only the provision of Directive 2002/87/EC to that mixed financial holding company.

2. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provision of the Directive relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC.

3. The consolidating supervisor shall inform EBA and the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010[1] of the decisions taken under paragraphs 1 and 2.

[1] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010, p. 48.

4. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of those Regulations, develop guidelines aimed at converging supervisory practices and shall, within three years of the adoption of those guidelines, develop draft regulatory technical standards.

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, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010[1].

Article 94

Technical criteria for the supervisory review and evaluation

1. In addition to credit, market and operational risks, the review and evaluation performed by competent authorities pursuant to Article 92 shall include at least all of the following:

(a) the results of the stress test carried out in accordance with Article 173 of Regulation [inserted by OP] by institutions applying an IRB approach;

(b) the exposure to and management of concentration risk by institutions, including their compliance with the requirements laid down in Part Four of Regulation [inserted by OP] and Article 79 of this Directive;

(c) the robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognized credit risk mitigation techniques;

[1] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84.

(d) the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

(e) the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

(f) the impact of diversification effects and how such effects are factored into the risk measurement system;

(g) the results of stress tests carried out by institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation [inserted by OP];

(h) the geographical location of institutions' exposures;

(i) the business model of the institution;

(j) the assessment of systemic risk, in accordance with the criteria set out in Article 92.

2. For the purposes of point (e) of paragraph 1, the competent authorities shall regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions and promote the development of sound internal methodologies. While conducting those reviews, the competent authorities shall have regard to the role played by institutions in the financial markets. The competent authorities in one Member State shall duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

3. Competent authorities shall monitor whether an institution has provided implicit support to a securitisation. If an institution is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

4. For the purposes of the determination to be made under Article 92(3) of this Directive, competent authorities shall consider whether the valuation adjustments taken for positions/portfolios in the trading book, as set out in Article 100 of Regulation [inserted by OP], enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

5. The review and evaluation performed by competent authorities shall include the exposure of institutions to the interest rate risk arising from non-trading activities. Measures shall be required at least in the case of institutions whose economic value declines by more than 20 % of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or as defined in the EBA guideline.

6. The review and evaluation performed by competent authorities shall include the exposure of institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 416 of Regulation [inserted by OP]. In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, competent authorities shall take into account the business model of these institutions.

7. The review and evaluation performed by competent authorities shall include governance arrangements of institutions and the ability of members of the management body to perform their duties.

Article 99a

Application of supervisory measures to institutions with similar risk profiles

1. Where the competent authorities determine under Article 92 that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, they may apply the supervisory review and evaluation process referred to these institutions in a similar or identical manner. For these purposes, Member States shall ensure that competent authorities have the necessary legal powers to impose requirements under this Directive and Regulation [inserted by OP] on these institutions in a similar or identical manner, including in particular the exercise of supervisory powers under Articles 100, 100a and 101.

   The types of institutions may in particular be determined according to the criteria referred to in Article 94(1) (j).

2. The competent authorities shall notify EBA where they apply paragraph 1. EBA shall monitor supervisory practices and issue guidelines to specify how similar risks should be assessed. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 96

Supervisory examination programme

1. The competent authorities shall, at least annually, adopt a supervisory examination programme for the institutions they supervise. Such programme shall take into account the supervisory review and evaluation process under Article 92. It shall contain the following elements:

   (a) An indication how competent authorities intend to carry out their tasks and allocate their resources.

(b) An identification which institutions are intended to be subject to enhanced supervision and make provision for such supervision as set out in paragraph 3.

(c) A plan for on-site inspections at the premises used by a institution, including its branches and subsidiaries established in other Member States in accordance with Articles 53 (1) and (2), 114 and 116.

2. Supervisory examination programmes shall include the following institutions:

(a) Institutions for which the results of the stress tests referred to in points (a) and (g) of Article 94(1) and Article 97, or the outcome of the supervisory review and evaluation process under Article 92, indicate significant risks to their ongoing financial soundness or indicate breaches of the requirements of this Directive and Regulation [inserted by OP];

(b) Institutions that pose systemic risk to the financial system;

(c) Any other institution for which the competent authorities deem this necessary.

3. When deemed appropriate under Article 92 the following measures shall, in particular, be taken if necessary:

(a) An increase in the number or frequency of on-site inspections of the institution;

(b) A permanent presence of the competent authority at the institution;

(c) Additional or more frequent reporting by the institution;

(d) Additional or more frequent review of the operational, strategic or business plans of the institution;

(e) Thematic examinations monitoring specific risks that are likely to materialise.

4. Adopting a supervisory examination programme by the home competent authority shall not prevent the competent authorities of the host Member State to carry out on a case by case basis on-the-spot inspections of the activities carried out by branches of institutions on their territory according to Article 53(3).

Article 97

Supervisory stress testing

1. The competent authorities shall carry out as appropriate supervisory stress tests on institutions they supervise, to support the review and evaluation process under Article 92

2. EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No. 1093/2010 to ensure that common methodologies are used by the competent authorities when conducting supervisory stress tests.

Article 98

Ongoing review of the permission to use internal approaches

1. Competent authorities shall review on a regular basis institutions' compliance with the requirements regarding approaches that require permission by the competent authorities prior to using it for the calculation of own funds requirements according to Part Three of Regulation [inserted by OP]. They shall have particular regard to changes in the institution's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by an institution’s internal approach, competent authorities must ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures

2. The competent authorities shall in particular review and assess that the institution uses well developed and up-to-date techniques and practices for these approaches.

3. If for an internal market risk model numerous overshootings referred to in Article 355 of Regulation [inserted by OP] indicate that the model is not or no longer sufficiently accurate, the competent authorities shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

4. If an institution has received permission to apply an approach that requires permission by the competent authorities prior to using it for the calculation of own funds requirements according to Part Three of Regulation [inserted by OP] but does not meet the requirements for applying this approach anymore, the competent authorities shall require the institution to either demonstrate to the satisfaction of the competent authorities that the effect of non-compliance is immaterial where applicable according to the [Regulation – CRR] or present a plan to timely restore compliance with the requirements and set a deadline for its implementation. The competent authorities shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the institution is unlikely to be able to restore compliance within an appropriate deadline and – where applicable – has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

5. In order to promote consistent soundness of internal approaches in the Union, EBA shall analyse internal approaches across institutions, including the consistency of implementation of the definition of default, how those institutions treat similar risks or exposures and the minimum standards of accuracy appropriate to the type of internal approach.

EBA shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/201 0, which contain benchmarks on the basis of that analysis.

Competent authorities shall take into account that analysis and those benchmarks for the review of the permissions they grant to institutions to use internal approaches.

