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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU

(Text with EEA relevance)

{SEC(2021) 380 final} - {SWD(2021) 320 final} - {SWD(2021) 321 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed amendment to Directive 2013/36/EU (the Capital Requirements Directive or CRD) is part of a legislative package that includes also amendments to Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR)[1].

In response to the Great Financial Crisis of 2008-09 (GFC), the Union implemented substantial reforms of the prudential framework applicable to banks in order to enhance their resilience and thus help prevent the recurrence of a similar crisis. Those reforms were largely based on international standards adopted since 2010 by the Basel Committee on Banking Supervision (BCBS)[2]. The standards are collectively known as the Basel III standards, the Basel III reforms or the Basel III framework[3].

The global standards developed by the BCBS have become increasingly important due to the ever more global and interconnected nature of the banking sector. While a globalised banking sector facilitates international trade and investment, it also generates more complex financial risks. Without uniform global standards, banks could choose to establish their activities in the jurisdiction with the most lenient regulatory and supervisory regimes. This might lead to a regulatory race to the bottom to attract bank businesses, increasing at the same time the risk of global financial instability. International coordination on global standards limits this type of risky competition to a large extent and is key for maintaining financial stability in a globalised world. Global standards also simplify the life of internationally active banks – among which are a good number of EU banks – as they guarantee that broadly similar rules are applied in the most important financial hubs worldwide.

The EU has been a key proponent of international cooperation in the area of banking regulation. The first set of post-crisis reforms that are part of the Basel III framework have been implemented in two steps:

- in June 2013 with the adoption of CRR[4] and CRD IV[5];
- in May 2019 with the adoption of Regulation (EU) 2019/876[6], also known as CRR II, and Directive (EU) 2019/878, also known as CRD V[7].

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1. COM(2021) 664.
2. Members of the BCBS comprise central banks and bank supervisors from 28 jurisdictions worldwide. Among the EU Member States, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, and Spain, as well as the European Central Bank are members of the BCBS. The European Commission and the EBA participate in BCBS meetings as observers.
3. The consolidated Basel III framework is available at https://www.bis.org/bcbs/publ/d462.htm.
4. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 321, 26.6.2013, p. 6).
5. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).
6. Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings (CIU), large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

The reforms implemented so far focused on increasing the quality and quantity of regulatory capital that banks have to hold to cover potential losses. Furthermore, they aimed at reducing banks' excessive leverage, increasing banks' resilience to short-term liquidity shocks, reducing their reliance on short-term funding and their concentration risk, and addressing too-big-to-fail problems[8].

As a result, the new rules strengthened the criteria for eligible regulatory capital, increased minimum capital requirements, and introduced new requirements for credit valuation adjustment[9] (CVA) risk and for exposures to central counterparties[10]. Furthermore, several new prudential measures were introduced: a minimum leverage ratio requirement, a short-term liquidity ratio (known as the liquidity coverage ratio), a longer-term stable funding ratio (known as the net stable funding ratio), large exposure limits[11] and macro-prudential capital buffers[12].

Thanks to this first set of reforms implemented in the Union[13], the EU banking sector has become significantly more resilient to economic shocks and entered the COVID-19 crisis on a significantly more stable footing when compared to its condition at the onset of the GFC.

In addition, temporary relief measures were taken by supervisors and legislators at the outset of the COVID-19 crisis. In its Interpretative Communication on the application of the accounting and prudential frameworks to facilitate EU bank lending supporting businesses and households amid COVID-19 of 28 April 2020[14], the Commission confirmed the flexibility embedded in the prudential and accounting rules as highlighted by the European Supervisory Authorities and international bodies. On that basis, in June 2020, the co-legislators adopted targeted temporary amendments to specific aspects of the prudential framework – the so-called CRR "quick fix" package[15]. Together with resolute monetary and fiscal policy measures[16], this helped banks to keep on lending to households and companies during the pandemic. This, in turn, helped mitigate the economic shock[17] resulting from the pandemic.

While the overall level of capital in the EU banking system is now considered satisfactory on average, some of the problems that were identified in the wake of the GFC have not yet been addressed. Analyses performed by the EBA and the ECB have shown that the capital

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7 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

8 See https://www.bis.org/publ/bcbs189.htm.

9 CVA is an accounting adjustment to the price of a derivative to account for counterparty credit risk.

10 These were the only significant changes to the part of the standards that deal with risk-based capital requirements that were introduced as part of the first stage of the Basel III reform.

11 A minimum requirement on large exposure limits was already a feature of Union legislation, but was a novelty for the Basel standards.

12 More specifically the capital conservation buffer (CCB), the countercyclical capital buffer (CCyB), the systemic risk buffer (SRB), and capital buffers for global and other systemically important banks (respectively, G-SII and O-SII).

13 Those first set of reforms have also been implemented in most jurisdictions worldwide as can be observed in the eighteenth progress report on adoption of the Basel regulatory framework published in July 2020 (see https://www.bis.org/bcbs/publ/d506.htm).

14 See https://ec.europa.eu/info/publications/200428-banking-package-communication_en.

15 See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0873&from=EN.

16 A comprehensive list of such measures has been collected by the ESBR, see "Policy measures in response to the COVID-19 pandemic".

17 In its COVID-19 vulnerability analysis published in July 2020, the ECB showed that the largest euro area banks would be sufficiently capitalised to withstand a short-lived deep recession and that the number of those banks with insufficient capital resources in case of a more severe recession would be limited (see https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200728_annex~d36d893ca2.en.pdf).

requirements calculated by EU banks using internal models demonstrated a significant level of variability that was not justified by differences in the underlying risks and that ultimately undermines the reliability and comparability of their capital ratios. In addition, the lack of risk sensitivity in the capital requirements calculated using standardised approaches results in insufficient or unduly high capital requirements for some financial products or activities (and hence for specific business models primarily based on them). In December 2017, the BCBS agreed on a final set of reforms[18] to the international standards to address these problems. In March 2018, the G20 Finance Ministers and Central Bank Governors welcomed these reforms and repeatedly confirmed their commitment to full, timely and consistent implementation. In 2019, the Commission announced its intention to table a legislative proposal to implement these reforms in the EU prudential framework.[19]

In light of the COVID-19 pandemic, the preparatory work of this proposal has been delayed. The delay reflected the BCBS's decision of 26 March 2020 to postpone the previously agreed implementation deadlines for the final elements of the Basel III reform by one year. [20]

Considering the above, the present legislative initiative has two general objectives: contributing to financial stability and contributing to the steady financing of the economy in the context of the post-COVID-19 crisis recovery. These general objectives can be broken down in four more specific objectives:

(1) to strengthen the risk-based capital framework, without significant increases in capital requirements overall;

(2) to enhance the focus on ESG risks in the prudential framework;

(3) to further harmonise supervisory powers and tools; and

(4) to reduce banks' administrative costs related to public disclosures and to improve access to banks' prudential data.

(1) To strengthen the risk-based capital framework

The temporarily stressed economic conditions have not modified the need to deliver on this structural reform. Completing the reform is necessary to address the outstanding issues, to further strengthen EU banks' financial soundness, putting them in a better position to support economic growth and withstand potential future crises, and to facilitate the comparability of capital levels across banks. The implementation of the final Basel III elements is also necessary to provide institutions with the necessary regulatory certainty, completing a decade-long reform of the prudential framework.

Finally, completing the reform is in line with the EU's commitment to international regulatory cooperation and the concrete actions some of its partners have announced or have already taken to implement the reform timely and faithfully.

(2) To enhance the focus on ESG risks in the prudential framework

Another equally important need for reform stems from the Commission's ongoing work on the transition to a sustainable economy. The Commission Communication on the European Green Deal (EGD)[21] and Commission Communication on achieving the EU's 2030 Climate

[18] See https://www.bis.org/bcbs/publ/d424.htm

[19] See https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6269.

[20] More specifically to 1 January 2023 for the starting date of application and to 1 January 2028 for the full application of the final elements of the reform.

[21] See https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX:52019DC0640.

Target ('Fit for 55')[22] clearly set out the Commission's commitment to transform the EU economy into a sustainable economy, while also dealing with the inevitable consequences of climate change. It also announced a Sustainable Finance Strategy[23] that builds on previous initiatives and reports, such as the action plan on financing sustainable growth[24] and the reports of the Technical Expert Group on Sustainable Finance[25], but reinforces the Commission's efforts in this area to bring them in line with the ambitious goals of the EGD.

The transition towards the Commission's sustainability goals requires unprecedented financing efforts to mitigate and adapt to climate change, rebuild natural capital and strengthen resilience and wider social capital. Public finances alone will not be enough. Private investment of the transition to a sustainable, carbon-neutral, circular and just economy needs to scale-up to meet the estimated amount of resources that need to be deployed to achieve these goals. Putting green and sustainable financing at the heart of the financial system is the aim of the Commission's strategy for green financing. Bank-based intermediation will therefore play a crucial role in financing the transition to a more sustainable economy. At the same time, this transition is likely to entail risks for banks that they will need to properly manage to ensure that risks to financial stability are minimised. This is where prudential regulation is needed and where it can play a crucial role. EU strategy acknowledged this and highlighted the need to include a better integration of environmental, social and governance (ESG) risks into the EU prudential framework. The present legal requirements alone are insufficient to provide incentives for a systematic and consistent management of ESG risks by banks.

(3) To further harmonise supervisory powers and tools

Another area of focus is the proper enforcement of prudential rules. Supervisors need to have at their disposal the necessary tools and powers to this effect (e.g. powers to authorise banks and their activities, assess the suitability of their management, or sanction them in case they break the rules). While the EU legislation ensures a minimum level of harmonisation, the supervisory toolkit and procedures vary greatly across Member States. This fragmented regulatory landscape in the definition of certain powers and tools available to supervisors and their application across Member States undermines the level playing field in the internal market and raises doubts about the sound and prudent management of EU banks and their supervision. This problem is particularly acute in the context of the Banking Union. Differences across 21 different legal systems prevent the Single Supervisory Mechanism (SSM) from performing its supervisory functions effectively and efficiently. Moreover, cross-border banking groups have to deal with a number of different procedures for the same prudential issue, unduly increasing their administrative costs.

(4) To reduce banks' administrative costs related to public disclosures and improve access to banks' prudential data.

This proposal is also necessary to further enhance market discipline. This is another important tool in order for investors to exercise their role of monitoring the behaviour of banks. To do so, they need to access the necessary information. The current difficulties related to the access to prudential information deprive market participants from the information they need about banks' prudential situations. This ultimately reduces the effectiveness of the prudential

[22] See https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=COM:2021:550:FIN
[23] See COM(2021) 390 final.
[24] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097.
[25] See https://ec.europa.eu/info/publications/sustainable-finance-high-level-expert-group_en.

framework for banks and potentially raises doubt about the resilience of the banking sector, especially in periods of stress. For this reason, the proposal aims to centralise disclosures of prudential information with a view to increase access to prudential data and comparability across industry. The centralisation of disclosures in a single access point established by the EBA is also aimed at reducing the administrative burden for institutions, especially small and non-complex ones.

Another cross-sectoral objective, providing a robust EU framework for third country groups providing banking services in the EU, has taken a new dimension after Brexit. The establishment of third country branches (TCBs) is fundamentally subject only to national legislation and harmonised to a very limited extent by the CRD. The recent report by the EBA[26] to the Institutions shows that the current patchy regulatory landscape offers TCBs significant opportunities for regulatory and supervisory arbitrage to conduct their banking activities on the one hand, whilst leading to a lack of supervisory oversight and increased financial stability risks for the EU on the other hand.

Supervisors often lack the information and powers that they need to properly address those risks. The absence of common prudential, governance and detailed supervisory reporting requirements, as well as the insufficient exchange of information between the authorities in charge of supervising different entities/activities of a third country group leaves blind spots. The EU is the only major jurisdiction where the consolidating supervisor does not have the full picture of the activities of third country groups operating via both subsidiaries and branches. These shortcomings are not only creating risks for the financial stability and market integrity of the EU, but also impacting the level playing field among third country groups operating across different Member States, as well as vis-à-vis banks headquartered in the EU.

- **Consistency with existing policy provisions in the policy area**

Several elements of the CRD and CRR proposals follow work undertaken at international level, or by the EBA, whilst other adaptations of the prudential framework have become necessary due to the practical experience gained since the national transposition and application of the CRD, including in the context of the Single Supervisory Mechanism.

The proposal introduces amendments to the existing legislation and renders it fully consistent with the existing policy provisions in the area of prudential regulation and supervision of banks. The review of the CRR and of the CRD aims at finalising the Basel III reform implementation in the EU introducing measures that are needed to further strengthen resilience of the banking sector.

- **Consistency with other Union policies**

Almost ten years passed since the European Heads of State and Governments agreed to create a Banking Union; two pillars of the Banking Union – single supervision and resolution – are in place, resting on the solid foundation of a single rulebook for all EU institutions.

This proposal aims at ensuring a continued single rulebook for all EU institutions, whether inside or outside the Banking Union. The overall objectives of the initiative, as described above, are fully consistent and coherent with the EU's fundamental goals of promoting financial stability, reducing the likelihood and the extent of taxpayers' support in case an

26 EBA/REP/2021/20. The CRD requires the EBA to report on the regulatory arbitrage resulting from the current different treatments of TCBs. This report takes stock of the national regimes for TCBs and confirms that significant differences persist in the national treatment of these branches and in the degree of involvement of the host-supervisor.

institution is resolved, as well as contributing to a harmonious and sustainable financing of economic activity, which is conducive to a high level of competitiveness and consumer protection.

Lastly, with the recognition of ESG-related risks and the incorporation of ESG elements in the prudential framework, this initiative complements the EU broader strategy for a more sustainable and resilient financial system.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal considers actions to frame the taking up, the pursuit and the supervision of the business of banks within the Union, with the objective of ensuring the stability of the internal market. One of the fundamental components of the Union's financial system, banking is currently providing the largest part of financing within the internal market. The Union has a clear mandate to act in the area of the internal market and the appropriate legal basis consists of the relevant Treaty Articles[27] underpinning Union competences in this area.

The proposed amendments are built on the same legal basis as the legislative acts that are being amended, i.e. Article 114 TFEU for the proposal for a regulation amending CRR and Article 53(1) TFEU for the proposal for a directive amending CRD.

• Subsidiarity (for non-exclusive competence)

The legal basis falls within the internal market area, which is considered a shared competence, as defined by Article 4 TFEU. Most of the actions considered represent updates and amendments to existing Union law, and as such, they concern areas where the Union has already exercised its competence and does not intend to cease exercising such competence. A few actions (particularly those amending the CRD) aim to introduce an additional degree of harmonisation in order to achieve consistently the objectives defined by that Directive.

Given that the objectives pursued by the proposed measures aim at supplementing already existing EU legislation, they can be best achieved at EU level rather than by different national initiatives. National measures aimed at, for example, implementing rules that have an inherent international footprint elements – such as a global standard like Basel III or better tackling ESG-related risks - into applicable legislation would not be as effective in ensuring financial stability as EU rules. In terms of supervisory measures, disclosures and third country branches, if the initiative is left at national level only, this may result in reduced transparency and increased arbitrage costs, leading to potential distortion of competition and affecting capital flows. Moreover, adopting national measures would be legally challenging, given that the CRR already regulates banking matters, including risk weights, reporting and disclosures and other CRR-related requirements.

The amendment of the CRR and the CRD is thus considered to be the best option. It strikes the right balance between harmonising rules and maintaining national flexibility where essential, without hampering the single rulebook. The amendments would further promote a uniform application of prudential requirements, the convergence of supervisory practices and ensure a level playing field throughout the internal market for banking services. This is

[27] The relevant Treaty Articles conferring the Union the right to adopt measures are those concerning the freedom of establishment (in particular Article 53 TFEU), the freedom to provide services (Article 59 TFEU), and the approximation of rules which have as their object the establishment and functioning of the internal market (Article 114 TFEU).

particularly important in the banking sector where many credit institutions operate across the EU internal market. Full cooperation and trust within the single supervisory mechanism (SSM) and within the colleges of supervisors and competent authorities outside the SSM is essential to ensure the effective supervision of credit institutions on a consolidated basis. National rules would not achieve these objectives.

- **Proportionality**

Proportionality has been an integral part of the impact assessment accompanying the proposal. The proposed amendments in different regulatory fields have been individually assessed against the proportionality objective. In addition, the lack of proportionality of the existing rules has been assessed in several domains and specific options have been analysed aiming at reducing administrative burden and compliance costs for smaller institutions.

For instance, the amendments introducing ex-ante notification requirements for banks on events with prudential relevance are subject to materiality thresholds, below which events need not be notified. Under the new third country branch framework, those branches that qualify as small and less risky (class 2 third country branches) are subject to comparably less stringent prudential and reporting requirements. Lastly, the new requirements for ex-ante fit-and-proper assessment have been calibrated to target only large financial institutions.

- **Choice of the instrument**

The measures are proposed to be implemented by amending the CRR and the CRD through a Regulation and a Directive, respectively. The proposed measures indeed refer to or further develop already existing provisions inbuilt in those legal instruments (i.e. the framework for calculating risk-based capital requirements, powers and tools made available to supervisors across the Union).

Some of the proposed CRD amendments affecting sanctioning powers would leave Member States with a certain degree of flexibility to maintain different rules at the stage of their transposition into national law.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission has taken several steps and carried out various initiatives in order to assess whether the current banking prudential framework in the EU and the implementation of the outstanding international standards are adequate to contribute to ensuring that the EU banking system is stable and resilient to economic shocks and remains a sustainable source of steady funding for the EU economy.

The Commission gathered stakeholders' views on specific topics in the areas of credit risk, operational risk, market risk, CVA risk, securities financing transactions, as well as in relation to the output floor. In addition to these elements related to the Basel III implementation, the Commission has also consulted on certain other subjects with a view to ensuring convergent and consistent supervisory practices across the Union and alleviating the institutions' administrative burden.

A public consultation carried out between October 2019 and early January 2020[28] had been preceded by a first exploratory consultation conducted in spring 2018[29], seeking first views of a targeted group of stakeholders on the international agreement. The results of the two consultations have fed into the preparation of the legislative initiative accompanying the impact assessment.

All the initiatives mentioned above have provided clear evidence of the need to update and complete the current rules in order to i) further reduce the risks in the banking sector, and ii) enhance the ability of institutions to channel adequate funding to the economy.

Annex 2 of the impact assessment provides a summary of the consultation.

- **Collection and use of expertise**

The Commission made use of the expertise of the EBA, which prepared an impact analysis on the implementation of Basel III reform finalisation[30]. In addition, the Commission services considered the ECB macroeconomic analysis. This is presented in the impact assessment and updates the previous macroeconomic analysis published in December 2019.

- **Impact assessment[31]**

The impact assessment considered a range of policy options across four key policy dimensions, in addition to the baseline situation where no Union action is taken. As shown by the simulation analysis and macroeconomic modelling developed in the impact assessment, implementing the preferred options and taking into account all the measures in the proposal is expected to lead to a weighted average increase in EU banks' minimum capital requirements of +6.4% to +8.4% in the long term (by 2030), after the envisaged transitional period. In the medium term (in 2025), the increase is expected to range between +0.7% and +2.7%.

According to estimates provided by the EBA, this impact could lead a limited number of large EU banks (10 out of 99 banks in the test sample) to have to raise collectively additional capital amounts (less than EUR 27bn for the 10 banks) in order to meet the new minimum capital requirements under the preferred option. To put this amount into perspective, the 99 banks in the sample (representing 75% of EU banking assets) held a total amount of regulatory capital worth EUR 1414bn at the end of 2019 and had combined profits of EUR 99.8bn in 2019.

While banks would incur one-off administrative and operational costs to implement the changes in the rules, the simplifications implied by several of the preferred options (e.g. removal of internally modelled approaches) are expected to reduce the recurring costs compared to today.

[28] See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12015-Alignment-EU-rules-on-capital-requirements-to-international-standards-prudential-requirements-and-market-discipline-/public-consultation_en.

[29] See https://ec.europa.eu/info/consultations/finance-2018-basel-3-finalisation_en

[30] In its report published in December 2020, the EBA provided the impacts on the same sample of 99 banks but based on Q2 2018 data which was used in their previous impact analysis. From Q2 2018 to Q4 2019, the total increase in minimum capital requirements decreased by over 5 percentage points (i.e. from +24.1% to +18.5%), while the capital shortfall across these banks has more than halved (from EUR 109.5 bn to EUR 52.2 bn).

[31] SWD(2021) 321 (RIA). The impact assessment did not include an assessment of the proposal on third country branches, as the EBA Report on which the analysis is based was released on 23 June 2021. An assessment on the impact of the proposal based on the EBA Report has been included in this Explanatory memorandum as part of the section on third country branches.

- **Regulatory fitness and simplification**

This initiative is aimed at completing the EU implementation of the international prudential standards for banks agreed by the BCBS between 2017 and 2020. It would complete the EU implementation of the Basel III reform that was launched by the Basel Committee in the wake of the GFC. That reform was in itself a comprehensive review of the prudential framework that was in place before and during the GFC, namely the Basel II framework (in the EU that framework was implemented through Directive 2006/48/EC, i.e. the original CRD). The Commission used the results of the comprehensive review by the BCBS of the prudential framework, together with input provided by the EBA, the ECB and other stakeholders, to inform its implementation work. Pending the implementation of the final Basel III reforms in the EU, a fitness check or refit exercise has not been carried out yet.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The proposal does not have implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

It is expected that the proposed amendments will start entering into force in 2023 at the earliest. The amendments are tightly inter-linked with other provisions of the CRR and the CRD that are already in force and have been monitored since 2014 and, with respect to the measures introduced by the risk reduction measures package, since 2019.

The BCBS and the EBA will continue to collect the necessary data for the monitoring of the key metrics (capital rations, leverage ratio, liquidity measures). This will allow for the future impact evaluation of the new policy tools. Regular Supervisory Review and Evaluation Process (SREP) and stress testing exercises will also help monitoring the impact of the new proposed measures on affected institutions and assessing the adequacy of the flexibility and proportionality provided to cater for the specificities of smaller institutions. Additionally, the EBA, together with the SSM and the national competent authorities, are developing an integrated reporting tool (EUCLID) which is expected to be an useful instrument to monitor and evaluate the impact of the reforms. Finally, the Commission will continue to participate in the working groups of the BCBS and the joint task force established by the European Central Bank (ECB) and by the EBA, that monitor the dynamics of institutions' own funds and liquidity positions, globally and in the EU, respectively.

- **Explanatory documents (for directives)**

No explanatory documents are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Independence of competent authorities

Recent developments showed the need for clearer and more operational provisions on the principle of independence of competent authorities. Therefore, Article 4 is amended to clarify how Member States must ensure that the independence of competent authorities, including their staff and governance bodies, is preserved. Minimum requirements are introduced to prevent conflicts of interests in the supervisory tasks of competent authorities,their staff and governance bodies, and EBA is mandated to develop guidelines in that regard, taking into account international best practices.

Supervisory powers

For it to be efficient, the Banking Union relies on the convergence of supervisory practices and, ultimately, on a sufficient degree of harmonisation of the various national rules framing the supervisory action. A certain number of discrepancies between Member States are, in this regard, considered as very detrimental to the proper functioning of the Banking Union. This is, in particular, the case of supervisory powers. While the CRD lists a minimum set of supervisory powers that must be available to competent authorities across the Union, some of them are already in place in many Member States while missing in others. This situation leads to an uneven playing field and, potentially, to regulatory arbitrage. It also makes impossible for some competent authorities to intervene in certain transactions conducted by a supervised entity that may raise strong prudential and/or money laundering/terrorism financing concerns.

To remedy this situation, the Commission's proposal expands the list of supervisory powers available in the CRD to competent authorities to cover operations such as acquisitions by a credit institution of a material holding in a financial or non-financial entity (new Chapter 3 in the current Title III), the material transfer of assets or liabilities (new Chapter 4) and merger or divisions (new Chapter 5). These supervisory powers will ensure that competent authorities are notified in advance (Articles 27a, 27f and 27j), have at their disposal all the necessary information to perform a prudential assessment of these operations, and can ultimately oppose to the completion of operations (Articles 27b, 27g and 27k) detrimental to the prudential profile of the supervised entities undertaking them.

These new supervisory powers are framed in order stay proportionate, and more specifically to avoid undue additional administrative burden for supervised entities and competent authorities. First of all, powers related to acquisition by credit institutions of qualifying holdings and transfers of assets and liabilities only apply in case of transactions deemed material. A tacit approval mechanism is provided for, similar to the one in place for the acquisition of material holdings in credit institutions, in order to give legal certainty to supervised entities and to prevent that competent authorities be obliged to engage in a standard procedure of adoption of decisions where these are not necessary. Only in the case of mergers and divisions, a prior approval from competent authorities is imposed in all cases (unless the operation is internal to a group), as long as it does not lead to a situation where the new entity stemming from the merger of the division would need to seek an authorisation as a credit institution or an approval as a financial holding company.

In addition, in order to ensure a proper articulation between the various assessments (possibly involving multiple competent authorities) that could have to be undertaken for one single operation, a close cooperation between the competent authorities involved is expected, and framed by requirements to cross notifications and information sharing (Articles 27c, 27h and 27k). To facilitate this cooperation, but also to ensure a proper streamlining of the notification and assessments processes and to avoid undue administrative burden for both supervised entities and competent authorities, a certain number of EBA mandates are proposed to supplement the legal framework envisaged in the CRD for these new supervisory powers. These mandates concern matters such as the information to be sent to the competent authorities, the assessment process, added detail on the relevant assessment criteria, or the cooperation between the various competent authorities which may be involved.

These amendments were subject to dedicated discussions within the Expert Group on Banking, Payments and Insurance.

Fit & Proper

The fit-and-proper framework is one of the least harmonised areas in EU bank supervisory law and, accordingly, amendments to the CRD are deemed necessary to ensure a more consistent, efficient and effective supervision of members of the management body and of key function holders. Despite the efforts made by regulators and supervisors[32] to ensure further supervisory convergence, legislative modifications are necessary to improve their oversight. The current framework for board members, based on national laws implementing the CRD, is largely principle-based and therefore does not detail how and when supervisors should conduct fit-and-proper assessments. As regards key function holders, the absence of a definition and a framework in the CRD has led some supervisors to not properly identify them and therefore to not carry out an assessment of their suitability to perform their duties, while others do it in a variety of ways. This fragmented regulatory landscape is an acute problem, particularly in the Banking Union. Therefore, in addition to the fit-and-proper criteria in Article 91, Articles 91a and 91b are introduced to clarify the role of banks and competent authorities for checking the compliance of board members, including the timing of such assessment. Articles 91c and 91d are added to set minimum requirements for key function holders.

To ensure financial stability, in urgent situations of removal or replacement of members of the management body or senior management in the context of application of early intervention measures or implementation of resolution action by the competent authorities and resolution authorities, the fit-and-proper assessment should be carried out after those persons have taken up their duties.

Clarification of the interplay between the failing or likely to fail declaration (FOLTF) and the withdrawal of authorisation

Article 18 is amended in order to clarify that where a credit institution is declared failing or likely to fail (FOLTF) by the competent authority or by the resolution authority, the competent authority is empowered to withdraw of the banking authorisation.

Some recent cases highlighted a suboptimal alignment between the prudential and the resolution frameworks. To make an example, under the Union's bank resolution framework, not only actual insolvency or actual illiquidity, but also likely insolvency and likely illiquidity constitute grounds for determining that a credit institution is FOLTF. Instead, national insolvency laws usually require actual insolvency and/or actual illiquidity to occur before an insolvency proceeding can be opened. Some of the elements which are embedded into the national legislative framework for insolvency cannot be addressed via changes to the CRD. However, it is proposed to clarify in Article 18, point (g) that in case a credit institution is

[32] See https://www.eba.europa.eu/regulation-and-policy/internal-governance/joint-esma-and-eba-guidelines-on the-assessment-of-the-suitability-of-members-of-the-management-body.
See https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.fap_guide_201705_rev_201805.en.pdf

FOLTF and, at the same time, it does not meet the other conditions to enter resolution (presence of public interest, absence of a market driven alternative to resolve the crisis), it should discontinue the banking business and be liquidated under national laws.

Environmental, social and governance (ESG) risks

New provisions are introduced and adjustments made to several Articles in the CRD and in the CRR in order to address the significant risks that credit institutions will face due to climate change and the profound economic transformations that are needed to manage this and other ESG risks. The provisions in Article 133 on the systemic risk buffer (SyRB) framework may already be used to address various kinds of systemic risks, which may include risks related to climate change. The relevant competent or designated authorities, as applicable, may require credit institutions to maintain a systemic risk buffer to address risks with the potential to have serious negative consequences for the financial system and the real economy in Member States, where imposing a systemic risk buffer rate is deemed effective and proportionate to mitigate the risk. According to Article 133(5), measures taken by the relevant competent or designated authorities under Article 133 can be applied across certain sets or subsets of exposures, for instance those subject to physical and transition risks related to climate change. The suitability of the macroprudential framework for dealing with such risks will be assessed in a comprehensive and structured way in the 2022 review of the macroprudential framework.

Article 73 and Article 74 of the CRD are amended to require that short, medium and long-term horizons of ESG risks be included in credit institutions' strategies and processes for evaluating internal capital needs as well as adequate internal governance.

A reference to the current and forward-looking impacts of ESG risks and a request for the management body to develop concrete plans to address these risks are also introduced in Article 76.

Article 87a of the CRD introduces a sustainability dimension in the prudential framework to ensure a better management of ESG risks and incentivise a better allocation of bank funding across sustainable projects, thus helping the transition to a more sustainable economy. Article 87a also enables competent authorities to review banks' alignment with the relevant Union policy objectives or broader transition trends relating to ESG factors and banks' management of ESG risks over the short, medium and long term, leading to an improved understanding of these risks and enabling competent authorities to address financial stability concerns that could arise from credit institutions' continuing to misprice ESG risks. To ensure the consistency of ESG risk assessments, Article 87a mandates the EBA to specify further the criteria for the assessment of ESG risks, including how they should be identified, measured, managed and monitored as well as how credit institutions should draw concrete plans to address and internally stress test resilience and long-term negative impacts to the ESG risks.

As regards the supervisory review and evaluation process (SREP), the EBA is given the power in Article 98 to issue guidelines on the uniform inclusion of ESG risks in the SREP.

In light of the relevance of future-looking stress tests for gauging environment-related as well as other ESG risks in the review and evaluation process (SREP) under Article 97, Article 100 is amended to enable the EBA together with the other ESAs to develop consistent standards for methodologies to stress test these risks, giving priority to environment-related risks as ESG risk data and methodologies evolve to capture the other factors.

To facilitate the SREP of the credit institutions' exposures, governance and management of ESG risks, Article 98 is amended to require competent authorities to assess the adequacy of institutions' exposures as well as of the arrangements, strategies, processes and mechanisms to manage these risks in their review and evaluation.

In order to facilitate the possibility for competent authorities to address ESG risks affecting the prudential situation of the bank over the short, medium and long term, and to reflect the specificities of these category of risks, a concrete supervisory power to address ESG risks is added in Article 104.

Direct provision of banking services in the EU by third country undertakings

Credit institutions are subject to prudential regulation and supervision to minimise the risk of failure and, when it occurs, to manage that failure to prevent that it may spread in a disorderly manner to other credit institutions and market players and lead to the collapse of the financial system (contagion risk). Hence, one of the main purposes of prudential regulation and supervision is to protect the financial stability of the Union and its Member States.

Taking into account this objective, it is essential to prevent that areas or segments in the markets may fall outside the scope or reach of the system of prudential regulation and supervision, as in this scenario risks could build up in those segments in an unchecked fashion and spread to other parts of the financial system with very damaging effects. This is particularly important for those parts of the financial markets where credit institutions are closely involved.

The financial crisis of 2008-2009 is the latest historical precedent which underlines how small market segments may become the source of significant threats to the financial stability of the Union and its Member States if left outside the scope of prudential regulation and supervision.

For that reason, the provision of banking services in the Union requires having a physical presence in a Member State through a branch or a legal person, as only through such physical presence credit institutions may be subject to effective prudential regulation and supervision in the Union. *A sensu contrario*, the provision of banking services in the Union without a branch or a legal person established in a Member State contributes to creating such type of market segments that fall outside the scope and reach of the Union's prudential regulation and supervision, where risks may build up unchecked and eventually threaten the financial stability of the Union or its Member States.

Hence, undertakings in third countries must set up a branch in a Member State and seek authorisation under Title VI of the CRD for that branch as a condition for being allowed to start conducting banking activities in that Member State. Article 21c is inserted in the CRD to set this requirement explicitly.

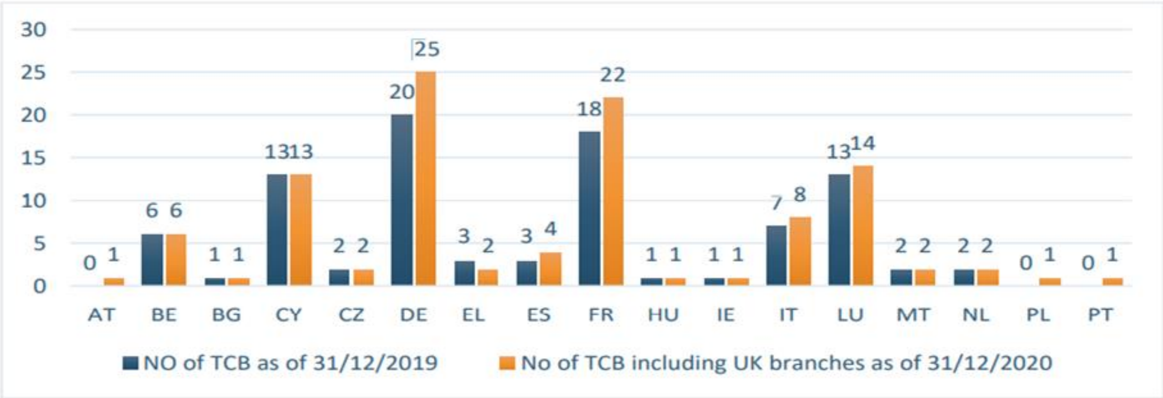
However, this requirement need not apply to cases where such third country undertakings engage in the provision of banking services with clients and counterparts in a Member State through reverse solicitation of services, as in such cases it is the relevant client or counterpart that approaches the undertaking in the third country to solicit the provision of the service.

Third country branches (TCBs)

Overview of TCBs in the EU[33]

As of 31 December 2020, there were 106 TCBs in the EU distributed across 17 Member States. The aggregate amount of total assets held by them on that date was just over EUR 510 billion, 86% of which was concentrated in only four Member States (Belgium, France, Germany and Luxembourg).

There seems to be a trend towards an increasing use of TCBs to access Member States' banking markets, insofar as the total number of TCBs went up by 14 and the amount of assets held by them by EUR 120.5 billion in 2020 relative to 2019.



Source: EBA Report on Third Country Branches

While a majority of TCBs (70 out of 106) held less than EUR 3 billion in assets, there were two individual TCBs holding assets in excess of EUR 30 billion, and another 14 TCBs held assets in an amount between EUR 10 billion and EUR 30 billion (compared to 6 on the same date of the previous year).

As of 31 December 2020, TCBs established in the EU originated from 23 third countries, the most numerous being from China (18), UK (15), Iran (10), USA (9) and Lebanon (9). Several third country groups (23) have TCBs in more than one Member State. In addition, some of those third country groups also have one or more subsidiaries in the EU. For instance, 14 third country groups have both a TCB and a subsidiary in the same Member State. Of these, 9 third country groups have one subsidiary and two or more TCBs in the EU. Two third country groups have a double presence comprising a TCB and a subsidiary in more than one Member State. The largest 15 third country groups operating in the EU hold more than ¾ of their EU assets via TCBs. As regards the impact of TCBs' presence in the EU, it can be measured using the following two metrics:

(a) the ratio of TCBs' aggregate total asset amount per Member State as at 31 December 2019 against the size of the national banking system[34]. This ratio is lower than 1% in 7 Member States, between 1% and 10% in 6 Member States and increases to over 25% in 1 Member State.

[33] This section is based on the EBA Report on the treatment of incoming third country branches under the national law of Member States of 23 June 2021 (Report on third country branches.docx (europa.eu))

[34] This metric is determined using CBD2 data which refers to data published by the ECB regarding 'Domestic banking groups and stand-alone banks, foreign (EU and non-EU) controlled subsidiaries and foreign (EU and non-EU) controlled branches' for December 2019.

(b) the ratio of TCBs' aggregate total asset amount per Member State as at 31 December 2019 against the size of the national GDP. This ratio is lower than 1% in 7 Member States, between 1% and 10% in 6 Member States and increases to over 25% in 1 Member State.

As for business models and based on available information, 50 TCBs operate as universal banks, while 48 operate only as wholesale banks. Only 4 TCBs operate as retail banks.

Current challenges

As shown in the preceding section, the footprint of TCBs in the EU is already highly significant. In various cases, TCBs hold collectively a very material amount of assets relative to the size of the GDP of their Member State of establishment and of the banking sector of that same Member State. For some TCBs, the individual asset size exceeds the threshold that would make them qualify as significant institutions under the direct supervision of the European Central Bank (ECB) in the context of the Single Supervisory Mechanism (SSM). However, TCBs remain outside the scope of the SSM and not subject to the supervisory requirements laid down in the CRD as they are not credit institutions authorised under Chapter 1 of Title III of that Directive.

In contrast to such background, the establishment of TCBs to provide banking services[35] in the EU is essentially subject to national legislation, as only high level information obligations in relation to them have recently been harmonised as part of CRDV. This creates a patchy regulatory landscape that gives rise to disparate requirements on TCBs in each Member State and to significant challenges for competent authorities to monitor properly the risks that result from the activities they conduct in the EU. For instance:

(a) given the complete absence of a common prudential or governance regulatory framework on TCBs, some of them are subject to only limited requirements in certain Member States;

(b) current EU-wide supervisory cooperation mechanisms do not capture TCBs, which creates blind spots insofar as TCBs generate risks that can spill over in an unfettered fashion to other group entities or to the market. For example, as there is no requirement for competent authorities to exchange comprehensive information on TCBs, authorities supervising a third country group in one Member State lack sufficient information on the TCBs of the same group in another Member State and, by the same token, they also lack adequate tools to deal with such potential spill-over risks;

(c) several third country groups use complex legal structures through a mix of subsidiaries and branches or, depending on the services provided, cross-border operations, to conduct their activities in the EU. Such complex structures can be opaque and very difficult for competent authorities to properly supervise given the different and disjointed set of requirements that apply to each of those. For example, double-hatting of board members can lead to conflicts of interest, while flexible booking and accounting may lead to shifting risk from one entity to the other;

35 These refer to any activities among those listed in Annex I of the CRD when performed by credit institutions, provision of investment services at a large scale as defined in Article 4(1), point (1)(b), and the provision of core banking activities (those listed in points (1) to (3) and (6) by any third country undertaking.

(d) while TCBs should provide services only in the Member States where they are established[36], enforcing compliance with this requirement is not only difficult, but made almost impossible under the current framework due to the growing trend of financial services' digitalisation.

TCBs also raise regulatory arbitrage concerns. Where the Member State of establishment imposes low prudential standards, TCBs may effectively allow third country groups to undercut EU banking requirements where their head office is subject to less stringent prudential or supervisory standards in the relevant third country.

Harmonised TCBs framework

Given the material footprint that TCBs already have in EU banking markets and the currently scattered and disjointed prudential and supervisory requirements that they are subject to, there are obvious risks to the financial stability and market integrity of the EU, as well as opportunities for regulatory arbitrage that need addressing through a new harmonised TCBs framework.

While maintaining the status quo is not a desirable option, subjecting TCBs to the full set of prudential and supervisory requirements that apply to credit institutions under the CRR and the CRD might be disproportionate, as it would not cater appropriately for their distinct features relative to credit institutions with their head office in the EU, and would have a material detrimental effect on such TCBs.

Instead, a more appropriate way forward would be to create an ad hoc set of minimum-harmonising requirements that builds on existing national frameworks of Member States currently in force and ensures minimum standards and consistent requirements throughout the Union . Such framework would provide the necessary clarity, predictability and transparency for third country undertakings wishing to conduct banking services through branches in one or various Member States. It would also align the EU requirements on TCBs with prevailing international practices, insofar as numerous third countries apply similar or equivalent requirements to branches of foreign banks active in their territories.

Title VI of the CRD is, therefore, amended to include provisions on the following:

(a) **authorisation**: the establishment of TCBs is subject to an explicit authorisation procedure and minimum requirements. Those requirements must include cooperation and information arrangements whereby the competent authorities of the TCBs i) have access to enough information on the undertaking in the third country that is the branch's head office (the TCB's "head undertaking") and ii) are able to cooperate with the supervisory authorities of the head undertaking insofar as necessary or relevant to effectively supervise the TCB in the Member State;

(b) **minimum regulatory requirements**: these comprise obligations on TCBs to:

(i) maintain a minimum capital endowment, calculated as a percentage of the branch's liabilities for larger and riskier TCBs (class 1) or a fixed amount for smaller TCBs (class 2);

[36] According to Recital 19 of the CRD: "The branches of credit institutions authorised in third countries should not enjoy the freedom to provide services under the second paragraph of Article 49 of the Treaty or the freedom of establishment in Member States other than those in which they are established". A TCB can only provide cross-border investment services to professional clients and eligible counterparties if the services are provided by branches authorised under MiFID and in case of an equivalence decision pursuant to Article 47(3) of MIFIR (see Annex 3). However, no equivalence decision has been taken or is envisaged in the near future.

(ii) comply with a liquidity requirement, which for class 1 TCBs must be the same as the liquidity coverage requirement that applies to credit institutions in accordance with Commission Delegated Regulation (EU) 2015/61;

(iii) meet internal governance and risk control requirements, and to implement booking arrangements in order to track the assets and liabilities linked to the business conducted by the TCB in the Member State.