SECTION IV

SUPERVISORY MEASURES AND POWERS

Article 99

Supervisory measures

1. Competent authorities shall require any institution to take the necessary measures at an early stage to address relevant problems in the following circumstances:

   (a) The institution does not meet the requirements of this Directive or the Regulation [inserted by OP];

   (b) The competent authorities have evidence that the institution is likely to breach the requirements of this Directive or the Regulation [inserted by OP] within the next 12 months;

2. For the purposes of paragraph 1, the powers of competent authorities shall include those referred to in Article 100

Article 100

Supervisory powers

1. For the purposes of Articles 92, 94(4), 98(4), 99 and 99a and the application of Regulation [inserted by OP], competent authorities shall have at least the following powers:

   (a) to require institutions to hold own funds in excess of the capital requirements laid down in Chapter Four and the Regulation [inserted by OP] related to elements of risks and risks not covered by Article 1 of Regulation [inserted by OP],

   (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented to comply with Articles 72 to 73;

(bi) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to this Directive and Regulation [Inserted by OP] and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(c) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(d) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

(e) to require the reduction of the risk inherent in the activities, products and systems of institutions;

(f) to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;

(g) to require institutions to use net profits to strengthen own funds

(h) to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;

(i) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;

(j) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

(k) to require additional disclosures

2. The additional own funds requirements referred to in paragraph 1(a) shall be imposed by the competent authorities at least in the following situations, where appropriate

(a) the institution does not meet the requirement laid down in Article 72 and 73 of this Directive or Article 382 of Regulation [inserted by OP]

(b) risks or elements of risks are not covered by the own funds requirements laid down in Chapter Four or the Regulation [inserted by OP]

(c) the sole application of other measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe.

(d) [deleted]

(e) the review referred to in Article 94(4) or 98(4) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;

(f) the risks are likely to be underestimated despite compliance with the applicable requirements of the Regulation and this Directive;

(g) the institution reports to the competent authority in accordance with Article 367(5) of Regulation [inserted by OP] that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio

3. For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Title VII, Chapter II, Section III, the competent authorities shall assess whether any imposition of an additional own funds requirement in excess of the capital requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following:

(a) the quantitative and qualitative aspects of institutions' assessment process referred to in Article 72;

(b) institutions' arrangements, processes and mechanisms referred to in Article 73;

(c) the outcome of the review and evaluation carried out in accordance with Article 92 or 98.

(d) the assessment of systemic risk

Article 100a

Specific liquidity requirements

For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Title VII, Chapter II, section III, the competent authorities shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following:

(a) the particular business model of the institution;

(b) 'institutions' arrangements, processes and mechanisms referred to in Section II and in particular in Article 84;

(c) t he outcome of the review and evaluation carried out in accordance with Article 92;

(d) Systemic liquidity risk that threatens the integrity of the financial markets of the given Member State.

Article 101

Specific publication requirements

1. Member States shall empower the competent authorities to require institutions:

   (a) to publish information referred to in Part Eight of Regulation [inserted by OP] more than once per year, and to set deadlines for publication;

   (b) to use specific media and locations for publications other than the financial statements;

2. Member States shall empower competent authorities to require parent undertakings to publish annually either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with Articles 14(3), 73(1) and 104(2).

Article 102

Consistency of supervisory reviews, evaluations and supervisory measures

1. Competent authorities shall inform EBA of the following:

   (a) the functioning of their review and evaluation process referred to in Article 92;

   (b) the methodology used to base decisions referred to in Articles 94 ,97, 98 , 99, 100 and 100a on the process referred to in point (a).

The EBA shall assess the information provided by competent authorities for the purposes of developing consistency in the supervisory review and evaluation process. It may request additional information from competent authorities in order to fulfil this process on a proportional basis in accordance with Article 35 of EBA Regulation (EU) No 1093/2010.

2. EBA shall annually report to the European Parliament and the Council on the degree of convergence of the application of the provisions of this Chapter between Member States.

In order to increase the degree of such convergence, EBA shall conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1093/2010.

3. EBA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 to further specify the following in a way that is appropriate to the size, the structure, the internal organization of the institutions and the nature, the scope and the complexity of their activities:

(a) the common procedure and methodology for the supervisory review and evaluation process referred to in paragraph 1 and in Article 92;

(b) common procedures and methodologies for assessment of the organisation and treatment of the risks referred to in Articles 75 to 85 and for the review and evaluation by the competent authorities as referred to in Article 92.

4. [deleted]

SECTION V

LEVEL OF APPLICATION

Article 103

Internal capital adequacy assessment process

1. Competent authorities shall require every institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every institution not included in the consolidation pursuant to Article 17 of Regulation [inserted by OP], to meet the obligations laid down in Article 72 on an individual basis.

   Competent authorities may exempt a credit institution that meets the conditions laid down in Article 9 of Regulation [inserted by OP] from Article 72.

   Where the competent authorities waive the application of own fund requirements on a consolidated basis provided for in Article 14 of Regulation [inserted by OP], the requirements of Article 72 shall apply on an individual basis.

2. Competent authorities shall require parent institutions in a Member State, to the extent and in the manner prescribed in Article 16 of Regulation [inserted by OP], to meet the obligations laid down in Article 72 on a consolidated basis.

3. Competent authorities shall require institutions controlled by a parent financial holding company or a parent mixed financial holding company in a Member State, to the extent and in the manner prescribed in Article 16 of Regulation [inserted by OP], to meet the obligations laid down in Article 72 on the basis of the consolidated situation of that financial holding company or mixed financial holding company.

Where more than one institution is controlled by a parent financial holding company or a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the institution to which supervision on a consolidated basis applies in accordance with Article 106.

4. Competent authorities shall require subsidiary institutions to apply the requirements laid down in Article 72 on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in such an undertaking.

5. [deleted]

Article 104

Institutions' arrangements, processes and mechanisms

1. Competent authorities shall require institutions to meet the obligations laid down in Section II of this Chapter on an individual basis, unless competent authorities make use of the derogation provided for in Article 6 of Regulation [inserted by OP].

2. Competent authorities shall require the parent undertakings and subsidiaries subject to this Directive to meet the obligations laid down in Section II of this Chapter on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms required by the section II of this Chapter are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that parent undertakings and subsidiaries subject to this Directive implement such arrangements, processes and mechanisms in their subsidiaries not subject to this Directive. These arrangements, processes and mechanisms shall also be consistent and well-integrated and these subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision.

3. Obligations resulting from Section II of this Chapter concerning subsidiary undertakings, not themselves subject to this Directive, shall not apply if the EU parent institution or institutions controlled by an EU parent financial holding company or EU parent mixed financial holding company, can demonstrate to the competent authorities that the application of Section II is unlawful under the laws of the third country where the subsidiary is established.

Article 105

Review and evaluation and supervisory measures

1. Competent authorities shall apply the review and evaluation process referred to in Section III and the supervisory measures referred to in Section IV in accordance with the level of application of the requirements of Regulation [inserted by OP] set out in Part One, Title II of that Regulation.

2. Where the competent authorities, in collaboration with the consolidating supervisor, waive the application of own funds requirements on a consolidated basis provided for in Article 14 of Regulation [inserted by OP], the requirements of Article 92 of this Directive shall apply to the supervision of investment firms on an individual basis.

Chapter 3

Supervision on a consolidated basis

SECTION I

PRINCIPLES FOR CONDUCTING SUPERVISION ON A CONSOLIDATED BASIS

Article 106

Determination of the consolidating supervisor

1. Where a parent undertaking is a parent institution in a Member State or an EU parent institution, supervision on a consolidated basis shall be exercised by the competent authorities that authorised it.

2. Where the parent of a institution is a parent financial holding company or parent mixed financial holding company in a Member State or an EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities that authorised the institution.