(c) **reporting requirements:** TCBs are required to report regularly to their competent authorities i) information on their compliance with the requirements laid out in the CRD and in national law and ii) financial information in relation to the assets and liabilities on their books;

(d) **supervision**: competent authorities are required to conduct regular reviews of TCBs' compliance with their regulatory requirements, including for AML purposes, and take supervisory measures to ensure or restore compliance with those requirements. Competent authorities of class 1 TCBs are required to include them in the colleges of supervisors of the relevant group, where one already exists, or otherwise set up an ad hoc college for class 1 TCBs of the same group operating in more than one Member State.

For reasons of **proportionality**, and in particular to avoid any unnecessary additional administrative burden for small(er) TCBs, the scope and level of prudential requirements is modulated to differentiate between class 1 and class 2 TCBs. The former class comprises the larger TCBs (i.e. those holding assets equal to or in excess of EUR 5 billion), as well as TCBs authorised to take deposits from retails customers and TCBs considered "non-qualifying", the latter two regardless of their size. Class 2 comprises all TCBs not classified as class 1.

A TCB is considered 'qualifying' where its head office is established in a country i) that has in place a supervisory and regulatory framework for banks and confidentiality requirements that have been assessed as equivalent to those in the Union and ii) that is not listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing.

Member States must ensure that their competent authorities have the necessary powers to require TCBs established in their territory to apply for authoritisation as subsidiary institutions under the CRD in specific cases (**power to subsidiarise**). For instance, this power must be capable of being used on a TCB that engages in transactions or business with counterparts in other Member States in contravention of the internal market rules. Moreover, the same power must also be available for using in cases where a TCB poses risks to the financial stability of the relevant Member State or of the EU, taking into account certain systemic risk indicators laid down in the CRD and further detailed in regulatory technical standards.

Where TCBs have assets on their books in an amount equal to or higher than EUR 30 billion, competent authorities must assess on a regular basis whether such TCBs pose a level of risk to the financial stability of the respective Member State and of the EU that is analogous to institutions defined as "systemic" under the CRR and the CRD (**assessment of systemic importance**). The EUR 30 billion threshold must be calculated taking into account the assets booked by all the TCBs belonging to the same third country group in the EU, whether in a single or in various Member States, and measured either as an average over a period of three consecutive years or as a minimum absolute threshold reached for at least 3 years over a period of 5 consecutive years. For the purposes of carrying out the systemic importance assessment, competent authorities must have regard to the systemic risk indicators referred to in the preceding paragraph. Where, in the light of those indicators, competent authorities conclude that the relevant TCBs are systemic, they may require such TCBs to apply for authoritisation as subsidiary institutions under the CRD in order to continue conducting banking activities in the Member State and the EU (**requirement to subsidiarise**). Alternatively, competent authorities may decide either (i) to require the TCBs to restructure their activities or assets so that that they cease to meet the criteria of systemic importance or the EUR 30bn threshold (**requirement to restructure**); or (ii) to impose additional Pillar 2 requirements on the third country group's TCBs and subsidiary institutions in the EU (e.g. additional capital, liquidity, reporting or disclosure requirements), where those Pillar 2 requirements are appropriate and sufficient to mitigate potential risks to financial stability (**Pillar 2 requirements**). Competent authorities may only decide not to impose any of the above requirements on the TCBs where they can justify that the risks that such TCBs pose to financial stability and market integrity would not significantly increase in the absence of those requirements (**decision to defer**). Competent authorities must reassess their decision to defer within one year from the date the decision was made.

The assessment of systemic importance of TCBs belonging to a third country group with branches and subsidiaries across the EU must be led by (i) the consolidating supervisor of the relevant group in the Union, where Article 111 of the CRD applies; (ii) the competent authority that would become the consolidated of the group in the EU in accordance with that Article if the TCBs were treated as subsidiary institutions; or (iii) EBA, where the lead competent authority has not commenced the assessment or the hypothetical consolidated supervisor has not been determined within a period of three months. The decision whether to impose any of the above-referred requirements or to defer imposing such requirements on TCBs assessed as systemic, must be taken as a joint decision by the lead competent authority and the competent authorities responsible for supervising the TCBs and subsidiaries of the same third country group.

Furthermore, the new TCB framework does not supersede or prevent any discretion that Member States may currently have to impose a requirement of general application on undertakings established in certain third countries to conduct banking activities in their territory through subsidiaries authorised in accordance with Chapter 1 of Title III of the CRD.

Impact of the new framework

Under the proposed new framework, TCBs currently operating in the EU will need to be re-authorised. However, the compliance and transitional costs associated with this authorisation and on-going operation would be significantly mitigated by the following circumstances:

(a) TCBs will have a transitional period of 12 months following the 18 months transposition period of the Directive to obtain the authorisation and, therefore, will be able to spread out the transitional costs over that period;

(b) the authorisation and prudential requirements are largely based on existing national requirements in various Member States and, since the new framework contains requirements very similar to those, TCBs would only need to incur limited costs to adapt;

(c) based on 31 December 2020 data, up to 40 out of 106 TCBs authorised to operate in various Member States would have qualified as class 2 and, hence, those 40 would be subject to comparatively less stringent prudential and reporting requirements under the new framework;

(d) based on the same data and as of that date, only 3 TCBs had assets on their books in excess of EUR 30 billion and, thus, would be subject to the assessment of systemic importance.

While TCBs may be subject to additional costs to comply with the new reporting requirements, these would be justified in order to meet the objective of enhancing the protection of financial stability and market integrity.

Review of the administrative sanctioning regime

Periodic penalty payments are introduced as a new enforcement tool aimed at ensuring that credit institutions swiftly comply with the prudential rules. In addition, a clear distinction is made between periodic penalty payments and administrative penalties. The list of breaches subject to administrative penalties and sanctions is supplemented with prudential requirements currently missing on the list of sanctionable breaches under article 67 of the CRD. Articles 66 and 67 of CRD are amended to clarify the definition of "*total annual net turnover*" and define it by reference to the business indicator in the new Article 314 of the CRR.

To ensure a level playing field in the field of sanctioning powers, Member States are required to provide for administrative penalties, periodic penalty payments and other administrative measures in relation to breaches of national provisions transposing the CRD and the CRR. In addition, procedural safeguards are introduced for the effective application of penalties especially in the case of accumulation of administrative and criminal penalties on the same breach. To this end, Article 70 of CRD is amended to require Member States to lay down rules on the cooperation between competent authorities and judicial authorities in cases of duplication of criminal and administrative proceedings and penalties on the same breach. These rules are intended to provide for a sufficient level protection for the natural or legal person subject to this duplication of proceedings in accordance with the "*ne bis in idem principle*".

Review of the composition of Pillar 2 requirements

In order to enhance the internal coherence of the regulatory framework, CRD V aligned the nature of regulatory capital that banks must hold to meet the Pillar 2 capital requirement with the minimal capital composition of the Pillar 1 capital requirement. By derogation from the general rule set out in Article 104a(4) of the CRD, supervisors have the discretion to decide, on a case by case basis, to impose Pillar 2 capital requirements with a higher share of Tier 1 capital or CET 1 capital. This new treatment has been implemented only recently during the COVID-19 crisis. While it is still too early for comprehensive conclusions on the recent alignment, a first review has confirmed the usefulness of a consistent standard composition of minimum (Pillar 1) and additional (Pillar 2) capital requirements.

Adjustments accompanying the introduction of the output floor

The introduction of the output floor (OF) in the calculation of the total risk exposure amount (TREA) as set out in Article 92 of the CRR will have an impact on those own funds requirements set out in the CRD the calculation of which depends on TREA. Those requirements are the capital conservation buffer (CCB) requirement, the countercyclical capital buffer (CCyB) requirement, the buffer requirements for global systemically-important and other systemically-important institutions (G-/O-SIIs), the systemic risk buffer (SyRB) requirement, and – to the extent a competent authority uses an approach that sets it as a percentage of TREA from the outset[37] – the institution-specific Pillar 2 requirement (P2R).

Two of those requirements, namely the P2R and the SyRB, can be used to address risks that are similar in nature to those addressed by the OF. Consequently, there is a possibility that certain risks (e.g. model risk[38]) could be double-counted once the OF starts to apply. This needs to be avoided. The EBA's advice on the Basel III finalisation includes a specific recommendation on this issue and calls, more generally, on competent and designated authorities to reconsider the appropriate level of P2R and the SyRB, respectively, once the OF will start to apply.

In view of the above, the proposal amends Articles 104a and 133 of the CRD - setting out the rules on the P2R and the SyRB, respectively - by introducing safeguards aimed at preventing unjustified increases in the P2R and the SyRB requirement following an institution becoming bound by the OF[39]:

- the P2R and the SyRB requirement will be "frozen" to avoid automatic (also referred to as "arithmetic") increases in the amount of regulatory capital required under those two requirements. This safeguard is justified by the fact that the increase in RWAs due to the institution becoming bound by the OF is, all else being equal, purely arithmetic and is not reflective of an actual increase in risks that would justify requiring additional capital from the institution;
- the institution's competent authority will be required to review the calibration of the P2R and the competent or designated authority, as applicable, will be required to review the calibration of the the SyRB requirement, respectively, to establish whether double-counting of risk is present, and if so, to re-calibrate those requirements to avoid such double-counting;
- the two requirements will remain frozen until the respective reviews will be concluded and the relevant decisions on the appropriate calibration of the requirements will be announced[40].

Articles 104a and 133 of the CRD are also amended to clarify that the P2R and the SyRB requirement cannot be used to cover risks that are already fully covered by the OF.

Finally, Article 131 is amended to require competent or designated authorities, as applicable, to review the calibration of the O-SII buffer requirement of an O-SII when that O-SII becomes bound by the OF, to make sure that the calibration remains appropriate.

Disclosure

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37 Instead of first setting P2R as a nominal amount, which is subsequently expressed as a percentage of TREA to fit in the overall capital stack.

38 In this context, model risk should be understood as the risk that the own funds requirement calculated using internal models would not be commensurate to the risk inherent in the exposure for which the requirement is calculated.

39 An institution becomes bound by the OF when the institution's "floored" TREA (i.e. the TREA calculated by taking into account the OF) is higher than its "un-floored" TREA (i.e. the TREA calculated by not taking into account the OF). For further details on the functioning of the OF, please see the explanatory memorandum of the Regulation amending the CRR.

40 In the case of the P2R, the announcement will take the form of a letter from the competent authority to the supervised institution containing the results of the SREP and the institution's new P2R (of course, in case no double-counting will be identified, the P2R will remain unchanged). In the case of the P2R, the announcement will take the form of a new decision by the competent or designated authority, as applicable, on the appropriate calibration of the SyRB rate or rates.

Article 106 is amended to allow Member States to grant supervisors the power to require institutions to submit information to the EBA within a deadline. This follows the changes made to Articles 433 and 434 of the CRR, which require EBA to centralise the publication of institutions' disclosures. In addition, the proposal enables supervisors to allow institutions to use specific media and locations for publications other than the EBA website. This is in line with the proposed change to the CRR according to which, in addition to the centralised EBA's publication, institutions remain free to publish their own disclosures via other means.

Supervisory benchmarking of approaches for calculating own funds requirements

Article 78 is amended to add two types of approaches to calculate own funds requirements to the approaches included in the scope of the supervisory benchmarking, namely:

(a) modelling approaches used to calculate expected credit risk losses both under International Financial Reporting Standard (IFRS) 9 and under national accounting standards; and

(b) the alternative standardised approach for market risk set out in Part Three, Title IV, Chapter 1a of the CRR given that institutions can model certain parameters under that approach.

Since the approaches used to calculate expected credit risk losses can also be used by institutions using the standardised approach for credit risk set out in Part Three, Title II, Chapter 2 of the CRR, those institutions are also included in the scope of the supervisory benchmarking exercise. However, the EBA is required to decide which of those institutions must be included, taking into account the principle of proportionality.

Article 78 is also amended to allow for the possibility of reducing the frequency of the benchmarking exercises from annual to biennial in recognition of the fact that after a certain number of exercises are been carried out, a lower frequency is likely to be sufficient to monitor the outcomes of institutions' approaches. This will also reduce the administrative burden for institutions using the benchmarked approaches.

2021/0341 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU

(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[41],

Having regard to the opinion of the European Economic and Social Committee[42],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Competent authorities, their staff and members of their governance bodies should be independent of political and economic influence. Risks of conflicts of interest undermine the integrity of the Union financial system and harm the goal of an integrated banking and capital markets union. Directive 2013/36/EU should provide more detailed provisions for Member States to ensure that the competent authorities, including their staff and management, act independently and objectively. In this context, minimum requirements should be laid down to prevent conflicts of interests. The European Banking Authority (EBA) should issue guidelines addressed to competent authorities on the prevention of conflicts of interests, based on international best practices.

(2) Competent authorities should have the necessary power to withdraw the authorisation granted to a credit institution where such a credit institution has been declared failing or likely to fail and, at the same time, has not met the other conditions for resolution set out by Directive 2014/59/EU of the European Parliament and of the Council[43] or

[41] OJ C , , p. .

[42] OJ C , , p. .

[43] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

by Regulation (EU) No 806/2014 of the European Parliament and of the Council[44]. In such a situation, a credit institution should be wound up in accordance with the applicable national insolvency proceedings, or in other types of proceedings laid down for those institutions under national law, and should therefore discontinue the activities for which the authorisation had been granted.

(3) The provision of banking services in the Union is conditional upon the credit institution's having previous authorisation and a physical presence through a legal person or a branch in its territory. Only in that way credit institutions may be subject to effective prudential regulation and supervision that are necessary to minimise the risk of failure and, when it occurs, to manage that failure in order to prevent it from spreading in a disorderly manner and leading to the collapse of the financial system (contagion risk by e.g. a bank run or a bank failure triggered by imprudent lending). The provision of banking services in the Union without such physical presence would increase the presence and prevalence in the financial markets where credit institutions are closely involved of risk segments not subject to Union's prudential regulation and supervision, that may eventually threaten the financial stability of the Union or of its individual Member States. The financial crisis of 2008-2009 is the latest historical precedent, which underlines how small market segments may become the source of significant threats to the financial stability of the Union and its Member States if left outside the scope of prudential regulation and supervision. Hence, it is necessary to lay down an explicit requirement in Union law that undertakings established in a third country and seeking to provide banking services in the Union should at least establish a branch in a Member State and that such branch be authorised in accordance with Union legislation, unless the undertaking wishes to provide banking services in the Union through a subsidiary. However, that requirement to establish a branch should not apply to cases of reverse solicitation of services, as in this case it is the customer that approaches the undertaking in the third country to solicit the provision of the service.

(4) Supervisors of credit institutions should have all the necessary powers that enable them to perform their duties and that cover the various operations conducted by the supervised entities. To that end and to increase the level playing field, supervisors must have at their disposal all the supervisory powers enabling them to cover material operations that can be undertaken by the supervised entities. The European Central Bank and national competent authorities should therefore be notified in case a material operation, including acquisitions by supervised entities of material holdings in financial or non-financial entities, material transfers of assets and liabilities from or to a supervised entities, and mergers and divisions involving a supervised entities, undertaken by a supervised entity raises concerns over its prudential profile, or over possible money laundering and terrorist financing activities. Furthermore, the ECB and national competent authorities should have the power to intervene in such cases.

(5) Concerning mergers and divisions, the Directive (EU) 2017/1132 lays down harmonised rules and procedures, in particular for cross-border mergers and divisions of limited liability companies. Therefore, the assessment procedure by the competent authorities stipulated in this directive should be complementary to the Directive (EU)

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44 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

2017/1132 and should not contradict any of its provisions. In case of those cross-border mergers and divisions which fall under the scope of Directive 2017/1132, the motivated opinion issued by the competent supervisory authority should be part of the assessment of the compliance with all relevant conditions and the proper completion of all procedures and formalities required for the pre-merger or pre-division certificate. The motivated opinion should therefore be transferred to the designated national authority responsible for issuing the pre-merger or pre-division certificate under Directive 2017/1132.

(6) In order to ensure that competent authorities can intervene before one of these material operations is undertaken, they should be notified *ex ante*. That notification should be accompanied by information necessary for the competent authorities to assess the planned operation from a prudential and anti-money laundering and counter-terrorist financing perspective. That assessment by competent authorities should commence at the moment of the receipt of the notification including all the requested information and, in the case of the acquisition of a material holding or the material transfer of assets and liabilities, should be limited in time.

(7) In the case of the acquisition of a qualifying holding, or the material transfer of assets or liabilities, the conclusion of the assessment could lead the competent authority to decide to oppose to the operation. In the absence of opposition from the competent authorities within a given period, the operation should be deemed approved.

(8) In order to ensure proportionality and avoid undue administrative burden, those additional powers of competent authorities should be applicable only to operations deemed material. Only operations consisting in mergers or divisions should be treated automatically as material operations, as the newly created entity can be expected to present a significantly different prudential profile from the entities initially involved in the merger or division. Also, mergers or division should not be concluded by entities undertaking them before a prior positive opinion is received from the competent authorities. Other operations (including acquisition of holding and transfers of assets and liabilities), when considered material, should be assessed by the competent authorities based on a tacit approval procedure.

(9) In some situations (for instance when entities established in various Member States are involved), operations might require multiple notifications and assessments from different competent authorities, requiring an efficient cooperation among those authorities. It is therefore necessary to precise cooperation obligations, in particular early cross notifications, smooth exchange of information and coordination in the assessment.

(10) It is necessary to align provisions related to the acquisition of a qualifying holding in a credit institution with provisions on the acquisition of a qualifying holding by an institution, in case both assessments have to be undertaken for the same operation. Indeed, without proper articulation these provisions could lead to inconsistencies in the assessment undertaken by competent authorities, and ultimately the decisions taken by them. It is therefore necessary to provide for similar additional time provided to competent authorities to acknowledge receipt of the notification when the operation is considered complex).

(11) EBA should be mandated to develop regulatory technical standards and implementing technical standards to ensure an appropriate framing of the use of those additional supervisory powers. Those regulatory technical standards and implementing technical standards should, in particular, specify the information to be received by the

competent authorities, the elements to be assessed, and cooperation when more than one competent authorities are involved. Those various elements are crucial to ensure that a sufficiently harmonised supervisory methodology allows provisions on the additional powers to be implemented efficiently, with the minimum possible additional administrative burden.

(12) It is crucial that credit institutions, financial holding companies and mixed financial holding companies comply with the prudential requirements to ensure their safety and soundness and preserve the stability of the financial system, both at the level of the Union as a whole and in each Member State. Therefore, the ECB and national competent authorities should have the power to take timely and decisive measures where those credit institutions, financial holding companies and mixed financial holding companies and their effective managers fail to comply with the prudential requirements or supervisory decisions.

(13) To ensure a level playing field in the area of sanctioning powers, Member States should be required to provide for effective, proportionate and dissuasive administrative penalties, periodic penalty payments and other administrative measures in relation to breaches of national provisions transposing this Directive and breaches of Regulation (EU) No 575/2013 of the European Parliament and of the Council[45]. In particular, Member States can impose administrative penalties where the relevant breach is also subject to national criminal law. Those administrative penalties, periodic penalty payments and other administrative measures should meet certain minimum requirements, including the minimum powers that should be vested on competent authorities to be able to impose them, the criteria that competent authorities should take into account in their application, publication requirements or the levels of administrative penalties and periodic penalty payments. Member States should lay down specific rules and effective mechanisms regarding the application of periodic penalty payments.

(14) Administrative pecuniary penalties should have a deterrent effect in order to prevent the natural or legal person in breach of national provisions transposing Directive 2013/36/EU or in breach of Regulation (EU) No 575/2013 from engaging in the same or similar conduct in the future. Member States should be required to provide for administrative penalties, which are effective, proportionate and dissuasive. Furthermore, competent authorities should have regard to any previous criminal penalties that may have been imposed on the same natural or legal person responsible for the same breach when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties. This is to ensure that the severity of all the penalties and other administrative measures imposed for punitive purposes in case of accumulation of administrative and criminal proceedings is limited to what is necessary in the view of the seriousness of the breach concerned. To that end, it is essential to enhance the cooperation between competent authorities and judicial authorities in the case of accumulation of administrative and criminal proceedings against the same persons responsible for the same breach. Member States should lay down specific rules and mechanisms to facilitate such cooperation.

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45 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (*OJ L 176, 27.6.2013, p. 1).*

(15) Competent authorities should be able to impose administrative penalties on the same natural or legal person responsible for the same acts or omissions. However, such accumulation of proceedings and penalties on the same breach should pursue different objectives of general interest. Member States should lay down rules to provide for an appropriate coordination between administrative and criminal proceedings. Such rules should limit the imposition of accumulative penalties in relation to the same breach on the natural or legal person concerned to the strictly necessary in order to meet those different objectives. Furthermore, Member States should lay down rules to ensure that the severity of all the administrative and criminal penalties and other measures imposed in cases of accumulation of proceedings are limited to what is necessary in view of the seriousness of the breach concerned. Member States should also ensure that such duplication of proceedings and subsequent penalties comply with the *ne bis in idem* principle and that the rights of the natural or legal person concerned are duly protected.