3. Where institutions authorised in two or more Member States have as their parent the same parent financial holding company , the same parent mixed financial holding company in a Member State , the same EU parent financial holding company or the same EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the institution authorised in the Member State in which the financial holding company or mixed financial holding company was set up.

   Where the parent undertakings of institutions authorised in two or more Member States comprise more than one financial holding company or mixed financial holding company with head offices in different Member States and there is a credit institution in each of these States, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.

4. Where more than one institution authorised in the Union has as its parent the same financial holding company or mixed financial holding company and none of these institutions has been authorised in the Member State in which the financial holding company or mixed financial holding company was set up, supervision on a consolidated basis shall be exercised by the competent authority that authorised the institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the institution controlled by an EU parent financial holding company or EU parent mixed financial holding company.

5. In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 3 and 4 if their application would be inappropriate, taking into account the institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. In these cases, before taking their decision, the competent authorities shall give the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company, or institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

6. The competent authorities shall notify the Commission and EBA of any agreement falling within paragraph 5.

Article 107

Coordination of supervisory activities by the consolidating supervisor

1. In addition to the obligations imposed by the provisions of this Directive and Regulation [inserted by OP], the consolidating supervisor shall carry out the following tasks:

   (a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

(b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Title VII, Chapter 3, in cooperation with the competent authorities involved;

(c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.

2. Where the consolidating supervisor fails to carry out the tasks referred to in the first paragraph or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in the first paragraph, any of the competent authorities concerned may refer the matter to EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.

3. The planning and coordination of supervisory activities referred to in paragraph 1(c) includes exceptional measures referred to in Article 112(1)(d) and 112(4)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

Article 108

Joint decisions on institution-specific prudential requirements

1. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company in a Member State shall do everything within their power to reach a joint decision:

(a) on the application of Articles 72 and 92 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 100 to each entity within the group of institutions and on a consolidated basis;

(b) on measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 84 and relating to the need for institution-specific liquidity requirements in accordance with Article 100a of this Directive.

2. The joint decision referred to in paragraph 1 shall be reached:

(a) for the purpose of paragraph 1(a) within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Articles 72, 92 and 100 to the other relevant competent authorities.

(b) for the purposes of paragraph 1(b) within one month after submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group in accordance with Article 84 and 100a.

The joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 72 and 92.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent institution by the consolidating supervisor. In the event of disagreement, the consolidating supervisor shall at the request of any of the other competent authorities concerned consult EBA. The consolidating supervisor may consult EBA on its own initiative.

3. In the absence of such a joint decision between the competent authorities within the time period referred to in paragraph 2, a decision on the application of Articles 72, 84, 92, 100 and 100a shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the time period referred to in paragraph 2, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The time period referred to in paragraph 2 shall be deemed the conciliation period within the meaning of the Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the time period referred to in paragraph 2 or after a joint decision has been reached.

The decision in the application of Articles 72, 84, 92, 100 and 100a shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the time period referred to in paragraph 2, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The time period referred to in the paragraph 2 shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the time period referred to in paragraph 2 or after a joint decision has been reached.

The decisions shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the time period referred to in paragraph 2. The document shall be provided by the consolidating supervisor to all competent authorities concerned and to the EU parent institution.

Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.

4. The joint decision referred to in paragraph 1 and the decisions taken by the competent authorities in the absence of a joint decision referred to in paragraph 3 shall be recognized as determinative and applied by the competent authorities in the Member States concerned.

The joint decision referred to in the paragraph 1 and any decision taken in the absence of a joint decision in accordance with paragraph 3, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent institution or, an EU parent financial holding company or EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Articles 100 and 100a. In the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.

5. EBA shall develop draft implementing technical standards to specify the joint decision process referred to in this Article, with regard to the application of Articles 72, 84, 92, 100 and 100a with a view to facilitating joint decisions.

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.

EBA shall develop draft implementing technical standards for submission to the Commission by 31 December 2013.

Article 109

Information requirements in emergency situations

1. Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 52 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Articles 54 and 58 of Directive 2004/39/EC, alert as soon as is practicable, EBA, ESRB, the central bank of the Member State and the authorities referred to in Article 60 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities. If the central bank of the Member State becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Article 107, and EBA.

   Where possible, the competent authority and the central banks use existing defined channels of communication.

2. The consolidating supervisor shall, when it needs information which has already been given to another competent authority, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Article 110

Coordination and cooperation arrangements

1. In order to facilitate and establish effective supervision, the consolidating supervisor and the other competent authorities shall have written coordination and cooperation arrangements in place.

Under these arrangements additional tasks may be entrusted to the consolidating supervisor and procedures for the decision-making process and for cooperation with other competent authorities, may be specified.

2. The competent authorities responsible for authorising the subsidiary of a parent undertaking which is an institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. EBA shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.

Article 111

Colleges of supervisors

1. The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 107 to 109(1) and subject to the confidentiality requirements of paragraph 2 of this Article and compatibility with Union law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010. To that end, EBA shall participate as it deems appropriate and shall be considered as a competent authority for that purpose.

Colleges of supervisors shall provide a framework for the consolidating supervisor, EBA and the other competent authorities concerned to carry out the following tasks:

(a) exchanging information among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes referred to in Article 94 based on a risk assessment of the group in accordance with Article 92;

(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Articles 109 and 112(2);

(e) consistently applying the prudential requirements under this Directive and Regulation [inserted by OP] across all entities within a group of institutions without prejudice to the options and discretions available in Union legislation;

(f) applying Article 107(1)(c) taking into account the work of other forums that may be established in that area.

2. The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Chapter 1, Section II of this Directive, and Articles 54 and 58 of Directive 2004/39/EC shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive and regulation [inserted by OP].

3. The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 110, determined after consultation with competent authorities concerned by the consolidating supervisor.

4. EBA shall develop draft regulatory technical standards in order to specify general conditions of functioning of the colleges of supervisors with regard to Articles 52 and 112.

EBA shall submit these draft regulatory technical standards by 31 December 2015

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.

5. EBA shall develop draft implementing technical standards in order to determine the operational functioning of the colleges of supervisors with regard to Articles 52 and 112.

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.

EBA shall submit these draft implementing technical standards by 31 December 2015.

6. The competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company or EU parent mixed financial holding company and the competent authorities of a host Member State where significant branches as referred to in Article 52 are established, ESCB central banks as appropriate, and third countries' competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Chapter 1 Section II, and where applicable, Articles 54 and 58 of Directive 2004/39/EC, may participate in colleges of supervisors.

7. The consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college. The consolidating supervisor 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 consolidating supervisor 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.

8. The decision of the consolidating supervisor 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 8 and the obligations referred to in Article 52(2).

9. The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section II, and where applicable, Articles 54 and 58 of Directive 2004/39/EC, shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.

Article 112

Cooperation obligations

1. The competent authorities shall cooperate closely with each other. They shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under this Directive and Regulation [inserted by OP]. In this regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

   The competent authorities shall cooperate with EBA for the purposes of this Directive and Regulation [inserted by OP], in accordance with Regulation (EU) No (EU) No 1093/2010.

The competent authorities shall provide EBA upon request with all information necessary to carry out its duties under this Directive, Regulation [inserted by OP], and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.

Information referred to in the first subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or financial institution in another Member State.