(16) Administrative pecuniary penalties on legal persons should be applied consistently, in particular as regards the determination of the maximum amount of administrative penalties, which should take into account the total annual net turnover of the relevant undertaking. However, the current definition of the total annual net turnover in Directive 2013/36/EU is neither exhaustive enough nor sufficiently clear and complete to ensure a level playing field in the application of administrative pecuniary penalties. Therefore, it is necessary to clarify several elements of the current definition of total annual net turnover in order to avoid an inconsistent interpretation.

(17) In addition to administrative penalties, competent authorities should be empowered to impose periodic penalty payments on credit institutions, financial holding companies, mixed financial holding companies and their effective managers for failure to comply with their obligations under Directive 2013/36/EU, Regulation (EU) No 575/2013 or a decision issued by a competent authority. Those enforcement measures should be imposed where a breach of a requirement or supervisory decision of the competent authority is continuing. Competent authorities should be able to impose those enforcement measures without having to address a prior request, order or warning to the party in breach. Since the purpose of the periodic penalty payments is to compel natural or legal persons to terminate an ongoing breach, the application of periodic penalty payments should not prevent competent authorities from imposing subsequent administrative penalties for the same breach.

(18) It is necessary to lay down administrative penalties, periodic penalty payments and other administrative measures in order to ensure the greatest possible scope for action following a breach and to help prevent further breaches, irrespective of their qualification as an administrative penalty or other administrative measure under national law. Member States should therefore be able to provide for additional penalties and higher level of administrative pecuniary penalties.

(19) Competent authorities should impose periodic penalty payments that are proportionate and effective. Accordingly, the competent authority should take into account the potential impact of the periodic penalty payment on the financial situation of the legal or natural person in breach, and seek to avoid that the penalty would cause the legal or natural person in breach to become insolvent, lead it to serious financial distress or represent a disproportionate percentage of its total annual turnover.

(20) Where the legal system of the Member State does not allow the administrative penalties provided for in this Directive, the rules on administrative penalties may be

applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities. Therefore, it is necessary that those Member States ensure that the application of the rules and penalties has an effect equivalent to the administrative penalties imposed by the competent authorities. When imposing such penalties, judicial authorities should take into account the recommendation by the competent authority initiating the penalty. The penalties imposed should be effective, proportionate and dissuasive.

(21) In order to provide for appropriate sanctions for breaches of national provisions transposing Directive 2013/36/EU and Regulation (EU) No 575/2013, the list of breaches subject to administrative penalties, periodic penalty payments and other administrative measures should be supplemented. Therefore, the list of breaches under Article 67 of Directive 2013/36/EU should be amended.

(22) The regulation of branches established by undertakings in a third country to provide banking services in a Member State is subject to national law and only harmonised to a very limited extent by Directive 2013/36/EU. While third country branches have a significant presence in Union banking markets, they are currently subject only to very high level information requirements, but not to any Union-level prudential standards or supervisory cooperation arrangements. The complete absence of a common prudential framework leads to third country branches' being subject to disparate national requirements of varying level of prudence and reach. Furthermore, competent authorities lack comprehensive information and the necessary supervisory tools to properly monitor the specific risks created by third country groups operating in one or various Member States through both branches and subsidiaries There are currently no integrated supervisory arrangements in relation to them and the competent authority responsible for the supervision of each branch of a third country group is not obliged to exchanging information with the competent authorities supervising the other branches and subsidiaries of the same group. Such fragmented regulatory landscape creates risks to the financial stability and market integrity of the Union which should be properly addressed through a harmonised framework on third country branches. Such a framework should comprise minimum common requirements on authorisation, prudential standards, internal governance, supervision and reporting. This set of requirements should build on those that Member States already apply to third countries branches in their territories and should take into account similar or equivalent requirements that third countries apply to foreign branches, with the aim of ensuring consistency between Member States and aligning the Union third country branches framework with the prevailing international practices in this field.

(23) For reasons of proportionality, the requirements on third country branches should be catered relative to the risk that they pose to the financial stability and market integrity of the Union and the Member States. Third country branches should, therefore, be categorised as either class 1, where they are deemed riskier, or, otherwise, as class 2, where they are small and non-complex and do not pose a significant financial stability risk (consistently with the definition of "small and non-complex institution" in Regulation (EU) No 575/2013). Accordingly, third country branches with booked assets in the Member State in an amount equal to or in excess of EUR 5 000 000 000 should be regarded as posing such a greater risk due to their larger size and complexity, because their failure could lead to a significant disruption of the Member State's market for banking services or of its banking system. Third country branches authorised to accept retail deposits should also be regarded similarly as riskier regardless of their size, insofar as their failure would affect highly vulnerable

depositors and could lead to a loss of confidence in the safety and soundness of the Member State’s banking system to protect citizens’ savings. Both of those types of third country branches should, therefore, be categorised as class 1.

(24) Third country branches should also be classified as class 1 where the undertaking in the third country that is their head office (the “head undertaking”) is subject to regulation, oversight and implementation of such regulation that are not determined to be at least equivalent to Directive 2013/36/EU and Regulation (EU) No 575/2013 or where the relevant third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing in accordance with Directive (EU) 2015/849 of the European Parliament and of the Council[46]. Those third country branches pose a significant risk to the financial stability of the Union and of the Member State of establishment because the banking regulatory or anti-money laundering frameworks that apply to their head undertaking fail to adequately capture or permit a proper monitoring of the specific risks that arise from the activities conducted by the branch in the Member State or of the risks to counterparties in the Member State that arise from the third country group. For the purposes of determining the equivalence of the third country’s banking prudential and supervisory standards to the Union’s standards, the Commission should be able to instruct EBA to conduct an assessment in accordance with Article 33 of Regulation (EU) No 575/2013. EBA should ensure that the assessment is conducted in a rigorous and transparent manner and in accordance with a sound methodology. Furthermore, EBA should also consult and cooperate closely with the third countries’ supervisory authorities and government departments in charge of banking regulation and, where appropriate, private sector parties, endeavouring to treat those parties fairly and to give them the opportunity to submit documentation and make representations within reasonable timeframes. Furthermore, EBA should ensure that the report issued in accordance with Article 33 of Regulation (EU) No 575/2013 is adequately reasoned, sets out a detailed description of the assessed matters and is delivered within a reasonable timeframe.

(25) Competent authorities should have an explicit power to require on a case-by-case basis that third country branches apply for authorisation in accordance with Title III, Chapter 1 of Directive 2013/36/EU, at a minimum where those branches engage in activities with counterparts in other Member States in contravention of the internal market rules or where they pose a significant risk to the financial stability of the Union or of the Member State where they are established. Moreover, competent authorities should be required to periodically assess whether third country branches holding assets on their books in an amount equal to or higher than EUR 30 000 000 000 have systemic importance. All the third country branches that belong to the same third country group established in one Member State or across the Union should be jointly subject to such periodic assessment. That assessment should examine, in accordance with specific criteria, whether those branches pose an analogous level of risk to the financial stability of the Union or its Member States as institutions defined as “systemically important” under Directive 2013/36/EU and Regulation EU No

[46] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

575/2013. Where competent authorities conclude that the third country branches are systemically important, they should impose requirements on those branches that are appropriate to mitigate the risks to financial stability. For those purposes, competent authorities should be able to require the third country branches to apply for authoritisation as subsidiary institutions under Directive 2013/36/EU in order to continue conducting banking activities in the Member State or across the Union. Moreover, competent authorities should be able to impose other requirements, in particular an obligation to restructure the third country branches' assets or activities in the Union so that those branches stop being systemic, or a requirement to comply with additional capital, liquidity, reporting or disclosure requirements, where that would be sufficient to address the risks to financial stability. Competent authorities should have the possibility not to impose any of those requirements on third country branches assessed as systemic only where the competent authorities can justify that the risks that those branches pose to the financial stability and market integrity of the Union and the Member States would not significantly increase in the absence of such requirements for a period not exceeding one year.

(26) To ensure the consistency of supervisory decisions on a third country group with branches and subsidiaries across the Union, a lead competent authority should be designated to conduct the assessment of systemic importance. That role should correspond to the consolidated supervisor of the third country group in the Union, where Article 111 of Directive 2013/36/EU applies, or to the competent authority that would become the consolidated supervisor in accordance with that Article, should the third country branches of that group be treated as its subsidiaries. Where the relevant consolidated supervisor has not been determined or where the lead competent authority has not started the assessment of systemic importance within three months. EBA should, instead, perform that assessment. The lead competent authority, or, where applicable, EBA, should consult and cooperate fully with the competent authorities responsible for supervising the relevant third country group's subsidiaries and branches across the Union. The lead competent authority and those competent authorities should take a joint decision on whether to impose requirements on the third country branches assessed as systemic. For reasons of due process, the lead competent authority or, where applicable, EBA should ensure that the third country branches' right to be heard and to make representations are respected during the assessment of systemic importance.

(27) Competent authorities should conduct regular reviews of third country branches' compliance with relevant requirements under Directive 2013/36/EU, and take supervisory measures on those branches to ensure or restore compliance with those requirements. To facilitate the effective supervision of the requirements on third country branches and allow for a comprehensive overview of third country groups' activities within the Union, common supervisory and financial reporting should be made available to competent authorities in accordance with standardised templates. EBA should be mandated to develop draft implementing technical standards setting out those templates and the Commission should be empowered to adopt those draft implementing technical standards. Furthermore, it is necessary to implement appropriate cooperation arrangements between competent authorities to ensure that all the activities of third country groups operating in the Union through third country branches are subject to comprehensive supervision, to prevent the requirements applicable to those groups under Union law from being circumvented and to minimise the potential risks to the financial stability of the Union. In particular, class 1 third country branches should be included within the scope of the colleges of supervisors of

third country groups in the Union. Where such a college does not exist already, competent authorities should set up an *ad hoc* college for all class 1 third country branches of the same group where it operates in more than one Member State.

(28) The Union's third country branches framework should be applied without prejudice to the discretion that Member States may currently have to require on a general basis that third country undertakings from certain third countries conduct banking activities in their territory solely through subsidiary institutions authorised in accordance with Title III, Chapter 1 of Directive 2013/36/EU. That requirement may refer to third countries that apply banking prudential and supervisory standards that are not equivalent to the standards under the Member State's national law or to third countries that have strategic deficiencies in its regime on anti-money laundering and counter terrorist financing.

(29) Following the introduction of IFRS 9 on 1 January 2018, the outcome of the expected credit losses calculations, which is based on a modelling approaches, directly affects the amount of own funds and the regulatory ratios of institutions. The same modelling approaches are also the basis for the expected credit losses calculation where institutions apply national accounting frameworks. As a result, it is important that competent authorities and EBA have a clear view of the impact that those calculations have on the range of values for risk-weighted assets and own funds requirements that arise for similar exposures. To that end, the benchmarking exercise should cover also those modelling approaches. Given that institutions calculating capital requirements in accordance with the standardised approach for credit risk may also use models for the calculation of expected credit losses within the IFRS 9 framework, those institutions should also be included in the benchmarking exercise, taking into account the principle of proportionality.

(30) Regulation (EU) 2019/876[47] amended Regulation (EU) No 575/2013 by introducing a revised market risk framework developed by the Basel Committee for Banking Supervision. The alternative standardised approach that is part of that new framework allows institutions to model certain parameters used in the calculation of risk-weighted assets and own funds requirements for market risk. It is therefore important that competent authorities and EBA have a clear view of the range of values for risk-weighted assets and own funds requirements that arise for similar exposures not only under the alternative internal model approach, but also under the alternative standardised approach. As a result, the market risk benchmarking exercise should cover the revised standardised and internal model approaches.

(31) The global transition towards a sustainable economy as enshrined in the Paris Agreement[48], as concluded by the Union, and the United Nations 2030 Agenda for Sustainable Development will require a profound socio-economic transformation and will depend on the mobilisation of significant financial resources from the public and

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47 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

48 Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 4).

private sectors. The European Green Deal[49] commits the Union to becoming climate-neutral by 2050. The financial system has a relevant role to play in supporting that transition, which relates not only to capturing and supporting the opportunities that will arise but also to properly managing the risks that it may entail.

(32) The unprecedented scale of transition towards a sustainable, climate-neutral and circular economy will have considerable impacts on the financial system. In 2018, the Network of Central Banks and Supervisors for Greening the Financial System[50] acknowledged that climate-related risks are a source of financial risk. The Commission's Renewed Sustainable Finance Strategy[51] emphasises that environmental, social and governance (ESG) risks, and risks steaming from the physical impact of climate change, biodiversity loss and the broader environmental degradation of ecosystems in particular, pose an unprecedented challenge to our economies and to the stability of the financial system. Those risks present specificities such as their forward-looking nature and their distinctive impacts over short, medium and long-term time horizons.

(33) The long-term nature and the profoundness of the transition towards a sustainable, climate-neutral and circular economy will entail significant changes in the business models of institutions. The adequate adjustment of the financial sector, and of credit institutions in particular, is necessary to achieve the objective of net-zero greenhouse gas emissions in the Union's economy by 2050, while maintaining the inherent risks under control. Competent authorities should, therefore, be enabled to assess this process and intervene in cases where institutions' manage climate risks, as well as risks stemming from environmental degradation and biodiversity loss, in a way that endangers the stability of the individual institutions, or the financial stability overall. Competent authorities should also monitor and be empowered to act, when there is a misalignment of institutions' business models and strategies with the relevant Union policy objectives and broader transition trends towards a sustainable economy, resulting in risks to their business models and strategies, or to the financial stability. Climate and, more broadly, environmental risks, should be considered together with social risks and governance risks under one category of risks to enable a comprehensive and coordinated integration of these factors, as they are often intertwined. ESG risks are closely linked with the concept of sustainability, as ESG factors represent the main three pillars of sustainability.

(34) To maintain adequate resilience to the negative impacts of ESG factors, institutions established in the Union need to be able to systematically identify, measure and manage ESG risks, and their supervisors need to assess the risks at the level of the individual institution as well as at the systemic level, giving priority to environmental factors and progressing to the other sustainability factors as the methodologies and tools for the assessment evolve. Institutions should assess the alignment of their portfolios with the ambition of the Union to become climate-neutral by 2050 as well as avert environmental degradation and biodiversity loss. Institutions should set out specific plans to address the risks arising, in the short, medium and long term, from the

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[49] COM(2019) 640 final.

[50] Launched at the Paris One Planet Summit on 12 December 2017, is a group of Central Banks and Supervisors willing, on a voluntary basis, to share best practices and contribute to the development of environment and climate risk management in the financial sector and to mobilise mainstream finance to support the transition toward a sustainable economy.

[51] COM(2021) 390 final, 06.07.2021.

misalignment of their business model and strategy with relevant policy objectives of the Union, included in the Paris Agreement, the Fit for 55 package[52] [and the post-2020 Global Biodiversity Framework]. Institutions should be required to have robust governance arrangements and internal processes for the management of ESG risks and to have in place strategies approved by their management bodies that take into consideration not only the current but also the forward-looking impact of ESG factors. The collective knowledge and awareness of ESG factors by the management body and institutions' internal capital allocation to address ESG risks will also be key to drive the change within each and single institution. The specificities of ESG risks as well as their relative novelty means that understandings, measurements and management practices can differ significantly across institutions. To ensure convergence across the Union and a uniform understanding of ESG risks, appropriate definitions and minimum standards for the assessment of those risks should be provided in prudential regulation. To achieve this objective, definitions are laid down in Regulation (EU) No 575/2013 and the EBA is empowered to specify a minimum set of reference methodologies for the assessment of the impact of ESG risks on the financial stability of institutions, giving priority to the impact of environmental factors. Since the forward-looking nature of ESG risks means that scenario analysis and stress testing, together with plans for addressing those risks, are particularly informative assessment tools, EBA should be also empowered to develop uniform criteria for the content of the plans to address those risks and for the setting of scenarios and applying the stress testing methods. Environment-related risks, including risks stemming from environmental degradation and biodiversity loss, and climate-related risks in particular should take priority in light of their urgency and the particular relevance of scenario analysis and stress testing for their assessment.

(35) ESG risks can have far-reaching implications for the stability of both individual institutions and the financial system as whole. Hence, competent authorities should consistently factor those risks into their relevant supervisory activities, including the supervisory evaluation and review process and the stress testing of those risks. The European Commission, via its Technical Support Instrument, has been providing support to national competent authorities in developing and implementing stress testing methodologies and stands ready to continue to provide technical support in this respect. However, the stress testing methodologies for ESG risks have so far mainly been applied in an exploratory manner. To firmly and consistently embed stress testing of ESG in supervision, the EBA, European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) should jointly develop guidelines to ensure consistent considerations and common methodologies for stress testing ESG risks. Stress testing of those risks should start with climate and environment-related factors, and as more ESG risk data and methodologies become available to support the development of additional tools to assess their quantitative impact on financial risks, competent authorities should increasingly assess the impact of those risks in their adequacy assessments of credit institutions. In order to ensure convergence of supervisory practices, EBA should issue guidelines regarding the uniform inclusion of ESG risks in the supervisory review and evaluation process (SREP).

[52] Communication of the Commission COM(2021)568 final, 14.07.2021, comprising the following Commission proposals: COM(2021)562 final, COM(2021)561 final, COM(2021)564 final, COM(2021)563 final, COM(2021)556 final, COM(2021)559 final, COM(2021)558 final, COM(2021)557 final, COM(2021)554 final, COM(2021)555 final, COM(2021)552 final.

(36) The provisions in Article 133 of Directive 2013/36/EU on the systemic risk buffer framework may already be used to address various kinds of systemic risks, including risks related to climate change. To the extent that the relevant competent or designated authorities, as applicable, consider that risks related to climate change have the potential to have serious negative consequences for the financial system and the real economy in Member States, they should introduce a systemic risk buffer rate for those risks where they consider the introduction of such rate effective and proportionate to mitigate those risks.

(37) Members of the management body may undergo the suitability assessment only after a significant time after their appointment or, in the case of key function holders, not at all. Thus, members of the management body who do not meet the suitability criteria may have exercised their duties for a long time, which is problematic especially for large institutions. Moreover, cross-border institutions must navigate through a wide diversity of national rules and processes, which does not make the current system efficient. The existence of different requirements as regards the suitability assessment across the Union is a particularly acute issue in the context of the Banking Union. As a result, it is important to provide a set of rules at Union level to put in place a consistent and predictable "fit-and-proper" framework. This will foster supervisory convergence, enabling further trust between competent authorities and give more legal certainty to institutions. Having a robust "fit-and-proper" framework for assessing the suitability of members of the management body and key function holders is a crucial factor to ensure that institutions are adequately run and their risks appropriately managed.

(38) The purpose of assessing the suitability of members of management bodies is to ensure that those members are qualified for their role and are of good repute. Having the primary responsibility for assessing the suitability of each member of the management body, institutions should carry out the suitability assessment, followed by a verification by the competent authorities that may perform it before or after the member of the management body takes up the position. However, due to the risks posed by large institutions resulting in particular from potential contagion effects, unsuitable members of management body should be prevented from influencing the running of such large institutions with potential serious detrimental effects. It is therefore appropriate that, safe in exceptional circumstances, the competent authorities assess the suitability of members of the management body of large institutions before those members exercise their duties.

(39) Not only members of the management body, but also key function holders have a significant influence in ensuring the sound and prudent management of an institution on a day-to-day basis. Because Directive 2013/36/EU does not currently define key function holders, Member States have diverging practices across the Union, which impedes an effective and efficient supervision and prevents a level playing field. It is therefore necessary to define key function holders. In addition, the responsibility for assessing the suitability of key function holders should primarily belong to institutions. However, due to the risks posed by the activities of large institutions, the suitability of the heads of internal control functions and the chief financial officer in such large institutions should be assessed by competent authorities before those persons take up their positions.

(40) In order to ensure legal certainty and predictability for the institutions, it is necessary to establish an efficient and timely process for verifying the suitability of members of the management body and key function holders by competent authorities. Such process should enable competent authorities to request any additional information

where necessary, but also ensure that those competent authorities are able to handle the suitability assessments within the prescribed timeframe. Institutions, from their side, should provide the competent authorities with correct and complete information within the allocated time and respond quickly and in good faith to requests for additional information from the competent authorities.

(41) In light of the role of the suitability assessment for the prudent and sound management of institutions, it is necessary to provide competent authorities with new tools, such as statements of responsibilities and a mapping of duties, to assess the suitability of members of the management body and key function holders. Those new tools will also support the work of competent authorities when reviewing the governance arrangements of institutions as part of the supervisory review and evaluation process. Notwithstanding the overall responsibility of the management body as a collegial body, institutions should be required to draw up individual statements and a mapping that clarify the duties held by members of the management body, senior management and key function holders. Their individual duties are not always clearly or consistently laid down and there may be situations where two or more roles overlap or where areas of duties are overlooked because they do not fall neatly under the remit of a single person. The scope of each individual's duties should be well defined and no areas of duties should be left without ownership. Those tools should ensure further accountability of the members of the management body, senior management and key function holders.

(42) In order to safeguard financial stability, competent authorities should be able to take and implement decisions swiftly. In the context of early intervention measures or resolution action, competent authorities and resolution authorities may consider it appropriate to remove or replace members of the management body or senior management. To take into account such situations, competent authorities should perform the suitability assessment of members of the management body or key function holders after those members of the management body or key function holders have taken up their position.

(43) Upon becoming bound by the output floor laid down in Regulation (EU) No 575/2013, the nominal amount of an institution's additional own funds requirement set by the institution's competent authority in accordance with Article 104(1), point (a), of Directive 2013/36/EU to address risks other than the risk of excessive leverage should not immediately increase as a result, all else being equal. Furthermore, in such case, the competent authority should review the institution's additional own funds requirement and assess, in particular, whether and to what extent such requirement captures model risk from the use of internal models by the institution. Where that is the case, the institution's additional own funds requirement should be regarded as overlapping with the risks captured by the output floor in the own funds requirement of the institution and, consequently, the competent authority should reduce that requirement to the extent necessary to remove any such overlap for as long as the institution remains bound by the output floor.

(44) Similarly, upon becoming bound by the output floor, the nominal amount of an institution's CET1 capital required under the systemic risk buffer should not increase where there has been no increase in the macroprudential or systemic risks associated with the institution. In such cases, the institution's competent or designated authority, as applicable, should review the calibration of the systemic risk buffer rates and make sure that they remain appropriate and do not double-count the risks that are already covered by virtue of the fact that the institution is bound by the output floor. More in

general, competent and designated authorities, as applicable, should not impose systemic risk buffer requirements for risks which are already fully covered by the output floor.

(45) Furthermore, when an institution designated as an ‘other systemically important institution’ becomes bound by the output floor, its competent or designated authority, as applicable, should review the calibration of the institution’s O-SII buffer requirement and make sure that it remains appropriate.

(46) To enable the timely and effective activation of the systemic risk buffer it is necessary to clarify the application of the relevant provisions and simplify and align the applicable procedures. Setting a systemic risk buffer should be possible for designated authorities in all Member States to enable the recognition of systemic risk buffer rates set by authorities in other Member States and to ensure that authorities are empowered to address systemic risks in a timely and effective manner. Recognition of a systemic risk buffer rate set by another Member State should require only a notification from the authority recognising the rate. To avoid unnecessary authorisation procedures where the decision to set a buffer rate results in a decrease or no change from any of the previously set rates, the procedure laid down in Article 131(15) of Directive 2013/36/EU needs to be aligned with the procedure laid down in Article 133(9) of that Directive. The procedures laid down in Article 133(11) of that Directive should be clarified and made more consistent with the procedures applying for other systemic risk buffer rates, where relevant.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) in Article 3, paragraph 1 is amended as follows:

(a) the following point (8a) is inserted:

‘(8a) ‘management body in its management function’ means the management body acting in its role of directing effectively the institution and includes the persons who direct the business of the institution;’;

(b) point (9) is replaced by the following:

‘(9) ‘senior management’ means those natural persons who exercise executive functions within an institution and are directly accountable to the institution’s management body but are not members of that body, and who are responsible for the day-to-day management of the institution under the direction of the management body of the institution;’;

(c) the following points (9a) to (9d) are inserted:

‘(9a) ‘key function holders’ means persons who have significant influence over the direction of the institution but are not members of the management body, including the heads of internal control functions and the chief financial officer, where those heads or that officer are not members of the management body;

(9b) ‘chief financial officer’ means the person responsible for the financial resources management, financial planning and financial reporting of the institution;

(9c) ‘heads of internal control functions’ means the persons at the highest hierarchical level responsible for effectively managing the day-to-day operation of the independent risk management, compliance and internal audit functions of the institution;

(9d) ‘internal control functions’ means risk management, compliance and internal audit functions;’;

(d) point (11) is replaced by the following:

‘(11) ‘model risk’ means model risk as defined in Article 4(1), point (52b), of Regulation (EU) No 575/2013;’;

(e) the following point (29a) is inserted:

‘(29a) ‘stand-alone institution in the EU’ means stand-alone institution in the EU as defined in Article 4(1), point (33a), of Regulation (EU) No 575/2013;’;

(f) the following point (47a) is inserted:

‘(47a) ‘eligible capital’ means the eligible capital as defined in Article 4(1), point (71), of Regulation (EU) No 575/2013;’;

(g) the following points (66) to (69) are added:

‘(66) ‘large institution’ means an institution as defined in Article 4(1), point (146), of Regulation (EU) No 575/2013;

(67) ‘relevant subsidiary’ means a material subsidiary as defined in Article 4(1), point (135), of Regulation (EU) No 575/2013 or a large subsidiary as defined in Article 4(1), point (147), of that Regulation;

(68) ‘periodic penalty payments’ means daily penalties, aimed at ending ongoing breaches and compelling legal or natural person to return to compliance with their obligations under this Directive and Regulation (EU) No 575/2013;

(69) ‘environmental, social and governance risk’ means environmental, social and governance risk as defined in Article 4(1), point (52d), or Regulation (EU) No 575/2013;’;

(2) in Article 4, paragraph 4 is replaced by the following:

‘4. Member States shall ensure that competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and the powers to impose periodic penalty payments and penalties set out in this Directive and in Regulation (EU) No 575/2013.

For the purposes of preserving the independence of competent authorities in the exercise of their powers, Member State shall provide all the necessary arrangements to ensure that those competent authorities, including their staff and members of their governance bodies, can act independently and objectively, without seeking or taking instructions, or being subject to influence from supervised institutions, from any government of a Member State or body of the Union or from any other public or private body. These arrangements shall be without prejudice to the rights and obligations of the competent authorities as stemming from being part of the European system of financial supervision as stemming from Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010[*1], the Single Supervisory Mechanism as stemming from Council Regulation (EU) No 1024/2013 of 15 October 2013[*2] and Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014[*3], for the Single Resolution Board as stemming from stemming from Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014[*4].

Member States shall, in particular, ensure that competent authorities have in place all the necessary arrangements to prevent conflicts of interests of their staff and members of their governance bodies. For those purposes, Member States shall lay down rules proportionate to the role and responsibilities of those staff and members of the governance bodies, and at a minimum prohibiting them from:

(a) trading in financial instruments issued by or referenced to the institutions supervised by the competent authorities, their direct or indirect parent undertakings, subsidiaries or affiliates;

(b) following the end of their employment at the competent authority, being hired by or accepting any kind of contractual agreement for the provision of professional services with any of the following:

   (i) institutions they have directly supervised, including their direct or indirect parent undertakings, subsidiaries or affiliates, over at least the two preceding years from the date when taking up any new role;

   (ii) firms that provide services to any of the undertakings referred to in point (i) that were directly supervised over at least the two preceding years from the date when taking up any new role, unless they are strictly precluded from taking part in any provision of those services while the prohibition referred to herein remains in force.

Members of staff and of governance bodies subject to the prohibitions provided for in the third subparagraph, point (b), shall be entitled to an appropriate compensation for the inability to take up a prohibited role.

EBA shall issue guidelines addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the prevention of conflicts of interests in and independence of competent authorities, taking into account international best practices, for a proportionate application of this Article.';

[*1] 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

[*2] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287,29.10.2013, p. 63).

[*3] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities

and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

[*4] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(3) In Article 18 the following point (g) is added:

‘(g) meets all of the following conditions:

(i) it has been determined to be failing or likely to fail in accordance with Article 32(1), point (a) of Directive 2014/59/EU or in accordance with Article 18(1), point (a), of Regulation (EU) No 806/2014;

(ii) the resolution authority considers that the condition in Article 32(1), point (b) of Directive 2014/59/EU or in Article 18(1), point (b), of Regulation (EU) No 806/2014 is met with respect to that credit institution;

(iii) the resolution authority considers that the condition in Article 32(1), point (c) of Directive 2014/59/EU or in Article 18(1), point (c), of Regulation (EU) No 806/2014 is not met with respect to that credit institution.’;

(4) Article 21a is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies shall seek approval in accordance with this Article. Other financial holding companies or mixed financial holding companies shall seek approval in accordance with this Article where they are required to comply with this Directive or Regulation (EU) No 575/2013 on a sub-consolidated basis.

Competent authorities shall perform a review of the parent undertakings of an institution, or of the parent undertakings of an entity requesting an authorisation pursuant to Article 8, in order to detect the presence or not of an undertaking complying with the criteria to be considered as a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company.

For the purposes of the second sub-paragraph, where the parent companies are located in other Member States than the Member State in which the institution, or the entity requesting an authorisation pursuant to Article 8, is established, competent authorities of those two Member States shall cooperate closely to perform the review.

Competent authorities shall publish the outcome of the review referred to in the second sub-paragraph.’;

(b) paragraph 2 is amended as follows:

(i) in the first subparagraph, point (b) is replaced by the following:

‘(b) information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company and compliance with the requirements set out in Article 91(1);’;

(ii) the second subparagraph is replaced by the following:

‘Where the approval of a financial holding company or mixed financial holding company takes place concurrently with the assessment referred to in Article 22 and Article 27a, the competent authority for the purposes of that Article shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In that case, the assessment period referred to in Article 22(3), second subparagraph, and Article 27a(6) shall be suspended for a period exceeding 20 working day until the procedure set out in this Article is complete.’;

(5) in Article 21b(6), the following second and third subparagraphs are added:

‘EBA shall develop draft implementing technical standards to specify the uniform formats, definitions and the IT solutions to be applied in the Union for the reporting of the information referred to in the first subparagraph.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

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

(6) the following new Article 21c is inserted:

Article 21c

Requirement to establish a branch for the provision of banking services by third country undertakings and exception for the reverse solicitation of services

1. Member States shall require undertakings established in a third country as referred to in Article 47(1) and (2) to establish a branch in their territory and apply for authorisation in accordance with Title VI to commence or continue conducting the activities referred to in paragraph (1) of that Article in the relevant Member State.

2. Where a retail client, an eligible counterparty or a professional client within the meaning of Sections I and II of Annex II to Directive 2014/65/EU established or situated in the Union approaches an undertaking established in a third country at its own exclusive initiative for the provision of any service or activity referred to in Article 47(1), the requirement laid down in paragraph 1 of this Article shall not apply to the provision to that person of the relevant service or activity, including a relationship specifically related to the provision of that service or activity. Without prejudice to intragroup relationships, where a third country undertaking, including through an entity acting on its behalf or having close links with such third-country undertaking or any other person acting on behalf of such undertaking, solicits clients

or potential clients in the Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client.

3. An initiative by a client or counterparty as referred to in paragraph 2 shall not entitle the third-country undertaking to market other categories of products, activities or services than those that the client or counterparty had solicited, other than through a third country branch established in a Member State.';

(7) In Title III, the following Chapters 3, 4 and 5 are added:

'CHAPTER 3

Acquisition or divesture of a qualifying holding

Article 27a

Notification and assessment of the acquisition

1. Member States shall require any institution, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, or other financial holding companies or mixed financial holding companies required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis (the "acquirer") to notify their competent authority where they intend to acquire, directly or indirectly, a qualifying holding which exceeds 15% of the eligible capital of the acquirer (the "proposed acquisition"), indicating the size of the intended holding and the relevant information, as specified in Article 27b(5).

2. The competent authorities shall acknowledge receipt of the notification under paragraph 1 or of any additional information under paragraph 5 promptly and in any event within two working days following receipt of that notification.

By way of derogation from the paragraph 2 of this Article, and of Article 22(2), when the proposed acquisition referred to in paragraph 1 of this Article or in Article 22(1) is deemed complex by the competent authorities, acknowledgment of the receipt of the notification of any additional information shall be done promptly and in any event within ten working days following the receipt of that notification.

3. The competent authorities shall have 60 working days from the date of the written acknowledgement of receipt of the notification and from the receipt of all documents, including those required by the Member State to be attached to the notification in accordance with Article 27b(4) (the "assessment period"), to carry out the assessment provided for in Article 27b(1) (the "assessment").

If the proposed acquisition consists in a qualifying holding in a credit institution as referred in Article 22(1), the acquirer shall also still be subject to the notification requirement and the assessment under that Article.

4. The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt referred to in paragraph 3.

5. The competent authorities may, during the assessment period where necessary, and no later than on the 50^{th} working day of the assessment period, request additional information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

6. The assessment period shall be suspended between the date of request for additional information by the competent authorities and the date of receipt of a response thereto by the acquirer, providing all the requested information. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

7. The competent authorities may extend the suspension referred to in the second subparagraph of paragraph 6 up to 30 working days in the following situations:

(a) the entity acquired is situated or regulated in a third country;

(b) exchange of information with authorities responsible for supervising the obliged entities listed in Article 2(1) points (1) and (2) of Directive (EU) 2015/849 of the European Parliament and of the Council[*5] is necessary to perform the assessment referred to in Article 27b(1) of this Directive.

8. Where the approval of a financial holding company or mixed financial holding company pursuant to Article 21a takes place concurrently with the assessment referred in this Article, the competent authority for the purposes of that Article shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In that case, the assessment period shall be suspended for a period not exceeding 20 working days until the procedure set out in Article 21a is complete.

9. Where competent authorities decide to oppose the proposed acquisition, they shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the acquirer in writing, providing the reasons for their objection. Subject to national law, an appropriate statement of the reasons for the decision opposing the proposed acquisition may be made accessible to the public at the request of the acquirer. The absence of provisions in the national law regarding an appropriate statement of the reasons for the decision opposing the proposed acquisition shall not prevent Member States from allowing the competent authority to publish such information in the absence of a request by the acquirer.

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

11. Competent authorities may set a maximum period for completing the proposed acquisition and extend it where appropriate.

12. Member States may not impose requirements for notification to, or approval by, competent authorities of direct or indirect acquisitions or capital that are more stringent than those set out in Article 89 of Regulation (EU) No 575/2013.

[*5] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Article 27b

Assessment criteria

1. In dealing with the notification of the proposed acquisition provided for in Article 27a(1) and the information referred to in Article 27a(5), the competent authorities shall assess the sound and prudent management of the acquirer after the acquisition and in particular of the risks to which the acquirer is or might be exposed, in accordance with the following criteria:

(a) the sufficiently good repute and sufficient knowledge, skills and experience, as set out in Article 91(1), of any new member of the management body of the acquirer to be appointed as a result of the proposed acquisition.

(b) whether the acquirer will be able to comply and continue to comply with the prudential requirements set out in this Directive and Regulation (EU) No 575/2013, and where applicable, other acts of Union law.

(c) 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 (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. For the purposes of assessing the criterion laid down in paragraph 1, point (c), and criterion laid down in Article 23(1), point (e), competent authorities shall consult, in the context of their verifications, the authorities competent for the supervision of the undertakings in line with Directive (EU) 2015/849.

3. 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 acquirer is incomplete, despite a request made in accordance with Article 27a.

For the purposes of this paragraph and Article 23(2), and with regard to the criterion laid down in paragraph 1, point (c), an objection in writing by the authorities competent for the supervision of the undertakings under Directive (EU) 2015/849 shall constitute a reasonable ground for opposition.

4. 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.

5. Member States shall publish a list specifying the information required to carry out the assessment. That information shall be provided to the competent authorities at the time of the notification referred to in Article 27a(1). The information shall be proportionate and appropriate to the nature of the entity to be acquired. Member States shall not require information that is not relevant for the prudential assessment under this Article.

6. Notwithstanding Article 27a, paragraphs 2 to 7, where two or more proposals to acquire qualifying holdings in the same entity have been notified, the competent authority shall treat the acquirers in a non-discriminatory manner.

7. EBA shall develop draft regulatory technical standards specifying:

(a) the minimum list of information to be provided to the competent authorities at the time of the notification referred to in Article 23(1), Article 27a(1), Article 27f(1) and Article 27k(1);

(b) a common assessment methodology of the criteria set out in this Article, Article 27g and Article 27l;

(c) the process applicable to notification and the prudential assessment required under Article 27a, Article 27f and Article 27k.

For the purpose of the first sub-paragraph, the EBA shall take into consideration the Directive (EU) 2017/1132 of the European Parliament and of the Council[*6].

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

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] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification).

Article 27c

Cooperation between competent authorities

1. The relevant competent authorities shall consult each other when carrying out the assessment referred to in Article 27b where the entity acquired is one of the following:

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

(b) a parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 2(1), point (b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that of the proposed acquirer;

(c) a legal person controlling a credit institution, 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.

The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. For those purposes, the competent authorities shall communicate to each other upon request or on their own initiative all relevant information for the assessment.

2. The competent authorities shall seek to coordinate their assessments and ensure the consistency of their decisions. To this end, the decision by the competent authority of the acquirer shall indicate any views or reservations made by the

competent authority that has authorised the credit institution controlled by the parent undertaking in which the acquisition is proposed.

3. 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 this Article.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

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 27d

Notification in the case of divestiture

Member States shall require institutions, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, as well as financial holding companies and mixed financial holding companies, to notify the competent authorities where they intend to dispose, directly or indirectly, of a qualifying holding that exceeds 15% of the eligible capital of the acquirer. That notification shall be made in writing and in advance of the divestiture, indicating the size of the holding concerned.

Article 27e

Information obligations and penalties

Where the acquirer fails to notify the proposed acquisition in advance in accordance with Article 27a(1) or has acquired a qualifying holding as referred to that Article despite the competent authorities' opposition, Member States shall require those competent authorities to take appropriate measures. Such measures may include injunctions, periodic penalty payments and penalties, in accordance with Articles 65 to 72, against members of the management body and senior management. Where a qualifying holding is acquired despite opposition by the competent authorities, Member States shall, without prejudice to potential penalties, provide either for exercise of the corresponding voting rights to be suspended or for votes cast to be declared null and void.

CHAPTER 4

Material transfers of assets and liabilities

Article 27f

Notification and assessment of material transfers of assets and liabilities

1. Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies, EU parent mixed financial holding companies, or other financial holding companies and mixed financial holding companies required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis to notify their competent authority of any material transfer of assets or liabilities which they intend to execute either through a sale or any other type of

transaction (the “intended operation”). The notification shall indicate the size of the intended operation and provide the information specified in Article 27g(5).

When the intended operation involves only institutions from the same group, these institutions shall also be subject to the first sub-paragraph.

For the purposes of the first and second sub-paragraphs, each of the institutions involved in the same intended operation shall be subject individually to the obligation to notify set out in those subparagraphs.

2. For the purposes of paragraph 1:

(a) the intended operation shall be deemed material for an institution where it is at least equal to 10 % of its total assets or liabilities, where the intended operation is performed between entities of the same group, the intended operation is deemed material for an institution where it is at least equal to 15 % of its total assets or liabilities;

(b) transfers of non-performing assets, or of assets for the purpose of being included in a cover pool, within the meaning of Article 3(3) of Directive (EU) 2019/2162 of the European Parliament and of the Council[*7], or to be securitised, shall not be taken into account for calculating the percentage in point (a);

(c) transfers of assets or liabilities in the context of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU shall not be taken into account for calculating the percentage referred to in point (a).

3. Competent authorities shall acknowledge receipt of the notification under paragraph 1 or of additional information under paragraph 6 promptly and in any event within two working days following receipt of the notification.

4. From the date of the written acknowledgement of receipt of the notification and of the documents, including those required by the Member State to be attached to the notification in accordance with Article 27g(5), competent authorities shall have a maximum of 60 working days to carry out the assessment provided for in Article 27g(1) (the “assessment period”).

5. Competent authorities shall inform the institution of the date of the expiry of the assessment period at the time of acknowledging receipt.

6. Competent authorities may request further necessary information to complete the assessment at any time during the assessment period and no later than the 50th working day of the assessment period. Such a request shall be made in writing and specify the additional information needed.

7. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the institution providing all the requested information, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for the completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

8. Where competent authorities decide to oppose the intended operation, they shall inform the institution in writing and provide the reasons thereto within two working days of completion of the assessment and not later than the date of the expiry of the assessment period. 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 institution. The absence of provisions in the national law regarding an appropriate statement of the reasons for the decision opposing the proposed acquisition shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the institution.

9. Where the competent authorities do not oppose the intended operation in writing within the assessment period, it shall be deemed approved.

10. The competent authorities may set a maximum period for completing the intended operation and extend it where appropriate.

11. Member States may not impose requirements for notification on, or approval by, the competent authorities that are more stringent than those set out in Article 27f.

[*7] Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29).

Article 27g

Assessment criteria

1. In dealing with the notification provided for in Article 27f(1) and the information referred to in Article 27f(6), competent authorities shall assess the intended operation in accordance with the following criteria:

(a) whether the institution will be able to comply and continue to comply with the prudential requirements set out in this Directive and Regulation (EU) No 575/2013, and where applicable, other acts of Union law.

(b) whether there are reasonable grounds to suspect that, in connection with the intended operation, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. For the purposes of assessing the criterion laid down in paragraph 1, point (b), competent authorities shall consult, in the context of their verifications, the authorities competent for the supervision of the undertakings under Directive (EU) 2015/849.

3. The competent authorities may oppose the intended operation only where the criteria set out in paragraph 1 are not met or where the information provided by the institution is incomplete despite a request made in accordance with Article 27f.

With regard to the criterion laid down in paragraph 1, point (b), an objection in writing by the competent authorities under Directive (EU) 2015/849 shall constitute a reasonable ground for opposition.

4. Member States may neither subject the intended operation to meeting a specified level or amount, nor allow their competent authorities to examine the intended operation in terms of the economic needs of the market.