In particular, consolidating supervisors of EU parent institutions and institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of these parent undertakings with all relevant information. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account.

The essential information referred to in the first subparagraph shall include, in particular, the following items:

(a) Identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Articles 14(3), 73(1) and 104(2), as well as of the competent authorities of the regulated entities in the group;

(b) procedures for the collection of information from the institutions in a group, and the verification of that information;

(c) adverse developments in institutions or in other entities of a group, which could seriously affect the institutions;

(d) major sanctions and exceptional measures taken by competent authorities in accordance with this Directive, including the imposition of a specific own fund requirement under Article 100 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 301 (2) of Regulation [inserted by OP].

2. The competent authorities may refer to EBA any of the following situations:

(a) where a competent authority has not communicated essential information;

(b) where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

3. The competent authorities responsible for the supervision of institutions controlled by an EU parent institution shall whenever possible contact the consolidating supervisor when they need information regarding the implementation of approaches and methodologies set out in this Directive and Regulation [inserted by OP] that may already be available to that competent authority.

4. The competent authorities concerned shall, prior to their decision, consult each other with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities; and

(b) major sanctions or exceptional measures taken by competent authorities, including the imposition of an additional own funds requirement under Article 99 and the imposition of any limitation on the use of the Advances Measurement Approaches for the calculation of the own funds requirements under Article 301 (2) of Regulation [inserted by OP].

For the purposes of point (b), the consolidating supervisor shall always be consulted.

However, a competent authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the competent authority shall, without delay, inform the other competent authorities.

Article 113

Verification of information concerning entities in other Member States

Where, in applying this Directive and Regulation [inserted by OP], the competent authorities of one Member State wish in specific cases to verify the information concerning an institution, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article 119 or a subsidiary of the kind covered in Article 114(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.

SECTION II

FINANCIAL HOLDING COMPANIES,

MIXED FINANCIAL HOLDING COMPANIES AND MIXED-ACTIVITY HOLDING COMPANIES

Article 114

Inclusion of holding companies in consolidated supervision

1. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies and mixed financial holding companies in consolidated supervision.

2. Where an institution subsidiary is not included in supervision on a consolidated basis under one of the cases provided for in Article 17 of Regulation [inserted by OP], the competent authorities of the Member State in which that institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that institution.

3. Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 116. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.

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 116

Requests for information and inspections

1. Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the authorisation and supervision of those institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via institution subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the institution subsidiaries.

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 119 may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 113.

Article 117

Supervision

1. Without prejudice to Part Five of Regulation [inserted by OP], Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of these institutions shall exercise general supervision over transactions between the institution and the mixed-activity holding company and its subsidiaries.

2. Competent authorities shall require institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the institution of any significant transaction with these entities other than the one referred to in Article 383 of Regulation [inserted by OP]. These procedures and significant transactions shall be subject to overview by the competent authorities.

Where these intra-group transactions are a threat to a institution's financial position, the competent authority responsible for the supervision of the institution shall take appropriate measures.

Article 118

Exchange of information

1. Member States shall take the necessary steps to ensure that there are no legal impediments preventing the exchange, as between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of the kind covered in Article 114, of any information which would be relevant for the purposes of supervision in accordance Article 105 and Chapter 3. .

2. Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 106, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to these authorities.

3. Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.

Similarly, Member States shall authorise their competent authorities to exchange the information referred to in Article 116 on the understanding that the collection or possession of information does not in any way imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of the kind covered in Article 114(3).

Article 119

Cooperation

1. Where an institution, financial holding company, mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

2. Information received, in the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to the obligation of professional secrecy defined in Chapter 1, Section 2 for credit institutions or Directive 2004/39/EC for investment firms.

3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 10 of Regulation [inserted by OP]. Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.

Article 120

Sanctions

In accordance with Title VII, Chapter 1 Section IV, Member States shall ensure that sanctions or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies, mixed financial holding companies, and mixed-activity holding companies, or their effective managers, that infringe laws, regulations or administrative provisions enacted to implement Chapter 3.

Article 121

Assessment of equivalence of third countries' consolidated supervision

1. Where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under Articles 106, the competent authorities shall verify whether the institution is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in this Directive and the requirements of Part One, Title II, Chapter 2 of Regulation [inserted by OP].

   The verification shall be carried out by the competent authority which would be responsible for consolidated supervision if paragraph 3 were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. That competent authority shall consult the other competent authorities involved.

2. The Commission may request the European Banking Committee to give general guidance as to whether the consolidated supervision arrangements of competent authorities in third countries are likely to achieve the objectives of consolidated supervision as defined in this Chapter, in relation to institutions, the parent undertaking of which has its head office in a third country. The Committee shall keep any such guidance under review and take into account any changes to the consolidated supervision arrangements applied by such competent authorities. EBA shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to whether such guidance should be updated.

The competent authority carrying out the verification referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For that purpose, the competent authority shall consult EBA before adopting a decision.

3. In the absence of such equivalent supervision, Member States shall apply the provisions of this Directive and Regulation [inserted by OP] to the institution by analogy or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of institutions.

Those supervisory techniques shall, after consultation with the other competent authorities involved, be agreed upon by the competent authority which would be responsible for consolidated supervision.

Competent authorities may in particular require the establishment of a financial holding company or mixed financial holding company which has its head office in the Union, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or the consolidated position of the institutions of that mixed financial holding company.

The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in this Chapter and shall be notified to the other competent authorities involved, EBA and the Commission.

Chapter 4
Capital Buffers

SECTION I
CAPITAL CONSERVATION AND COUNTERCYCLICAL CAPITAL BUFFERS

Article 122
Definitions

For the purpose of this Chapter, the following definitions shall apply:

(1) 'Capital conservation buffer' means the own funds that an institution is required to maintain in accordance with Article 123;

(2) 'Combined Buffer Requirement' means the total Common Equity Tier 1 capital required to meet the requirement for the Capital Conservation Buffer extended by an institution specific Countercyclical Capital Buffer if the latter is more than 0% of the total risk exposure amount;

(3) 'Countercyclical buffer rate' means the rate that institutions must apply in order to calculate their institution specific countercyclical capital buffer, and that is set in accordance with Article 126, Article 127 or by a relevant third country authority (as the case may be);

(4) 'Domestically authorised institution' means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting the countercyclical buffer rate;

(5) 'Institution specific countercyclical capital buffer' means the own funds that an institution is required to maintain in accordance with Article 124;

Article 123

Requirement to maintain a Capital Conservation Buffer

1. Member States shall 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 [inserted by OP], a Capital Conservation Buffer of Common Equity Tier 1 capital equivalent to 2,5 % of their total risk exposure amount calculated in accordance with Article 87(3) of Regulation [inserted by OP] on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

1a. By way of derogation from paragraph 1, a Member State may exempt small and medium investment firms from the requirements set under this paragraph if such exemption does not pose a threat to the financial stability of that Member State.

The decision on the application of such exemption shall be fully reasoned, include an explanation as to why the exemption does not pose a threat to the financial stability of the Member State and contain the exact definition of small and medium investment firms which are exempted.

The Member State which decides to apply such exemption shall notify the European Commission, the ESRB, the EBA and competent authorities of concerned Member States of that fact.

1b. For the purpose of paragraph 1a, 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.