5. Member States shall publish a list of information items that are necessary to carry out the assessment referred to in paragraph 1. That information shall be provided to the competent authorities at the time of the notification referred to in Article 27f(1).

Member States shall not require information that is not relevant for a prudential assessment of the intended operation.

Article 27h

Cooperation between competent authorities

1. The relevant competent authorities shall consult each other when carrying out the assessment referred to in Article 27g where the parties involved in the intended operation are one of the following:

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

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

(c) a legal person controlling a credit institution, 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. Competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. For these purposes, competent authorities shall communicate to each other upon request or on their own initiative all relevant information for the assessment.

3. The competent authorities shall seek to coordinate their assessments, ensure the consistency of their decisions, and shall indicate in their decisions any views or reservations made by the competent authority supervising other entities involved in the intended operation.

4. 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 this Article.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

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 27i

Information obligations and penalties

Member States shall require that, where the institutions fail to notify the intended operation in advance in accordance with Article 27f(1), or has performed the intended operation as referred to that Article despite opposition by the competent authorities, the competent authorities take appropriate measures. Such measures may consist in injunctions, periodic penalty payments, penalties, subject to Articles 65 to 72, against members of the management body and managers.

CHAPTER 5

Mergers and divisions

Article 27j
Definitions

For the purposes of this Chapter, the following definitions shall apply:

(a) ‘merger’ means any of the following operations whereby:

(i) one or more companies, on being dissolved without going into liquidation, transfer all or parts of their assets and liabilities to another existing company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(ii) one or more companies, on being dissolved without going into liquidation, transfer all or parts their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their securities and shares in the same proportion in all merging companies;

(iii) two or more companies, on being dissolved without going into liquidation, transfer all or parts of their assets and liabilities to a company that they form in exchange for the issue to their members of securities or shares representing the capital of that new company and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(iv) a company, on being dissolved without going into liquidation, transfers all or parts of its assets and liabilities to the company holding all the securities or shares representing its capital.

(b) ‘division’ means any of the following operations:

(i) an operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(ii) an operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(iii) an operation consisting in a combination of operations described under points (i) and (ii);

(iv) an operation whereby a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the shareholders of the company being divided of shares in the recipient companies, in the company being divided or in both the recipient companies and the company being divided, and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(v) an operation whereby a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the company being divided of securities or shares in the recipient companies.

Article 27k

Notification and assessment of the merger or division

1. Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies, EU parent mixed financial holding companies, or financial holding companies and mixed financial holding companies required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis (the 'financial stakeholders') carrying out a merger or division (the "proposed operation"), to notify in advance of the completion of the proposed operation the competent authorities which will be responsible for the supervision of the entities resulting from such proposed operation, indicating the relevant information, as specified in accordance with Article 27l(4).

For the purpose of the first sub-paragraph, the ECB shall considered as the competent authority to be notified and in charge the assessment when the entities resulting from the proposed operation would meet on a consolidated bases any of the following conditions:

(a) the total value of its assets exceeds EUR 30 billion;

(b) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of its assets is below EUR 5 billion.

For the purpose of the first sub-paragraph, in case the proposed operation consists in a division, the competent authority in charge of the supervision of the entity carrying out the proposed operation shall be the competent authority to be notified and in charge of the assessment.

2. The competent authorities shall acknowledge receipt of the notification referred to in paragraph 1 or of the additional information submitted in accordance with paragraph 3 promptly and in any event within 10 working days following receipt of the notification or of the additional information.

Where the proposed operation involves only financial stakeholders from the same group, the competent authorities shall have a maximum of 60 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 in accordance with Article 27l(5) ("the assessment period"), to carry out the assessment provided for in Article 27l(1).

The competent authority shall inform the financial stakeholder of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. Competent authorities may request further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

Where the proposed operation involves only financial stakeholders from the same group, competent authorities may request additional information by no later than the fiftieth working day of the assessment period.

For the period between the date of request of additional information by the competent authorities and the receipt of a response thereto by the financial stakeholders providing all the requested information, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the provided information shall be at their discretion but shall not result in a suspension of the assessment period.

4. By way of derogation from paragraph 3, third subparagraph, competent authorities may extend the suspension referred to therein to a maximum of 30 working days in the following cases:

(a) the entity acquired is situated or regulated in a third country;

(b) an exchange of information with authorities responsible for supervising the obliged entities referred to in Article 2(1), points (1) and (2), of Directive (EU) 2015/849 is necessary to perform the assessment foreseen under Article 27l(1) of this Directive.

5. The proposed operations shall not be completed before the issuance of a positive opinion by the competent authorities.

6. The competent authorities shall, within two working days from the completion of their assessment, issue in writing a motivated positive or negative opinion to the financial stakeholders. Subject to national law, an appropriate statement of the reasons for the opinion may be made accessible to the public at the request of the financial stakeholders. This shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the financial stakeholder.

The financial stakeholders shall transmit the motivated opinion issued by their competent authorities under the first subparagraph to the authorities in charge, under the national law, of the scrutiny of the proposed operation.

7. When the proposed operation involves only financial stakeholders from the same group, and the competent authorities do not oppose the proposed operation within the assessment period in writing, the opinion shall be deemed to be positive.

8. The positive opinion issued by the competent authority may be limited in time.

9. Member States shall not impose requirements related to notification and approval as described in this Chapter that are more stringent than those set out herein.

10. This Chapter is without prejudice to the application of the Council Regulation (EC) No 139/2004*[8] and Directive (EU) 2017/1132 of the European Parliament and of the Council.

11. The assessment under Article 27k(1) shall not be performed where the proposed operation requires an authorisation in accordance with Article 8, or an approval in accordance with Article 21a.

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*[8] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

Article 27l
Assessment criteria

1. In assessing the notification provided for in Article 27k(1) and the information referred to in Article 27k(3), competent authorities shall, in order to ensure the soundness of the prudential profile of the financial stakeholders after the completion of the proposed operation and in particular the risks to which the financial stakeholder is or might be exposed in the course of the proposed operation and the risks to which the financial stakeholder resulting from the proposed operation might be exposed, assess the proposed operation in accordance with the following criteria:

(a) the reputation of entities involved in the proposed operation;

(b) the sufficiently good repute and sufficient knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the financial stakeholder resulting from the proposed operation;

(c) the financial soundness of entities involved in the proposed operation, in particular in relation to the type of business pursued and envisaged for the financial stakeholder resulting from the proposed operation;

(d) whether the entity resulting from the proposed operation will be able to comply and continue to comply with the prudential laid down in this Directive and Regulation (EU) No 575/2013, and where applicable, other acts of Union law, in particular Directives 2002/87/EC and 2009/110/EC;

(e) whether the implementation plan of the proposed operation is realistic, sound and efficient from a prudential perspective;

(f) whether there are reasonable grounds to suspect that, in connection with the proposed operation, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed operation could increase the risk thereof.

The implementation plan referred to in point (d) shall be subject to appropriate monitoring by the competent authority until completion of the proposed operation.

2. For the purposes of assessing the criterion laid down in paragraph 1, point (f), competent authorities shall consult, in the context of their verifications, the authorities competent for the supervision of the undertakings under Directive (EU) 2015/849.

3. The competent authorities may issue a negative opinion to the proposed operation only if the criteria set out in paragraph 1 are not met or where the information provided by the financial stakeholder is incomplete despite a request made in accordance with Article 27k.

With regard to the criterion laid down in paragraph 1, point (f), an objection in writing by the authorities competent for the supervision of the undertakings in line with Directive (EU) 2015/849 shall constitute a reasonable ground for negative opinion.

4. Member States shall not allow their competent authorities to examine the proposed operation in terms of the economic needs of the market.

5. Member States shall publish a list of information items that are necessary to carry out the assessment referred to in Article 27k(1) and that must be provided to the competent authorities at the time of notification referred to that Article. The information required shall be proportionate and appropriate to the proposed operation. Member States shall not require information that is not relevant for a prudential assessment.

Article 27m

Cooperation between competent authorities

1. The relevant competent authorities shall consult each other when carrying out the assessment referred to in Article 27l where the proposed operation involves, in addition to the financial stakeholder, entities that are one of the following:

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

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

(c) a legal person controlling a credit institution, 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 relevant for the assessment. In that 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 of the financial stakeholder shall indicate any views or reservations expressed by the competent authority that supervise one or several of the entities listed above and involved in the proposed operation.

3. The competent authorities shall seek to coordinate their assessments, ensure the consistency of their opinions, and shall indicate in their opinions any views or reservations made by the competent authority supervising other financial stakeholders.

4. 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 this Article.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

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 27n

Information obligations and penalties

Member States shall require that, where the financial stakeholders fail to provide prior notification of the proposed operation in accordance with Article 27k(1) or have carried out the proposed operation as referred to that Article without prior positive opinion by the competent authorities, the competent authorities shall take appropriate measures. Such measures may consist in injunctions, periodic penalty payments, penalties, subject to Articles 65 to 72, against members of the management body and managers of the financial stakeholders or of the entity resulting from the proposed operation.';

(8) Title VI is replaced by the following:

‘Title VI
PRUDENTIAL SUPERVISION OF THIRD COUNTRY BRANCHES AND RELATIONS WITH THIRD COUNTRIES’

CHAPTER 1

Prudential supervision of third-country branches

SECTION I

GENERAL PROVISIONS

Article 47
Scope and definition

1. This Chapter lays down the rules concerning the carrying out in a Member State of:

(a) any of the activities listed in Annex I to this Directive by an undertaking established in a third country;

(b) the activities referred to in Article 4(1), point (b), of Regulation (EU) 575/2013, by an undertaking established in a third country that fulfils any of the criteria laid down in points (i) to (iii) of that point.

2. By derogation from paragraph 1, where the undertaking in the third country is not a credit institution or an undertaking that meets the criteria of paragraph 1, point (b), the carrying out of any of the activities listed in Annex I, points (4), (5), and (7) to (15), to this Directive by that undertaking in a Member State shall be subject to Title II, Chapter IV, of Directive 2014/65/EU.

3. For the purposes of this Title, the following definitions shall apply:

(a) ‘third country branch’ shall mean branches established in a Member State by either:

  (i) an undertaking which has its head office in a third country, for the purpose of carrying out any of the activities referred to in paragraph 1;

  (ii) a credit institution which has its head office in a third country;

(b) ‘head undertaking’ shall mean the undertaking with its head office in the third country that has established the third country branch in the Member State, and the undertaking’s intermediate and ultimate parent undertakings, as the case may be.

Article 48
Prohibition of discrimination

Member States shall not apply to third country branches, when commencing or continuing to carry out their business, provisions which result in a more favourable treatment than that accorded to branches of institutions having their head office in another Member State of the European Union.

Article 48a

Classification of third country branches

1. Member States shall classify third country branches as class 1 where those branches meet any of the following conditions:

(a) the total value of the assets booked by the third country branch in the Member State is equal to or higher than EUR 5 billion, as reported for the immediately preceding annual reporting period in accordance with Section II, Sub-section 4;

(b) the third country branch's authorised activities include taking deposits and other repayable funds from retail customers;

(c) the third country branch is not a qualifying third country branch in accordance with Article 48b.

2. Member States shall classify third country branches that do not meet any of the conditions laid out in paragraph 1 as class 2.

3. Competent authorities shall update the classification of third country branches as follows:

(a) where a class 1 third country branch ceases to meet the conditions laid down in paragraph 1, it shall immediately be considered as class 2;

(b) where a class 2 third country branch starts to meet one of the conditions laid down in paragraph 1, it shall be considered as class 1 only after a period of three months from the date on which it started to meet those conditions.

Article 48b

Conditions for 'qualifying third country branches'

1. Where the following conditions are met in relation to a third country branch, that branch shall be regarded as a 'qualifying third country branch' for the purposes of this Title:

(a) the head undertaking of the third country branch is established in a country that applies prudential standards and a supervisory oversight in accordance with the third country's banking regulatory framework that are at least equivalent to this Directive and Regulation (EU) No 575/2013;

(b) the supervisory authorities of the third country branch's head undertaking are subject to confidentiality requirements that are at least equivalent to the requirements laid down in Title VII, Chapter 1, Section II of this Directive;

(c) the country where the third country branch's head undertaking is established is not listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849;

2. The Commission may adopt, by means of implementing acts, decisions as to whether the conditions laid down in paragraph 1, points (a) and (b) of this Article are met in relation to a third country's banking regulatory framework. For those

purposes, the Commission shall comply with the examination procedure referred to in Article 464(2) of Regulation (EU) No 575/2013.

3. Before adopting the decision referred to in paragraph 2, the Commission may request the EBA's assistance in accordance with Article 33 of Regulation (EU) No 1093/2010 to conduct an assessment of the relevant third country's banking regulatory framework and confidentiality requirements and to issue a report on that framework's compliance with the conditions laid down in paragraph 1, points (a) and (b), of this Article. EBA shall publish the outcome of its assessment on its website.

4. EBA shall keep a public register of the third countries and third country authorities that meet the conditions laid down in paragraph 1.

5. Upon receiving an application for authorisation in accordance with Article 48c, competent authorities shall assess the conditions laid down in paragraph 1 of this Article and in Article 48a to classify the third country branch as class 1 or class 2. Where the relevant third country is not recorded on the register referred to in paragraph 4 of this Article, the competent authority shall request the Commission to assess the third country's banking regulatory framework and confidentiality requirements for the purposes of paragraph 2 of this Article, provided that the condition referred to paragraph 1, point (c), of this Article is met. The competent authority shall classify the third country branch as class 1 pending the Commission's adoption of a decision in accordance with paragraph 2 of this Article.

SECTION II

AUTHORISATION AND REGULATORY REQUIREMENTS

SUB-SECTION 1
AUTHORISATION REQUIREMENTS

Article 48c

Conditions for the authorisation of third country branches

1. Member States shall require that third country undertakings establish a branch in their territory before commencing the activities referred to in Article 47(1). The establishment of a third country branch shall be subject to prior authorisation in accordance with this Chapter.

2. Member States shall require that the applications for authorisation of third country branches be accompanied by a programme of operations setting out the envisaged business, the activities to be carried out among those referred to in Article 47(1) and the structural organisation and risk controls of the branch in the relevant Member State in accordance with Article 48h.

3. Third country branches shall only be authorised where all of the following conditions are fulfilled:

(a) the third country branch meets the minimum regulatory requirements laid down in Sub-section 2;

(b) the activities that the head undertaking seeks authorisation for in the Member State are covered by the authorisation that such head undertaking holds in the third country where it is established and subject to supervision therein;

(c) the supervisory authority of the head undertaking in the third country has been notified of the application to establish a branch in the Member State and the accompanying documents referred to in paragraph 2;

(d) the authorisation provides that the third country branch may only conduct the authorised activities within the Member State where it is established and expressly prohibits the third country branch from offering or conducting those same activities in other Member States on a cross-border basis;

(e) for the purpose of performing its supervisory functions, the competent authority is able to access all the necessary information on the third country branch’s head undertaking from its supervisory authorities and to effectively coordinate its supervisory activities with those of the third country supervisory authorities, in particular in periods of crisis or financial distress affecting the head undertaking, its group or the third country’s financial system;

(f) there are no reasonable grounds to suspect that the third country branch would be used to commit or facilitate the commission of money laundering within the meaning of Article 1, point 3 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing or terrorist financing as defined in Article 1, point 5 of that Directive.

For the purposes of point (e) of this paragraph, the competent authorities shall endeavor to use the model administrative agreements developed by EBA in accordance with Article 33(5) of Regulation (EU) No 1093/2010.

4. For the purposes of assessing whether the condition laid down in paragraph 3, point (f), is met, competent authorities shall consult the authority responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849 and obtain written confirmation that the condition is fulfilled before proceeding to authorising the third country branch.

5. EBA shall develop draft regulatory technical standards to further specify:

(a) the information to be provided to the competent authorities upon application for authorisation of a third country branch, including the programme of operations and the structural organisation and governance arrangements referred to in paragraph 2;

(b) the procedure for authorisation of the third country branch, as well as the standard forms and templates for the provision of the information referred to in point (a) of this paragraph;

(c) the conditions for authorisation referred to in paragraph 3.

EBA shall submit these draft regulatory technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].

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

Article 48d

Conditions for the refusal or withdrawal of a third country branch's authorisation

1. Member States shall, at a minimum, provide for the following conditions for refusing or withdrawing the authorisation of a third country branch:

(a) the third country branch does not meet the requirements for authorisation laid down in Article 48c or in national law;

(b) the third country branch's head undertaking or its group do not meet the prudential requirements that apply to them under the third country law or there are reasonable grounds to suspect that they do not meet or that they will breach those requirements within the following 12 months.

For the purposes of point (b) of this paragraph, third country branches shall promptly notify their competent authorities where the circumstances referred to in that point have taken place.

2. Without prejudice to paragraph 1, competent authorities may withdraw the authorisation granted to a third country branch where any of the following conditions is met:

(a) the third country branch 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, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

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

(c) the third country branch no longer fulfils any additional conditions or requirements under which the authorisation was granted;

(d) the third country branch can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;

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

(f) the third country branch commits one of the breaches referred to in Article 67(1);

(g) there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted in connection with the third country branch, its head undertaking or its group, or there is a heightened risk of money laundering or terrorist financing being committed or attempted in relation to the third country branch, its head undertaking or its group.

3. For the purposes of assessing whether the condition laid down in paragraph 2(g) is met, the competent authorities shall consult the authority responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849.

4. The EBA shall develop draft regulatory technical standards to specify:

(a) the conditions laid down in paragraphs 1 and 2 for refusing or withdrawing a third country branch's authorisation;

(b) the procedure to withdraw the third country branch's authorisation;

(c) the content and process of the notification to the competent authorities referred to in the last subparagraph of paragraph 1 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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

SUB-SECTION 2
MINIMUM REGULATORY REQUIREMENTS

Article 48e

Capital endowment requirement

1. Without prejudice to other applicable capital requirements in accordance with national law, Member States shall require that third country branches maintain at all times a minimum capital endowment that is at least equal to:

(a) for class 1 third country branches, 1% of the branch’s average liabilities as reported for the three immediately preceding annual reporting periods in accordance with Sub-section 4, subject to a minimum of EUR 10 million;

(b) for class 2 third country branches, EUR 5 million.

2. Third country branches shall fulfil the minimum capital endowment requirement referred to in paragraph 1 with assets in the form of any of the following:

(a) cash or cash assimilated instruments;

(b) debt securities issued by central governments or central banks of Union Member States; or

(c) any other instrument that is available to the third country branch for unrestricted and immediate use to cover risks or losses as soon as those occur.

3. Member States shall require third country branches to deposit the capital endowment instruments referred to in paragraph 2 in an escrow account with a credit institution in the Member State where the branch is authorised or, where permitted under national law, with the central bank of the Member State. The capital endowment instruments deposited in the escrow account shall be pledged or assigned by way of security in favour of the resolution authority to secure the claims of the third country branch’s creditors. Member States shall lay down rules to grant the resolution authority the power to act in a fiduciary capacity for the benefit of those creditors for the purposes of this Article and Article 48g.

4. The EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify the requirement laid down in paragraph 2, point (c) of this Article in relation to instruments that are available for unrestricted and immediate use to cover risks or losses as soon as those occur. The EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

Article 48f

Liquidity requirements

1. Without prejudice to other applicable liquidity requirements in accordance with national law, Member States shall at a minimum require third country branches to maintain at all times a volume of unencumbered and liquid assets sufficient to cover liquidity outflows over a minimum period of 30 days.

2. For the purposes of paragraph 1, Member States shall require class 1 third country branches to comply with the liquidity coverage requirement laid down in Part Six, Title I of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61[*9].

3. Member States shall require third country branches to deposit the liquid assets held to comply with this Article in an escrow account with a credit institution in the Member State where the branch is authorised or, where permitted under national law, with the central bank of the Member State. The liquid assets deposited in the escrow account shall be pledged or assigned by way of security in favor of the resolution authority to secure the claims of the third country branch's creditors. Member States shall lay down rules to grant the resolution authority the power to act in a fiduciary capacity for the benefit of those creditors for the purposes of this Article and Article 48g.

4. Competent authorities may waive the liquidity requirement laid down in this Article for qualifying third country branches.

[*9] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

Article 48g

Insolvency and resolution of third country branches

1. Member States shall ensure that, in the event of insolvency or resolution of a third country branch pursuant to Article 96 of Directive 2014/59/EU, resolution authorities are vested with legal power and authority to enforce the security created over the liquid assets and capital endowment instruments held in the escrow account pursuant to Articles 48e(3) and 48f(3) of this Directive. When dealing with those liquid assets and capital endowment instruments following the enforcement of security, resolution authorities shall take into account the existing national rules, as well as supervisory and judicial powers, and ensure adequate coordination with the national administrative or judicial authorities, in accordance with national insolvency law and the principles set out in Article 96 of Directive 2014/59/EU, as appropriate.

2. Any surplus of liquid assets or capital endowment instruments held in the escrow account and not used in accordance with paragraph 1 shall be dealt with in accordance with the applicable national law.

Article 48h

Internal governance and risk controls

1. Member States shall require third country branches to have at least two persons effectively directing their business in the Member State subject to prior approval by the competent authorities. Those persons shall be of good repute and possess sufficient knowledge, skills and experience and commit sufficient time to the performance of their duties.

2. Member States shall require class 1 third country branches to comply with Articles 74 and 75 and Article 76(5). Competent authorities may require third country branches to establish a local management committee to ensure an adequate governance of the branch.

3. Member States shall require class 2 third country branches to comply with Articles 74, and 75 and to have internal control functions as provided for under Article 76(5), first, second and third subparagraphs.

Depending of their size, internal organisation and the nature, scope and complexity of their activities, competent authorities may require class 2 third country branches to appoint heads of internal control functions as provided under Article 76(5), fourth and fifth subparagraphs.

4. Member States shall require third country branches to establish reporting lines to the management body of the head undertaking that cover all material risks and risk management policies and changes thereof and have in place adequate ICT systems and controls to ensure that policies are duly complied with.

5. Member States shall require third country branches to monitor and manage their outsourcing arrangements, and to ensure that their competent authorities have full access to all information they need to fulfil their supervisory function.

6. Member States shall require third country branches that engage in back-to-back or intragroup operations to have adequate resources to identify and properly manage their counterparty credit risk where material risks associated with assets booked by the third country branch are transferred to the counterparty.

7. Where critical or important functions are delegated to the head undertaking, competent authorities in charge of the supervision of third country branches shall have access to all information they need to fulfil their supervisory function.

8. Competent authorities shall periodically require that an independent third party assesses the implementation of and on-going compliance with the requirements laid down in this Article and addresses a report to the competent authority with its findings and conclusions.

9. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the application to third country branches of the arrangements, processes and mechanisms referred to in Article 74(1), taking into account Article 74(2), and on the application to third country branches of Article 75 and Article 76(5), by [OP please insert the date = 6 months from date of entry into force of this amending Directive].

Article 48i

Booking requirements

1. Member States shall require third country branches to maintain a registry book enabling those branches to track and keep a comprehensive and precise record of all the assets and liabilities associated with the activities of the third country branch in the Member State and to manage those assets and liabilities autonomously within the branch. The registry book shall provide sufficient information on the risks generated by the third country branch and on how they are managed.

2. Member States shall require third country branches to develop policies on booking arrangements for the management of the registry book referred to in paragraph 1 for the purposes laid down therein. Those policies shall be documented and validated by the relevant governing body of the third country branch's head undertaking. The policy document referred to in this paragraph shall provide a clear rationale for the booking arrangements and set out how those arrangements align with the third country branch's business strategy.

3. Competent authorities shall require that an independent written and reasoned opinion on the implementation of and on-going compliance with the requirements laid down in this Article be regularly prepared and addressed to the competent authority with its findings and conclusions.

4. EBA shall develop draft regulatory technical standards to specify the booking arrangements that third country branches shall apply for the purposes of this Article, in particular as regards:

(a) the methodology to be used by the third country branch to identify and keep a comprehensive and precise track record of the assets and liabilities associated with the third country branch's activities in the Member State; and

(b) the specific treatment to identify and keep a record of the assets and liabilities originated by the third country branch and booked or held remotely in other branches or subsidiaries of the same group on behalf of or for the benefit of the originating third country branch.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].

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.

SUB-SECTION 3
POWER TO REQUIRE AUTHORISATION UNDER TITLE III AND REQUIREMENTS ON SYSTEMIC BRANCHES

Article 48j

Power to require establishing a subsidiary

1. Member States shall ensure that competent authorities have the power to require third country branches to apply for authorisation under Title III, Chapter 1, at least where:

(a) the third country branch has engaged in the past or currently engages in interconnected activities with other third country branches or subsidiary institutions of the same group or in one of the activities referred to in Article 47(1) with customers or counterparts in other Member States in contravention of the internal market rules; or

(b) the third country branch meets the systemic importance indicators referred to in Article 131(3) and poses a significant risk to the financial stability of the Union or the Member State where it is established.

2. Before making the decision referred to in paragraph 1, competent authorities shall consult the competent authorities of the Member States where the relevant third country group has other third country branches and subsidiary institutions.

Where they disagree, the competent authorities of the third country group in other Member States may refer the matter to the EBA for mediation in accordance with Article 19 of Regulation (EU) No 1093/2010. EBA shall take its decision within one month of matter being referred and the competent authority of the relevant third country branch shall refrain from taking its decision during that time.

The competent authority of the relevant third country branch shall adopt the decision referred to in paragraph 1 in conformity with the decision of EBA.

3. Before imposing the requirement laid down in this Article on a third country branch in accordance with paragraph 1, point (a), the competent authority shall request EBA to issue a recommendation in accordance with Article 16 of Regulation (EU) No 1093/2010 on the interpretation of that point in relation to that third country branch.

4. EBA shall develop draft regulatory technical standards to specify the systemic importance indicators referred to in Article 131(3) as regards third country branches for the purposes of paragraph 1, point (b), of this Article and Article 48k. EBA shall have regard to the following items:

(a) the types of activities and services provided and the operations being conducted by the third country branch and, in particular, whether the third country branch provides those activities and services and conducts those operations with a very narrow set of customers or counterparts;

(b) the complexity of the third country branch's structure, organisation and business model;

(c) the degree of interconnectedness of the third country branch with the financial system of the Union and of the Member State where it is established;

(d) the substitutability of the activities, services or operations conducted or of the financial infrastructure provided by the third country branch;

(e) the market share of the third country branch in the Union and in the Member States where it is established as regards total banking assets and in relation the activities and services it provides and the operations that it conducts;

(f) the likely impact that a suspension or closure of the third country branch's operations or business could have on systemic liquidity or the payment, clearing and settlement systems in the Union and in the Member State where it is established;

(g) the likely impact that a suspension or closure of the third country branch's operations could have on intragroup financing agreements or intragroup services covering critical functions in the Union and in the Member States where it is established;

(h) the cross-border activity of the third country branch with its head undertaking and with counterparts in other third countries;

(i) the role and importance of the third country branch for the activities, services and operations of the third country group in the Union and in the Member State where it is established;

(j) the volume of the third country group's business being conducted through third country branches, relative to the business of that same group conducted through subsidiary institutions authorised in the Union and in the Member State where the third country branches are established;

(k) whether the third country branch is a qualifying third country branch in accordance with Article 48b.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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.

Article 48k

Assessment of systemic importance and requirements on systemic third country branches

1. The third country branch or branches in the Union that belong to the same third country group shall be subject to the assessment laid down in paragraph 2 of this Article where the aggregate amount of assets that they hold on their books in the Union as reported in accordance with Sub-section 4 is equal to or higher than EUR 30 billion, either:

(a) on average for the immediately preceding three annual reporting periods; or

(b) in absolute terms for at least three annual reporting periods during the immediately preceding five annual reporting periods.

2. Competent authorities shall assess whether the third country branches referred to in paragraph 1 have systemic importance for the Union and for the Member States where they are stablished. For those purposes, competent authorities shall assess whether those third country branches meet the indicators of systemic importance referred to in Article 48j(4) and Article 131(3).

3. The assessment of systemic importance referred to in paragraph 2 of this Article shall be performed by one of the following:

(a) where Article 111 applies to the relevant third country group, the consolidated supervisor of that third country group in the Union in accordance with that Article;

(b) where Article 111 does not apply to the relevant third country group, the competent authority that would become the consolidated supervisor of that third country group in the Union in accordance with that Article, should the third country branches be treated as subsidiary institutions;

(c) where the third country group has third country branches and subsidiary institutions in only one Member State, the competent authority of that Member State; or

(d) EBA where, after three months from the starting date of the annual reporting period immediately following the last annual reporting period that triggered the obligation to conduct the assessment in accordance with paragraph 1 of this Article:

(i) the assessment has not been commenced by either of the competent authorities referred to in points (a), (b) or (c); or

(ii) the competent authority that would be the consolidated supervisor in accordance with point (b) has not been determined.

The competent authorities referred to in points (a) and (b), acting as "lead competent authority", or, where applicable, EBA shall conduct the assessment in full cooperation with all the competent authorities concerned. The competent authorities concerned shall assist and provide all the necessary documentation to the lead competent authority or, where applicable, EBA. For those purposes, 'competent authorities concerned' shall mean all the authorities responsible for the supervision of the third country branches and subsidiary institutions of the relevant third country group in the Union.

Before the assessment of systemic importance is concluded, the lead competent authority, the competent authority referred to in point (c) or, where applicable, EBA shall hear the third country group and shall set reasonable timeframes for the third country group to submit documentation and make its views known in writing.

4. The lead competent authority shall conclude the assessment referred to in paragraph 2 and issue a report by no later than six months from the starting date of the annual reporting period immediately following the last reporting period that triggered the obligation to conduct the assessment in accordance with paragraph 1. Where, in accordance with paragraph 3, EBA is conducting the assessment, that period shall start to count from the date on which EBA became responsible for conducting the assessment. The report shall lay down the following:

(a) the assessment of systemic importance, which shall set out a clear and detailed analysis of the systemic importance indicators referred to in paragraph 2 in relation to the relevant third country branches and the lead competent authority's or, where applicable, EBA's conclusion;

(b) where the lead competent authority or, where applicable, EBA concludes that the third country branches are systemic, a proposed draft decision either:

(i) to require the third country branches to apply for authoritisation under Title III, Chapter 1;

(ii) to require the third country branches to restructure their assets or activities in the Union in such a manner that they cease to qualify as systemic in accordance with paragraph 2 of this Article;

(iii) to impose additional requirements on the third country branches or the subsidiary institutions of the third country group in the Union in accordance with Article 48p or Title VII, Chapter 2, Section IV, respectively;

(iv) not to impose any of the requirements referred to in points (i) to (iii) for a deferral period not exceeding 12 months and subject to conducting a new assessment of the third country branches before the expiry date of that period.

(c) the rationale of the proposed draft decision referred to in point (b), which shall set out a detailed explanation of how the decision relates back to the assessment referred to in point (a).

The lead competent authority or, where applicable, EBA shall only propose the decision referred to in point (b)(iv) where it can justify that the absence of requirements on the third country branches under this Article would not lead to a significant increase in the risk that those branches pose to financial stability and market integrity of the Union or the Member States during the deferral period referred to in that point.

Where applicable, the references to ‘lead competent authority” in this Article shall be understood as references to the competent authority referred to in paragraph 3, point (c). Where that competent authority is responsible for issuing the report laid down in this paragraph, the decision set out therein shall enter into force on the date of its notification to the third country branches. The competent authority shall also notify the decision to EBA.

5. The lead competent authority or, where applicable, EBA shall submit the report referred to in paragraph 5 to the competent authorities concerned. The lead competent authority and the competent authorities concerned shall do their best endeavours to reach a joint decision by consensus on the report and, where applicable, the draft decision within three months from the date on which the report was transmitted.

Where the competent authorities fail to reach a consensus after the end of the three-month period referred to in the first subparagraph, the joint decision shall be made within the month immediately following the end of the preceding three month period by a majority of votes cast. For those purposes, the voting stakes shall be allocated to the competent authorities in accordance with the following:

(a) subject to point (b), each competent authority, including the lead competent authority, shall be entitled to a voting stake equal to the percentage of assets of the third country group under its supervision relative to the total assets of that group in the Union;

(b) the voting stake of the lead competent authority shall be increased up to 25 % where it did not reach that percentage in accordance with point (a);

(c) where the voting stake of the lead competent authority has been increased to 25 % in accordance with point (b), the voting stakes of the remaining competent authorities that result from point (a) shall be adjusted as appropriate as stakes on the remaining 75 % of the voting rights.

For the purposes of point (a), the assets held in both the third country branches and subsidiary institutions of the third country group shall be included in the calculation.

After its adoption, the joint decision shall enter into force on the date it is notified to the third country branches. The joint decision shall also be notified to the EBA.

6. The third country branches shall have a period of three months from the date of the decision's entering into force in accordance with paragraphs 5 or 6 to comply with the requirements laid down in that decision.

Where the third country branches are required to apply for authorisation as institutions in accordance with Title III, Chapter 1, their authorisation under this Title shall remain valid on an interim basis until the expiry of the deadline referred to in the first subparagraph of this paragraph is reached or, as the case may be, until the completion of the authorisation process as institutions. The third country branches may request the competent authority to extend the three-month deadline referred to in the first subparagraph where they can justify the need for such an extended deadline to comply with the relevant requirement imposed on them.

Where the threshold referred to in paragraph 1 is met by aggregation of assets of various branches, the competent authorities may impose the requirement referred to in this subparagraph in decreasing asset size order up to the point in which the total assets remaining on the books of the third country branches in the Union is less than EUR 30 billion.

7. EBA shall develop draft regulatory technical standards to specify the rules of construction for the interpretation of Article 111 of this Directive for the purposes of determining the hypothetical consolidated supervisor as referred to in paragraph 3, point (b), of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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.

SUB-SECTION 4
REPORTING REQUIREMENTS

Article 48l

Regulatory, financial and head undertaking information

1. Member States shall require third country branches to periodically report to their competent authorities information on:

(a) the assets and liabilities held on their books in accordance with Article 48i, with a breakdown that singles out:

   (i) the largest recorded assets and liabilities classified by sector and counterparty type (including, in particular, financial sector exposures);

   (ii) significant exposure and funding source concentrations to specified types of counterparties;

   (iii) significant internal transactions with the head undertaking and with members of the head undertaking's group;

(b) the third country branch's compliance with the requirements that apply to them under this Directive;

(c) on an *ad hoc* basis, the deposit protection arrangements available to depositors in the third country branch in accordance with Article 15(2) and (3) of Directive 2014/49;

(d) additional regulatory requirements imposed on the third country branch by Member States under national law.

For the purposes of reporting the information on the assets and liabilities held on their books in accordance with point (a), third country branches shall apply the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002[*10] or the applicable GAAP in the Member State.

2. Member States shall require third country branches to report to their competent authorities the following information on their head undertaking:

(a) on a periodic basis, aggregated information on the assets and liabilities held or booked, respectively, by the subsidiaries and other third country branches of that head undertaking's group in the Union;

(b) on a periodic basis, the head undertaking's compliance with its applicable prudential requirements on an individual and consolidated basis;

(c) on an ad *hoc basis*, significant supervisory reviews and assessments when those are conducted on the head undertaking and the consequent supervisory decisions;

(d) the recovery plans of the head undertaking and the specific measures that could be taken on the third country branch in accordance with those plans, and any subsequent updates and amendments to those plans;

(e) the head undertaking's business strategy in relation to the third country branch, and any subsequent changes to that strategy;

(f) the services provided by the head undertaking to eligible counterparties or professional clients within the meaning of Section 1 of Annex II to Directive 2014/65/EU established or situated in the Union on the basis of reverse solicitation of services in accordance with Article 21c of this Directive.

3. The reporting obligations laid down in this Article shall not prevent competent authorities from imposing additional *ad hoc* reporting requirements on third country branches where the competent authority deems the additional information necessary to gain a comprehensive view of the branch's or its head undertaking's business, activities or financial soundness, verify the branch's and its head undertaking's compliance with applicable laws and ensure the branch's compliance with those laws.

[*10] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).'

Article 48m
Standard forms and templates and frequency of reporting

1. EBA shall develop draft implementing technical standards to specify the uniform formats, definitions, the IT solutions and the frequency of reporting to be applied for the purposes of Article 48l.

The reporting requirements referred to in the first subparagraph shall be proportionate to the classification of third country branches as either class 1 or class 2.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].

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.

2. The regulatory and financial information referred to in this Article shall be reported at least biannually by class 1 third country branches and at least annually by class 2 third country branches.

3. Competent authorities may waive all or part of the requirements to report information on the head undertaking laid out in paragraph 48l(3) for qualifying third country branches, provided that the competent authority is able to obtain the relevant information directly from the supervisory authorities of the relevant third country.

SECTION III

SUPERVISION

Article 48n
Third country branches supervision and supervisory examination programme

1. Member States shall require that competent authorities comply with this Section and, *mutatis mutandis*, with Title VII for the purposes of supervising third country branches.

2. Competent authorities shall include third country branches in the supervisory examination programme referred to in Article 99.

Article 48o
Supervisory review and evaluation

1. Member States shall require that competent authorities review the arrangements, strategies, processes and mechanisms implemented by third country branches to comply with the provisions that apply to them under this Directive and, where applicable, any additional regulatory requirements under national law.

2. On the basis of the review conducted in accordance with paragraph 1, the competent authorities shall evaluate whether the arrangements, strategies, processes and mechanisms implemented by the third country branches and the capital endowment and liquidity held by them ensure a sound management and coverage of their material risks and the viability of the branch.

3. Competent authorities shall conduct the review and evaluation referred to in paragraphs 1 and 2 in accordance with the principle of proportionality, as published in accordance with Article 143(1), point (c). In particular, competent authorities shall establish a frequency and intensity for the review referred to in paragraph 1 that is proportionate to the classification as class 1 and 2 third country branches and that takes into account other relevant criteria, such as the nature, scale and complexity of the third country branches' activities.

4. Where a review, in particular the evaluation of the governance arrangements, the business model, or the activities of a third country branch, gives competent authorities reasonable grounds to suspect that, in connection with that third country branch, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, the competent authority shall immediately notify EBA and the authority that supervises the third country branch in accordance with Directive (EU) 2015/849. Where there is an increased risk of money laundering or terrorist financing, the competent authority and the authority that supervises the third country branch in accordance with Directive (EU) 2015/849 shall liaise and notify their common assessment immediately to EBA. The competent authority shall take, as appropriate, measures in accordance with this Directive, which may include withdrawing the third country branch's permission in accordance with Article 48d(2), point (g).

5. Competent authorities, financial intelligence units and authorities that supervise third country branches shall cooperate closely with each other within their respective competences and shall exchange information relevant to this Directive, provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the competent authority, financial intelligence unit or authority entrusted with the public duty of supervising third country branches are located. EBA may assist the competent authorities and the authorities in charge of supervising the third country branch in accordance with Directive (EU) 2015/849 in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative. In such an event, EBA shall act in accordance with Article 19(1), second subparagraph, of Regulation (EU) No 1093/2010.

6. EBA shall develop draft regulatory technical standards to further specify:

(a) the common procedures and methodologies for the supervisory review and evaluation process referred to in this Article and for the assessment of the treatment of material risks;

(b) the mechanisms for cooperation and information exchange between the authorities referred to in paragraph 5 of this Article, in the context of identifying serious breaches of anti-money laundering rules.

For the purposes of point (a), the procedures and methodologies referred to therein shall be laid down in a manner that is proportionate to the classification of the third country branches as class 1 or class 2, and to other appropriate criteria such as the nature, scale and complexity of their activities.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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.

Article 48p

Supervisory measures and powers

1. Competent authorities shall require third country branches to take the necessary measures at an early stage in order to:

(a) ensure that the third country branches comply with the requirements that apply to them under this Directive and under national law or to restore compliance with those requirements; and

(b) to ensure that the material risks that the third country branches are exposed to are covered and managed in a sound and sufficient manner and that those branches remain viable.

2. Competent authorities' powers for the purposes of paragraph 1 shall include, at least, the power to require third country branches to:

(a) hold an amount of capital endowment in excess of the minimum requirements laid down in Article 48e or to comply with other additional capital requirements. Any additional capital endowment amount to be held by the third country branch in accordance with this point shall comply with the requirement laid down in Article 48e;

(b) meet other specific liquidity requirements in addition to the requirement laid down in Article 48f. Any additional liquid assets to be held by the third country branch in accordance with this point shall comply with the requirements laid down in Article 48f;

(c) reinforce their governance, risk control or booking arrangements;

(d) restrict or limit the scope of their business or of the activities they conduct, as well as the counterparties to those activities;

(e) reduce the risk inherent in their activities, products and systems, including outsourced activities, and stop engaging or offering such activities or products;

(f) comply with additional reporting requirements in accordance with Article 48l(3) or increase the frequency of the regular reporting;

(g) make public disclosures.

Article 48q

Cooperation between competent authorities and colleges of supervisors

1. Competent authorities supervising third country branches and subsidiary institutions of the same third-country group shall cooperate closely and share information with each other. The competent authorities shall have written coordination and cooperation arrangements in place in accordance with article 115.

2. For the purposes of paragraph 1, class 1 third country branches shall be subject to the comprehensive supervision of a college of supervisors in accordance with Article 116, subject to the following requirements:

(a) where a college of supervisors has been established in relation to the subsidiary institutions of a third country group, the class 1 third country branches of the same group shall be included within the scope of that college of supervisors;

(b) where the third country group has class 1 third country branches in more than one Member State but no subsidiary institutions in the Union subject to Article 116, a college of supervisors shall be established in relation to those class 1 third country branches;

(c) where the third country group has class 1 third country branches in more than one Member State or at least one class 1 third country branch, and one or more subsidiary institution~~s~~ in the Union that are not subject to Article 116, a college of supervisors shall be established in relation to those third country branches and subsidiary institutions.

3. For the purposes of paragraph 2, points (b) and (c), there shall be a lead competent authority that performs the same role as the consolidating supervisor in accordance with Article 116. The lead competent authority shall be that of the Member State with the largest third country branch in terms of total value of booked assets.