1c. For the purpose of paragraph 1a, investment firms shall be categorized as small and medium in accordance with EU Recommendation 2003/361;

2. Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 1 to meet any requirements imposed under Article 100.

3. 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.

Article 124

Requirement to maintain an institution specific countercyclical capital buffer

1. Member States shall require institutions to maintain an institution specific Countercyclical Capital Buffer equivalent to their total risk exposure amount calculated in accordance with Article 87(3) of Regulation [inserted by OP] multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with Article 130 on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

1a. By way of derogation from paragraph 1 a Member State may exempt small and medium investment firms from the requirements set under this paragraph if such exemption does not pose a threat to the financial stability of that Member State.

The decision on the application of such exemption shall be fully reasoned, include an explanation as to why the exemption does not pose a threat to the financial stability of the Member State and contain the exact definition of small and medium investment firms which are exempted.

The Member State which decides to apply such exemption shall notify the European Commission, the ESRB, the EBA and competent authorities of concerned Member States of that fact.

1b. For the purpose of paragraph 1a, 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.

1c. For the purpose of paragraph 1a, investment firms shall be categorized as small and medium in accordance with EU Recommendation 2003/361;

2. Institutions shall meet the requirement imposed by paragraph 1 with Common Equity Tier 1 capital, which shall be additional to any Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 87 of Regulation [inserted by OP], the requirement to maintain a Capital Conservation Buffer under Article 123 and any requirement imposed under Article 100.

3. 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.

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 [inserted by OP], a Systemic Risk Buffer of 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 and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

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 [inserted by OP] and Article 123, 124 and any requirements imposed under Article 99 and 100.

3. 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 paragraph 8 and 12. The exposures for the calculation of the Systemic Risk Buffer requirement shall be set 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 [inserted by OP] in order to prevent and mitigate long term non cyclical systemic or macroprudential risk 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.

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 positive or negative 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 [inserted 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 positive or negative 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 [inserted 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.

7a. The authority determined according to paragraph 1a 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 6. When setting or resetting a Systemic Risk Buffer requirement above 5 % the procedures in paragraph 7 shall be respected.

7b. Where the systemic risk buffer is to be set between 3% and 5% according to paragraph 7a, the authority determined according to paragraph 1a 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 authority determined according to paragraph 1a 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 authority determined according to paragraph 1a 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 authority determined according to paragraph 1a 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.

8. Within [4 weeks] from the notification referred to in paragraph 7, without prejudice to paragraph 8, 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. [deleted]

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.

12. Following the notification in paragraph 6, Member states may apply the buffer to all exposures. In case that the authority determined according to paragraph 1a 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 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.

SECTION II

SETTING AND CALCULATING COUNTERCYCLICAL CAPITAL BUFFERS

Article 125

ESRB guidance on setting countercyclical buffer rates

1. The ESRB may give, by way of recommendations in accordance with Article 16 of Regulation (EU) No. 1092/2010, guidance to authorities designated by Member States under Article 126(1) on setting countercyclical buffer rates, including the following:

   (a) principles to guide designated authorities when exercising their judgement as to the appropriate countercyclical buffer rate, ensure that authorities adopt a sound approach to relevant macro-economic cycles and promote sound and consistent decision-making;

   (b) general guidance on:

      (i) the measurement and calculation of the deviation from long term trends of ratios of credit to GDP;

      (ii) the calculation of buffer guides required by Article 126(2);

   (c) guidance on variables that indicate or might indicate the build-up of system-wide risk in a financial system, and on other relevant factors that should inform the decisions of designated authorities on the appropriate countercyclical buffer rate under Article 126;

   (d) guidance on variables that indicate that the buffer should be reduced or fully released.

2. Where it has issued a recommendation under paragraph 1, the ESRB shall keep it under review and update it, where necessary, in the light of experience of setting buffers under this Directive or of developments in internationally agreed practices.

3. Where it issues a recommendation under paragraph 1, the ESRB shall duly take into account the differences between Member States and in particular the specificities of Member States with small and open economies.

Article 126

Setting countercyclical buffer rates

1. Each Member State shall designate a public authority or body (hereafter, a 'designated authority') that is responsible for setting the countercyclical buffer rate for that Member State.

2. Each designated authority shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgement in setting the countercyclical buffer rate in accordance with paragraph 3. The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Member State and shall duly take into account specificities of the national economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking inter alia into account:

   (a) an indicator of growth of levels of credit within that jurisdiction and, in particular, an indicator reflective of the changes in the ratio of credit granted in that Member State to GDP;

   (b) any current guidance maintained by the ESRB in accordance with Article 125(1)(b).

3. Each designated authority shall assess and set the appropriate countercyclical buffer rate for its Member State on a quarterly basis, and in so doing shall take into account:

(a) the buffer guide calculated in accordance with paragraph 2;

(b) any current guidance maintained by the ESRB in accordance with Article 125(1)(a), (c) and (d) and any other indicators that may signal a build-up of system-wide risk.

4. [deleted]

5. The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP] of institutions that have credit exposures in that Member State, must be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points. Where justified in view of the considerations set out in paragraph 3, a designated authority may set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP] for the purpose set out in Article 130(2).

6. When a designated authority sets the countercyclical buffer rate above zero for the first time, or when thereafter a designated authority increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution specific countercyclical capital buffer. That date may be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 8. If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified by exceptional circumstances.

7. If a designated authority reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the designated authority.

8. Each designated authority shall announce the quarterly setting of the countercyclical buffer rate by publication on its website. The announcement shall include at least the following information:

(a) the applicable countercyclical buffer rate;

(b) the relevant credit-to-GDP-ratio and its deviation from the long-tem trend;

(c) the buffer guide calculated in accordance with paragraph 2;

(d) a justification for that buffer rate

(e) where the buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution specific countercyclical capital buffer;

(f) where the date mentioned in point (e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;

(g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period;

(h) [deleted]

Designated authorities shall take all reasonable steps to coordinate the timing of that announcement.

Designated authorities shall notify each quarterly setting of the countercyclical buffer rate and the information specified in points (a) to (g) to the ESRB. The ESRB shall publish on its website all such notified buffer rates and related information.

9.

Article 127

Recognition of countercyclical buffer rates in excess of 2.5%

1. Where a designated authority, in accordance with Article 126(5), or a relevant third country authority has set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP], the other designated authorities may recognise that buffer rate for the purposes of the calculation by domestically authorised institutions of their institution specific countercyclical capital buffers.

2. Where a designated authority recognises a buffer rate in excess of 2.5% of the total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP] in accordance with paragraph 1, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

   (a) the applicable countercyclical buffer rate;

   (b) the Member State or third countries to which it applies

   (c) where the buffer rate is increased, the date from which the institutions authorised in the Member State of the designated authority must apply that increased buffer rate for the purposes of calculating their institution specific countercyclical capital buffer;

   (d) where the date mentioned in point (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Article 128

ESRB recommendation on third country countercyclical buffer rates

The ESRB may, in accordance with Article 16 of Regulation (EU) No. 1092/2010, issue a recommendation to designated authorities on the appropriate countercyclical buffer rate for exposures to that third country where:

(a) a countercyclical buffer rate has not been set and published by the relevant third country authority for a third country (hereinafter referred to as 'relevant third country authority') to which one or more Union institutions have credit exposures;

(b) the ESRB considers that a countercyclical buffer rate which has been set and published by the relevant third country authority for a third country is not sufficient to protect Union institutions appropriately from the risks of excessive credit growth in that country, or a designated authority notifies the ESRB that it considers that buffer rate to be insufficient for that purpose.

Article 129

Decision by designated authorities on third country countercyclical buffer rates

1. This Article applies irrespective of whether the ESRB has issued a recommendation to designated authorities as mentioned in Article 128.

2. In the circumstances mentioned in point (a) of Article 128, designated authorities may set the countercyclical buffer rate that domestically authorised institutions must apply for the purposes of the calculation of their institution specific countercyclical capital buffer.

3. Where a countercyclical buffer rate has been set and published by the relevant third country authority for a third country, a designated authority may set a different buffer rate for that third country for the purposes of the calculation by domestically authorised institutions of their institution specific Countercyclical Capital Buffer if they reasonably consider that the buffer rate set by the relevant third country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

When exercising the power under the first sub-paragraph, a designated authority shall not set a countercyclical buffer rate below the level set by the relevant third country authority unless that buffer rate exceeds 2.5%, expressed, as a percentage of the total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP] of institutions that have credit exposures in that third country.

4. Where a designated authority sets a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 which increases the existing applicable countercyclical buffer rate, the designated authority shall decide the date from which domestically authorised institutions must apply that buffer rate for the purposes of calculating their institution specific countercyclical capital buffer. That date shall be no later than 12 months from the date when the buffer rate is announced in accordance with paragraph 5. If that date is less than 12 months after the setting is announced, that shorter deadline for application must be justified by exceptional circumstances.

5. Designated authorities shall publish any setting of a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 on their websites, and shall include the following information:

(a) the countercyclical buffer rate and the third country to which it applies;

(b) a justification for that buffer rate;

(c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution specific countercyclical capital buffer;

(d) where the date mentioned in point (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Article 130

Calculation of Institution Specific Countercyclical Capital Buffer Rate

1. The institution specific Countercyclical Capital Buffer Rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located, or are applied for the purposes of this Article by virtue of Article 129(2) or (3).

   Member States shall require institutions, in order to calculate the weighted average referred to in the first sub-paragraph, to apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Title II of Regulation [inserted by OP] that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

2. If, in accordance with Article 126(5), a designated authority sets a countercyclical buffer rate in excess of 2.5% of total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP], Member States shall ensure that the following buffer rates apply to relevant credit exposures located in the Member State of that designated authority (hereafter, 'Member State A') for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

(a) domestically authorised institutions shall apply that buffer rate in excess of 2.5% of total risk exposure amount;

(b) institutions that are authorised in another Member State shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2.5% in accordance with Article 127(1);

(c) institutions that are authorised in another Member State shall apply the countercyclical buffer rate set by the designated authority of Member State A if the designated authority in the Member State in which they have been authorised has recognised the that buffer rate in accordance with Article 127.

3. If the countercyclical buffer rate set by the relevant third country authority for a third country exceeds 2.5% of total risk exposure amount referred to in Article 87(3) of Regulation [inserted by OP], Member States shall ensure that the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

(a) institutions shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2.5% in accordance with Article 127(1);

(b) institutions shall apply the countercyclical buffer rate set by the relevant third country authority if the designated authority in the Member State in which they have been authorised has recognised the that buffer rate in accordance with Article 127.

4. Relevant credit exposures shall include all those exposures belonging to exposure classes, other than those mentioned in points (a), (b), (d), (e) and (f) of Article 107 of Regulation [inserted by OP], that are subject to:

(a) the own funds requirements for credit risk under Part Three, Title II of that Regulation,

(b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;

(c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5b of that Regulation;

5. Institutions shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with paragraph 7.

6. For the purposes of the calculation required under paragraph 1:

(a) a countercyclical buffer rate for a Member State shall apply from the date specified in the information published in accordance with Article 126(8)(e) or 127(2)(c) if the effect of that decision is to increase the buffer rate;

(b) subject to point (c), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;

(c) where the designated authority of the home Member State of the institution sets the countercyclical buffer rate for a third country pursuant to Article 129(2) or (3), or recognises the countercyclical buffer rate for a third country pursuant to Article 127, that buffer rate shall apply from the date specified in the information published in accordance with Article 129(5)(c) or Article 127 (2)(c), if the effect of that decision is to increase the buffer rate;

(d) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

For the purposes of point (b), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third country authority in accordance with the applicable national rules.

7. EBA shall develop draft regulatory technical standards to specify the method for the identification of the geographical location of the relevant credit exposures referred to in paragraph 5.

Powers are delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

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

SECTION III

CAPITAL CONSERVATION MEASURES

Article 131

Restrictions on distributions

1. Member States shall prohibit any institution that meets the combined buffer requirement from making a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is not longer met.

2. Member States shall require institutions that fail to meet the combined buffer requirement to calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 4 and to report this calculated MDA to the competent authority.

   Where the first sub-paragraph applies, Member State shall prohibit any such institution from undertaking any of the following actions before it has calculated the MDA:

   (a) make a distribution in connection with Common Equity Tier 1 capital;

   (b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;

   (c) make payments on Additional Tier 1 instruments.

3. While an institution fails to meet or exceed its combined buffer requirement, Member States shall prohibit it from distributing more than the MDA calculated in accordance with paragraph 4 through any action mentioned in points (a) to (c) of paragraph 2.

4. Member States shall require institutions to calculate the MDA by multiplying the sum calculated in accordance with point (a) by the factor determined in accordance with point (b). The MDA shall be reduced by any of the actions referred to in points (a), (b) or (c) of paragraph 2.

(a) The sum to be multiplied shall consist of:

(i) interim profits not included in Common Equity Tier 1 pursuant to Article 24(2) of Regulation [inserted by OP] that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of paragraph 2;

plus

(ii) year-end profits not included in Common Equity Tier 1 pursuant to Article 24(4) of Regulation [inserted by OP] that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of paragraph 2;

minus

(iii) amounts which would be payable by tax if the items specified in (i) and (ii) were to be retained.

(b) The factor shall be determined as follows:

(i) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 87(1)(c) of Regulation [inserted by OP], expressed as a percentage of the total risk exposure amount within the meaning of Article 87(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(ii) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 87(1)(c) of Regulation [inserted by OP], expressed as a percentage of the total risk exposure amount within the meaning of Article 87(3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

(iii) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 87(1)(c) of Regulation [inserted by OP], expressed as a percentage of the total risk exposure amount within the meaning of Article 87(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

(iv) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 87(1)(c) of Regulation [inserted by OP], expressed as a percentage of the total risk exposure amount within the meaning of Article 87(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{2{,}5\% + ISCCB}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{2{,}5\% + ISCCB}{4} \times Q_n$$

"ISCCBR" means "Institution specific countercyclical capital buffer rate" and "Qn" indicates the ordinal number of the quartile concerned.

5. The restrictions imposed by this Article shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.

6. Where an institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (a) to (c) of paragraph 2, it shall notify the competent authority and provide the following information:

(a) the amount of capital maintained by the institution, subdivided as follows:

(i) Common Equity Tier 1 capital,

(ii) Additional Tier 1 capital,

(iii) Tier 2 capital;

(b) the amount of its interim and year-end profits;

(c) the MDA calculated in accordance with paragraph 4;

(d) the amount of distributable profits it intends to allocate between the following:

(i) dividend payments,

(ii) share buybacks,

(iii) payments on Additional Tier 1 instruments,

(iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

7. Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the competent authority on request.

8. For the purposes of paragraphs 1 and 2, a distribution in connection with Common Equity Tier 1 capital shall include the following:

(a) a payment of cash dividends;

(b) a distribution of fully or partly paid bonus shares or other capital instruments mentioned in Article 24(1)(a) of Regulation [inserted by OP];

(c) a redemption or purchase by an institution of its own shares or other capital instruments mentioned in Article 24(1)(a) of that Regulation;

(d) a repayment of amounts paid up in connection with capital instruments mentioned in Article 24(1)(a) of that Regulation;

(e) a distribution of items referred to in points (b) to (e) of Article 24(1) of that Regulation.

Article 132

Capital Conservation Plan

1. Where an institution fails to meet its Combined Buffer Requirement, it shall prepare a capital conservation plan and submit it to the competent authority no later than 10 working days after it identified that it was failing to meet that requirement.

2. The capital conservation plan shall include the following:

   (a) estimates of income and expenditure and a forecast balance sheet;

   (b) measures to increase the capital ratios of the institution;

   (c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;

   (d) any other information the competent authority deems necessary to carry out the assessment required by paragraph 3.

3. The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the competent authority considers appropriate.

4. If the competent authority does not approve the capital conservation plan in accordance with paragraph 3, it shall impose one or both of the following measures:

   (a) require the institution to increase own funds to specified levels within specified periods;

   (b) exercise its powers under Article 99 to impose more stringent restrictions on distributions than those required by Article 131.

Title VIII

Disclosure by competent authorities

Article 133

General requirements

1. Competent authorities shall publish the following information:

   (a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;

   (b) the manner of exercise of the options and discretions available in Union legislation;

   (c) the general criteria and methodologies they use in the review and evaluation referred to in Article 92;

   (d) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II of this Directive and Articles 54 and 58 of Directive 2004/39/EC, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with Article 991(a), and of administrative sanctions taken in accordance with Article 65.

2. The information published according to paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. The disclosures shall be published following a common format, and updated regularly. The disclosures shall be accessible at a single electronic location.

3. EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the information listed in paragraph 1.

   EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

Article 134

Specific disclosure requirements

1. For the purpose of Part Five of Regulation [inserted by OP], competent authorities shall publish the following information:

   (a) the general criteria and methodologies adopted to review the compliance with Articles 394 to 398 of Regulation [inserted by OP];

   (b) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 394 to 398 of Regulation [inserted by OP] identified on an annual basis.

2. The competent authority of the Member States exercising the discretion laid down in Article 6 (3) of Regulation [inserted by OP] shall publish all the following:

   (a) criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

   (b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 6 (3) of Regulation [inserted by OP] and the number of these which incorporate subsidiaries in a third country;

(c) on an aggregate basis for the Member State:

(i) the total amount of own funds on the consolidated basis of the parent institution in a Member State, which benefits from the exercise of the discretion laid down in Article 6 (3) of that Regulation, which are held in subsidiaries in a third country;

(ii) the percentage of total own funds on the consolidated basis of parent institutions in a Member State which benefits from the exercise of the discretion laid down in Article 6 (3) of that Regulation, represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 87 of Regulation [inserted by OP] on the consolidated basis of parent institutions in a Member State, which benefits from the exercise of the discretion laid down in Article 6 (3) of Regulation [inserted by OP], represented by own funds which are held in subsidiaries in a third country.

3. The competent authority which exercises the discretion laid down in Article 8 (1) of Regulation [inserted by OP] shall publish all the following:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 8 (1) of Regulation [inserted by OP] and the number of these which incorporate subsidiaries in a third country;

(c) on an aggregate basis for the Member State

(i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 8 (1) of Regulation [inserted by OP] which are held in subsidiaries in a third country;

(ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 8 (1) of Regulation [inserted by OP] represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 87 of Regulation [inserted by OP] of parent institutions which benefit from the exercise of the discretion laid down in Article 8 (1) of that Regulation represented by own funds which are held in subsidiaries in a third country.

Title IX

Delegated and implementing acts

Article 135

Delegated Acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 138 concerning the following aspects:

(a) clarification of the definitions referred to in Article 4 and Article 122 to ensure uniform application of this Directive;

(b) clarification of the definitions referred to in Article 4 and Article 122 in order to take account, in the application of this Directive, of developments on financial markets;

(c) the alignment of terminology on, and the framing of definitions referred to in Article 4 in accordance with subsequent acts on institutions and related matters;

(d) expansion of the content of the list referred to in Articles 33 and 34 and set out in Annex I to this Directive or adaptation of the terminology used in that list to take account of developments on financial markets;

(e) the areas in which the competent authorities shall exchange information as listed in Article 51;

(f) adjustment of the provisions in Articles 75 to 86 and 94 in order to take account of developments on financial markets (in particular new financial products) or in accounting standards or requirements which take account of Union legislation, or with regard to the convergence of supervisory practices;

(g) adjustments of the criteria set out in Article 23(1), in order to take account of future developments and to ensure the uniform application of this Directive.

Article 136

Implementing Acts

The following measures shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 137(2):

(a) technical adjustments to the list in Article 2;

(b) alteration of the amount of initial capital prescribed in Article 12 and Title IV to take account of developments in the economic and monetary field.

Article 137

European Banking Committee

1. For the adoption of implementing acts, the Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC. That committee shall be a committee within the meaning of Article 3(2) of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No. 182/2011 shall apply.

Article 138

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 135 shall be conferred for an indeterminate period of time from the date referred to in Article 153.

3. The delegation of powers referred to in Article 135 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 135 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Title X

Amendments of Directive 2002/87/EC

Article 139

Amendment of Directive 2002/87/EC

1. In Article 21a(2), point (a) is deleted.

2. After Article 21a(2a), the following paragraph is inserted:

"(3) In order to ensure uniform conditions of application of the calculation methods listed in Annex I part II in conjunction with Article 46(1) of Regulation [inserted by OP] and Article 228(1) of Directive 2009/138/EC, EBA, EIOPA and ESMA shall, through the Joint Committee, develop draft regulatory technical standards with regard to Article 6(2).

ESA 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 third paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010."

Title XI

Transitional and final provisions

Chapter 1

Transitional provisions on the supervision of credit institutions exercising the freedom of establishment and the freedom to provide services

Article 140

Scope

1. The provisions in this Chapter shall apply instead of Articles 40, 41, 43, 49, 51 and 52 until the liquidity coverage requirement is implemented as a binding standard according to Article 481 of Regulation [inserted by OP]. 2. In order to ensure that the phasing in of supervisory arrangements for liquidity is fully aligned with the development of uniform liquidity rules, the Commission shall be empowered to adopt delegated acts in accordance with Article 135 postponing the date referred to in paragraph 1 by up to 2 years, where uniform liquidity rules have not been introduced in the Union because international standards on liquidity supervision have not yet been agreed upon at the date referred to in the first subparagraph.

Article 141

Reporting requirements

Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 145 of this Directive, host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.

Article 142

Member State Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host

1. Where the competent authorities of a host Member State ascertain that a credit institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that State pursuant to the provisions of this Directive involving powers of the host Member State's competent authorities, those authorities shall require the credit institution concerned to put an end to that irregular situation.

2. If the credit institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly.

3. The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the credit institution concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

4. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the Member State in question, the credit institution persists in violating the legal rules referred to in paragraph 1 in force in the host Member State, the latter State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further irregularities and, in so far as is necessary, to prevent that credit institution from initiating further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for these measures on credit institutions.

Article 143

Precautionary measures

Before following the procedure provided for in Article 142, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question shall amend or abolish those measures.

Article 144

Responsibility

1. The prudential supervision of a credit institution, including that of the activities it carries on accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2. Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

3. The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Article 145

Liquidity supervision

Host Member States shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.

Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of their monetary policies.

Such measures may not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Article 146

Collaboration concerning supervision

The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

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.

Article 148

On-the-spot verifications

1. Host Member States shall provide that, where a credit institution authorised in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification of the information referred to in Article 51.

2. The competent authorities of the home Member State may also, for purposes of the verification of branches, have recourse to one of the other procedures laid down in Article 113.

3. Paragraphs 1 and 2 shall not affect the right of the competent authorities of the host Member State to carry out, in the discharge of their responsibilities under this Directive, on-the-spot verifications of branches established within their territory.

Chapter 2

Transitional provision on capital buffers

Article 149

Transitional provisions for capital buffer

1. This Article modifies the requirements of Articles 123 and 124 for a transitional period between 1 January 2016 and 31 December 2018.

2. For the period from 1 January 2016 until 31 December 2016:

   (a) the Capital Conservation Buffer shall consist of common equity Tier 1 equivalent to 0.625% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 87 (3) of Regulation [inserted by OP];

   (b) the institution specific Countercyclical Capital Buffer shall be no more than 0.625% of that total, with the result that the combined buffer requirement shall be between 0.625% and 1.25% of the total of the risk-weighted exposure amounts of the institutions.

3. For the period from 1 January 2017 until 31 December 2017:

   (a) the Capital Conservation Buffer shall consist of common equity Tier 1 equivalent to 1.25% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 87 (3) of Regulation [inserted by OP];

   (b) the institution specific Countercyclical Capital Buffer shall be no more than 1.25% of that total, with the result that the combined buffer requirement shall be between 1.25% and 2.50% of the total of the risk-weighted exposure amounts of the institutions.

4. For the period from 1 January 2018 until 31 December 2018:

(a) the Capital Conservation Buffer shall consist of common equity Tier 1 equivalent to 1.875% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 87 (3) of Regulation [inserted by OP];

(b) the institution specific Countercyclical Capital Buffer shall be no more than 1.875% of that total with the result that the combined buffer requirement shall be between 1.875% and 3.750% of the total of the risk-weighted exposure amounts of the institutions.

5. The requirement for a capital conservation plan and the restrictions on distributions referred to in Article 131 and Article 132 shall apply during the transitional period between 1 January 2016 and 31 December 2018 where institutions fail to meet the modified requirements set out in paragraphs 2 to 4.

6. Member States may impose a shorter transitional period than that specified in paragraph 1, 2 and 3 and thereby implement the Capital Conservation Buffer and the Countercyclical Capital Buffer from 1 January 2013. Where a Member State does so, it should make its decision known to relevant parties, including the Commission, EBA, ESRB and the supervisory college.

7. Where a Member State imposes a shorter transitional period for the Countercyclical Capital Buffer the shorter period shall apply only for the purposes of the calculation of the institution specific Countercyclical Capital Buffer by institutions that are authorised in the Member State for which the designated authority is responsible.

Chapter 3

Final provisions

Article 150

Review

1. By 1 April 2013 the Commission shall review and report on the provisions on remuneration in this Directive and Regulation [inserted by OP], with particular regard to their efficiency, implementation and enforcement, taking into account international developments. That review shall identify any lacunae arising from the application of the principle of proportionality to those provisions. The Commission shall submit its report to the European Parliament and the Council, and, if appropriate, a legislative proposal.

   The Commission's periodic review of the application of this Directive shall ensure that the way it is applied does not result in manifest discrimination between institutions on the basis of their legal structure or ownership model.

2. From 2014 onwards, EBA shall, in cooperation with EIOPA and ESMA, biannually publish a report about the extent legislation of Member States refers to external ratings and about steps taken by Member States to reduce such references. This report shall also outline how competent authorities meet their obligations set out in Article 76(1) and (2) and in Article 77(1)(b). This report shall also outline the degree of supervisory convergence in this regard.

3. By 31 December 2013, the Commission shall review and report on the application of Articles 103 and 104 and shall submit this report to the European Parliament and the Council, and if appropriate, a legislative proposal.

4. By 31 December 2016, the Commission shall review and report on the results achieved under Article 87(4), including the appropriateness of benchmarking diversity practices, and, shall submit this report to the European Parliament and the Council, and, if appropriate, a legislative proposal.

5. Upon receiving a mandate from the Commission, EBA shall explore whether financial sector entities which declare that they carry out their activities in accordance with Islamic banking principles are adequately covered by the provisions of this Directive and Regulation [inserted by OP]. The Commission shall review the report prepared by EBA and if appropriate submit a legislative proposal to the European Parliament and the Council.

Article 151

Transposition

1. By 31 December 2012 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive.

   Member states shall apply those provisions from [1 January 2013].

2. By way of derogation from paragraph 1, Title VII, Chapter 4 shall apply from 1 January 2016.

3. When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

4. Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 152

Repeal

Directives 2006/48/EC and 2006/49/EC together with their successive amendments, are repealed with effect from 1 January 2013.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 153

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

Article 154

Addressees

This Directive is addressed to Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

Annex I

List of activities subject to mutual recognition

1. Acceptance of deposits and other repayable funds.

2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3. Financial leasing.

4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market[1].

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following:

   (a) money market instruments (cheques, bills, certificates of deposit, etc.);

   (b) foreign exchange;

   (c) financial futures and options;

   (d) exchange and interest-rate instruments;

   (e) transferable securities.

8. Participation in securities issues and the provision of services related to such issues.

[1] OJ L 319, 5.12.2007, p. 1

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[1], when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition according to this Directive.

[1] OJ L 145, 30.4.2004, p. 1.

Annex II
Correlation Table

This Directive	Directive 2006/48/EC	Directive 2006/49/EC
Article 1	Article 1(1)	
Article 2(1)	Article 1(2)	
Article 2(2)	Article 1(3)	
Article 2(3)	Article 2	
Article 3	Article 5	
Article 4(1)		
Article 4(2)(a)	Article 4(20)	
Article 4(2)(b)		
Article 4(2)(c)		
Article 5(1)		Article 36(1)
Article 5(2)		Article 36(2)
Article 5(3)		
Article 5(4)		
Article 6	Article 128	
Article 7	Article 42b(1)	
Article 8	Article 40(3)	
Article 9(1)	Article 6(1)	
Article 9(2)	Article 6(2)	
Article 9(3)	Article 6(3) 1. subparagraph	
Article 9(4)	Article 6(3) 2. subparagraph	
Article 10	Article 7	
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