4. In addition to the tasks set out in Article 116, the colleges of supervisors shall:

(a) prepare a report on the structure and activities of the third country group in the Union and update this report on an annual basis;

(b) exchange information on the results of the supervisory review and evaluation process referred to in Article 48o;

(c) endeavour to align the application of the supervisory measures and powers referred to in Article 48p.

5. The college of supervisors shall ensure appropriate coordination and cooperation with relevant third country supervisory authorities where appropriate.

6. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010.

7. EBA shall develop draft regulatory technical standards to specify:

(a) the mechanisms of cooperation and the draft model agreements between competent authorities for the purposes of paragraph 1 of this Article; and

(b) the conditions for the functioning of colleges of supervisors for the purposes of Articles 2 to 6 of this Article.

EBA shall submit those draft technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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.

Article 48r

Reporting to the EBA

Competent authorities shall notify EBA the following:

(a) all the authorisations granted to third country branches and any subsequent changes to such authorisations;

(b) total assets and liabilities booked by the authorised third country branches, as periodically reported;

(c) the name of the third country group to which an authorised third country branch belongs.

EBA shall publish on its website a list of all third country branches authorised to operate in the Union in accordance with this Title, indicating the Member State in which they are authorised to operate.

CHAPTER 2

Relations with third countries

Article 48s

Cooperation with supervisory authorities of third countries regarding supervision on a consolidated basis

1. The Union may conclude 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 that:

(a) the competent authorities of 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 and mixed financial holding companies situated in the Union which have as subsidiaries institutions or financial institutions situated in a third country, or holding participation therein;

(b) the supervisory 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 therein; and

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

3. Without prejudice to Article 218 TFEU, 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.;

(9) Articles 65 and 66 are replaced by the following:

'*Article 65*

Administrative penalties, periodic penalty payments and other administrative measures

1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties, periodic penalty payments and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013, and shall take all measures necessary to ensure that they are implemented. The administrative penalties, periodic penalty payments and other administrative measures shall be effective, proportionate and dissuasive..

2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, administrative penalties, periodic penalty payments and other administrative measures may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach.

3. The application of periodic penalty payments shall not prevent competent authorities from imposing administrative penalties for the same breach.

4. Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Those powers shall include:

(a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

(i) institutions established in the Member State concerned;

(ii) financial holding companies established in the Member State concerned;

(iii) mixed financial holding companies established in the Member State concerned;

(iv) mixed-activity holding companies established in the Member State concerned;

(v) persons belonging to the entities referred to in points (i) to (iv);

(vi) parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities;

(b) the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including the power to:

(i) require the submission of documents;

(ii) examine the books and records of the persons referred to in points (a)(i) to (vi) and take copies or extracts from such books and records;

(iii) obtain written or oral explanations from any person referred to in points (a)(i) to (vi) or their representatives or staff;

(iv) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation; and

(v) the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a)(i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.';

5. By way of derogation from paragraph 1, where the legal system of the Member State does not provide for administrative penalties, this Article may be applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative penalties imposed by competent authorities. In any event, the penalties imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [OP please insert date = date of transposition of this amending Directive] and, without delay, any subsequent amendment law or amendment affecting them.

Article 66

Administrative penalties, periodic penalty payments and other administrative measures for breaches of authorisation and requirements for acquisitions or divesture of qualifying holdings, material transfers of assets and liabilities, mergers or divisions

1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties, periodic penalty payments and other administrative measures at least where:

(a) the business of taking deposits or other repayable funds from the public is conducted without being authorised as a credit institution in breach of Article 9;

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

(c) a qualifying holding in a credit institution is acquired, directly or indirectly, or further increased, directly or indirectly, such that the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or the credit institution would become the subsidiary of the acquirer, without notifying in writing the competent authorities of the credit institution in relation to which the acquirer seeks to acquire or increase the qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of that Article;

(d) a qualifying holding in a credit institution is disposed of, directly or indirectly or reduced as a result of which the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25 or the credit institution would cease to be a subsidiary of the acquirer, without notifying in writing the competent authorities in breach of that Article ;

(e) a financial holding company or mixed financial holding company as defined in article 21a(1) fail to apply for approval in breach of Article 21a or breaches any other requirement set out in that Article;

(f) an acquirer as defined in Article 27a(1) acquires directly or indirectly, a qualifying holding in an institution, or increases an already held qualifying holding, such that the proportion of voting rights or capital held by the acquirer in the institution would exceed 15% of the institution's eligible capital without the acquirer's notifying the competent authorities in breach of that Article;

(g) any of the parties referred to in Article 27d of this Directive disposes directly or indirectly of a qualifying holding that exceeds the threshold referred to in Article 89 of Regulation (EU) 575/2013 without notifying the competent authorities in breach of Article 27d of this Directive;

(h) any of the parties referred to in Article 27f(1) executes a material transfer of assets and liabilities without notifying the competent authorities in breach of that Article;

(i) any of the parties referred to in Article 27k(l) engages in a process of merger or division in breach of that Article.

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

(a) administrative penalties:

(i) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover of the undertaking;

(ii) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

(iii) administrative pecuniary penalties of up to twice the profits gained or losses avoided because of the breach where those can be determined;

(b) periodic penalty payments:

(i) in the case of a legal person, periodic penalty payments of up to 5 % of the average daily turnover which, in the case of an ongoing breach, the legal person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period of up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment;

(ii) in the case of a natural person, periodic penalty payments of up to EUR 500 000 which, in the case of an ongoing breach, the natural person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment;

(c) other administrative measures:

(i) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company, intermediate parent undertaking responsible and the nature of the breach;

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

(iii) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1;

(iv) subject to Article 65(2), a temporary or a definitive ban of a member of the institution's management body or any other natural person who is held responsible for the infringement from exercising functions in the institution.

3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i), of this Article shall be equal to the business indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purposes of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. If the result is zero or negative, the basis for the calculation shall be the most recent earlier yearly supervisory financial information which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.

4. The average daily turnover referred to in paragraph (2), point (b)(i), shall be the total annual net turnover referred to in paragraph 3 divided by 365.';

(10) Article 67 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (d) and (e) are replaced by the following:

'(d) an institution fails to have in place governance arrangements and gender neutral remuneration policies required by the competent authorities in accordance with Article 74;

(e) an institution fails to report information or provides incomplete or inaccurate information regarding compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the competent authorities in breach of Article 430(1) of that Regulation;';

(ii) point (j) is replaced by the following:

'(j) an institution fails to maintain a net stable funding ratio in breach of Article 413 or 428b of Regulation (EU) No 575/2013 or repeatedly and persistently fails to hold liquid assets in breach of Article 412 of that Regulation;';

(iii) the following points (r) to (ab) are added:

'(r) an institution fails to meet the own fund requirements set out in Article 92(1) of Regulation (EU) No 575/2013;

(s) an institution or a natural person fails to comply with an obligation arising from a decision issued by the competent authority or an obligation arising from national provisions transposing Directive 2013/36/EU or from Regulation (EU) No 575/2013;

(t) an institution that fails to comply with the remuneration requirements in accordance with Articles 92, 94 and 95 of this Directive;

(u) an institution acts without the prior permission of the competent authority where national provisions transposing Directive 2013/36/EU or Regulation (EU) No 575/2013 require the institution to obtain such prior permission or obtained such permission on the basis of its own false statement or does not comply with the conditions under which such permission was granted;

(v) an institution fails to meet the requirements in relation to composition, conditions, adjustments and deductions related to own funds as set out in Part Two of Regulation (EU) No 575/2013;

(w) an institution fails to meet the requirements in relation to its large exposures to a client or group of connected clients set out in Part Four of Regulation (EU) No 575/2013;

(x) an institution fails to meet the requirements in relation to the calculation of the leverage ratio, including the application of derogations set out in Part Seven of Regulation (EU) No 575/2013;

(y) an institution fails to report information or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in Articles 430(1), (2) and (3) and in Articles430a and 430b of Regulation (EU) No 575/2013;

(z) an institution fails to comply with the data collection and governance requirements set out in Part Three, Title III, Chapter 2 of Regulation (EU) No 575/2013.

(aa) an institution fails to meet the requirements in relation to the calculation of the risk-weighted exposure amounts or own funds requirements or fails to have in place the governance arrangements set out in Part Three, Title II to VI of Regulation (EU) No 575/2013;

(ab) an institution fails to meet the requirements in relation to the calculation of the liquidity coverage ratio or the net stable funding ratio as set out in Part Six, Title I and Title IV of Regulation (EU) No 575/2013 and the delegated act referred to in Article 460(1) of that Regulation.';

(b) paragraph 2 is replaced by the following:

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

(a) administrative penalties:

(i) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover of the undertaking;

(ii) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

(iii) administrative pecuniary penalties of up to twice the profits gained or losses avoided because of the breach where those can be determined;

(b) periodic penalty payments:

(i) in the case of a legal person, periodic penalty payments of up to 5 % of the average daily turnover which, in the case of an ongoing infringement, the legal person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period of up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment. The average daily turnover referred to in this paragraph shall be the total annual net turnover divided by 365.

(ii) in the case of a natural person, periodic penalty payments of up to EUR 500 000 which, in the case of an ongoing infringement, the natural person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment;

(c) other administrative measures:

(i) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company, intermediate parent undertaking responsible and the nature of the breach;

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

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

(iv) subject to Article 65(2), a temporary or a definitive ban of a member of the institution's management body or any other natural person who is held responsible for the infringement from exercising functions in the institution;

(v) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.';

(c) the following paragraphs 3 and 4 are added:

'3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i), of this Article shall be equal to the business indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purpose of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. If the result is zero or negative, the basis for the calculation shall be the most recent earlier yearly supervisory financial information, which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.

4. The average daily turnover referred to in paragraph (2), point (b)(i), shall be the total annual net turnover referred to in paragraph 3 divided by 365.'

(11) Article 70 is replaced by the following:

'Article 70

Effective application of administrative penalties and exercise of powers to impose penalties by competent authorities

1. Member States shall ensure that, when determining the type and level of administrative penalties or other administrative measures, 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 natural or legal person responsible for the breach;

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

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, 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 natural or legal person responsible for the breach with the competent authority;

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

(h) any potential systemic consequences of the breach.

(i) previous application of criminal penalties to the same natural or legal person responsible for the same breach.

2. In the exercise of their powers to impose penalties, competent authorities shall cooperate closely to ensure that penalties produce the results pursued by this Directive. They shall also coordinate their actions to prevent accumulation and overlap when applying penalties and administrative measures to cross-border cases. Competent authorities shall cooperate closely with judicial authorities when dealing with same cases.

3. Competent authorities may apply penalties in relation to the same natural or legal person responsible for the same acts or omissions in the case of an accumulation of administrative and criminal proceedings and penalties is punishing the same breach. However, such accumulation of proceedings and penalties shall be strictly necessary and proportionate to pursue different and complementary objectives of general interest. The severity of all the penalties and other administrative measures imposed in case of accumulation of administrative and criminal proceedings shall be limited to what is necessary in the view of the seriousness of the breach concerned. Member

States shall lay down clear and precise rules regarding the circumstances in which acts or and omissions may be subject to such accumulation of administrative and criminal proceedings and penalties.

4. Member States shall lay down rules providing for full cooperation between competent authorities and judicial authorities to ensure a sufficiently close connection in substance and time between administrative and criminal proceedings.

5. By 18 July 2029, EBA shall submit a report to the Commission on the cooperation between competent authorities and judicial authorities in the context of application of administrative penalties. In addition, EBA shall assess any divergences in the application of penalties between competent authorities in this respect. In particular, EBA shall assess:

(a) the level of cooperation between competent authorities and judicial authorities in the context of application of penalties;

(b) the level of cooperation between competent authorities in the context of penalties applicable to cross-border cases or in case of accumulation of administrative and criminal proceedings;

(c) the application and the level of protection of ne bis in idem principle with regards to administrative and criminal penalties by Member States;

(d) the application of the principle of proportionality when both penalties are imposed in case of accumulation of administrative and criminal proceedings;

(e) the exchange of information between competent authorities when dealing with cross border cases.';

(12) in Article 73, the first subparagraph is replaced by the following:

'Institutions shall have in place sound, effective and comprehensive 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 in the short, medium and long term time horizon, including environmental, social and governance risks.';"

(13) in Article 74, paragraph 1 is replaced by the following:

'1. Institutions shall have robust governance arrangements, which include:

(a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility;

(b) effective processes to identify, manage, monitor and report the risks they are or might be exposed to in the short, medium and long term time horizon, including environmental, social and governance risks;

(c) adequate internal control mechanisms, including sound administration and accounting procedures;

(d) remuneration policies and practices that are consistent with and promote sound and effective risk management.

The remuneration policies and practices referred to in the first subparagraph shall be gender neutral.';

(14) Article 76 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the management body approves and at least every two years 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, and those resulting from the current, short, medium and long-term impacts of environmental, social and governance factors.’;

(b) in paragraph 2 the following subparagraph is added:

‘Member States shall ensure that the management body develops specific plans and quantifiable targets to monitor and address the risks arising in the short, medium and long-term from the misalignment of the business model and strategy of the institutions, with the relevant Union policy objectives or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors.’;

(c) paragraph 5 is replaced by the following:

‘5. Member States shall, in accordance with the proportionality requirement laid down in Article 7(2) of Commission Directive 2006/73/EC[*11], ensure that institutions have internal control functions independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body.

Member States shall ensure that the internal control functions ensure that all material risks are identified, measured and properly reported. They shall ensure that the internal control functions are actively involved in elaborating the institution's risk strategy and in all material risk management decisions and that the internal control functions can deliver a complete view of the whole range of risks of the institution.

Member States shall ensure that the internal control function can report directly to the management body in its supervisory function, independent from members of the management body in its management function or senior management, and can raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body pursuant to this Directive and Regulation (EU) No 575/2013.

The heads of internal control functions shall be independent senior managers with distinct responsibility for the risk management, compliance and internal audit functions. Where the nature, scale and complexity of the activities of the institution do not justify to appoint a specific person for each internal control functions, another senior person within the institution may combine the responsibilities for those functions, provided there is no conflict of interest.

The heads of the internal control functions shall not be removed without prior approval of the management body in its supervisory function and shall be able to have direct access to the management body in its supervisory function where necessary.

[*11] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as

regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).';

(15) Article 78 is amended as follows:

(a) the title is replaced by the following:

'**Supervisory benchmarking of approaches for calculating own funds requirements**';

(b) paragraph 1 is replaced by the following:

'1. Competent authorities shall ensure all of the following:

(a) that institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own funds requirements report the results of their calculations for their exposures or positions that are included in the benchmark portfolios;

(b) that institutions using the alternative standardised approach set out in Part Three, Title IV, Chapter 1a of Regulation (EU) No 575/2013 report the results of their calculations for their exposures or positions that are included in the benchmark templates;

(c) that institutions permitted to use internal approaches under Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, as well as significant institutions that apply the standardised approach under Part Three, Title II, Chapter 2 of that Regulation, report the results of the calculations of the approaches used for the purpose of determining the amount of expected credit losses for their exposures or positions that are included in the benchmark templates, where any of the following conditions is met:

(i) institutions prepare their accounts in conformity with the international accounting standards adopted in accordance with Article 6(2) of Regulation (EC) No 1606/2002;

(ii) institutions perform the valuation of assets and off-balance sheet items and the determination of their own funds in conformity with the international accounting standards pursuant to Article 24(2) of Regulation (EU) No 575/2013;

(iii) institutions perform the valuation of assets and off-balance sheet items in conformity with accounting standards under Directive 86/635/EEC[*12] and they use an expected credit loss model that is the same as the one used in international accounting standards adopted in accordance with Article 6(2) of Regulation (EC) No 1606/2002.

Institutions shall submit the results of their calculations referred to in the first subparagraph together with an explanation of the methodologies used to produce them and any qualitative information, as requested by EBA, that can explain the impact of these calculations on own funds requirements, to the competent authorities at least annually, but with the possibility for EBA to conduct the exercise biennially after the exercise has run five times.

(c) paragraph 3 is amended as follows:

(i) the introductory wording is replaced by the following:

‘Competent authorities shall, on the basis of the information submitted by institutions in accordance with paragraph 1, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, for the exposures or transactions in the benchmark portfolio resulting from the approaches of those institutions. Competent authorities shall make an assessment of the quality of those approaches with the frequency referred to in paragraph 1, second subparagraph, paying particular attention to:’;

(ii) the second subparagraph is replaced by the following:

‘EBA shall produce a report to assist the competent authorities in the assessment of the quality of the approaches based on the information referred to in paragraph 2.’;

(d) in paragraph 5, the introductory sentence is replaced by the following:

‘The competent authorities shall ensure that their decisions on the appropriateness of corrective actions as referred to in paragraph 4, comply with the principle that such actions must maintain the objectives of the approaches within the scope of this Article and therefore do not:’;

(e) paragraph 6 is replaced by the following:

‘6. EBA may issue guidelines and recommendations in accordance with Article 16 of Regulation (EU) No 1093/2010 where it considers them necessary on the basis of the information and assessments referred to in paragraphs 2 and 3 of this Article in order to improve supervisory practices or practices of institutions with regard to the approaches within the scope of the supervisory benchmarking.’;

(f) paragraph 8 is amended as follows:

(i) in the first subparagraph, the following point (c) is added:

‘(c) the list of significant institutions referred to in paragraph 1, point (c).’;

(ii) the following second subparagraph is inserted:

‘For the purposes of point (c), when determining the list of significant institutions EBA shall take into account proportionality considerations.’;

[*12] Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

(16) paragraph 1 of Article 85 is amended as follows:

“1. Competent authorities shall ensure that institutions implement policies and processes to evaluate and manage the exposures to operational risk, including risks resulting from outsourcing, and to cover low-frequency high-severity events. Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures.”

(17) a new Article 87a is inserted:

‘Article 87a

Environmental, social and governance risks

1. Competent authorities shall ensure that institutions have, as part of their robust governance arrangements including risk management framework required under Article 74(1), robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of environmental, social and governance risks over an appropriate set of time horizons.

2. The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the scale, nature and complexity of the environmental, social and governance risks of the business model and scope of the institution’s activities, and consider short, medium and a long-term horizon of at least 10 years.

3. Competent authorities shall ensure that institutions test their resilience to long-term negative impacts of environmental, social and governance factors, both under baseline and adverse scenarios within a given timeframe, starting with climate-related factors. For the testing, competent authorities shall ensure that institutions include a number of environmental, and social and governance scenarios reflecting potential impacts of environmental and social changes and associated public policies on the long-term business environment.

4. Competent authorities shall assess and monitor developments of institutions’ practices concerning their environmental, social and governance strategy and risk management, including the plans to be prepared in accordance with Article 76, as well as the progress made and the risks to adapt their business models to the relevant policy objectives of the Union or broader transition trends towards a sustainable economy, taking into account sustainability related product offering, transition finance policies, related loan origination policies, and environmental, social and governance related targets and limits.

5. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify:

(a) minimum standards and reference methodologies for the identification, measurement, management and monitoring of environmental, social and governance risks;

(b) the content of plans to be prepared in accordance with Article 76, which shall include specific timelines and intermediate quantifiable targets and milestones, in order to address the risks from misalignment of the business model and strategy of institutions with the relevant policy objectives of the Union, or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors;

(c) qualitative and quantitative criteria for the assessment of the impact of environmental, social and governance risks on the financial stability of institutions in the short, medium and long term;

(d) criteria for setting the scenarios and methods referred to in paragraph 3, including the parameters and assumptions to be used in each of the scenarios and specific risks.

EBA shall publish those guidelines by [OP please insert the date = 18 months from date of entry into force of this amending Directive]. EBA shall update those guidelines on a regular basis, to reflect the progress made in measuring and managing environmental, social and governance factors as well as the developments of policy objectives of the Union on sustainability.';

(18) Article 88 is amended as follows:

(a) in paragraph 1, point (e) is replaced by the following:

'(e) the chairman of the management body in its supervisory function of an institution may not exercise simultaneously the functions of a chief executive officer within the same institution.';

(b) in Article 88, the following paragraph 3 is added:

'3. Member States shall ensure that institutions draw up, maintain and update individual statements setting out the roles and duties of each member of the management body, senior management and key function holders and a mapping of duties, including details of the reporting lines and the lines of responsibility, and the persons who are part of the governance arrangements as referred to in Article 74 (1) and their duties approved by the management body.

Member States shall ensure that the statements of duties and the mapping of the duties are made available and communicated in due time, upon request, to the competent authorities.

EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, ensuring the implementation of this paragraph and its consistent application. EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].'

(19) Article 91 is replaced by the following:

'Article 91

Suitability criteria for members of the management body of the entities

1. Institutions and financial holding companies and mixed financial holding companies, as approved pursuant to Article 21a(1),("the entities"), shall have the primary responsibility for ensuring that members of the management body are at all times of good repute and possess sufficient knowledge, skills and experience to perform their duties and fulfil the requirements set out in paragraphs 2 to 8 of this Article.

Competent authorities shall in particular verify whether the criteria and requirements set out in the first subparagraph of this Article are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.

2. Each member of the management body shall commit sufficient time to perform his or her functions in the entities.

3. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Being a member of the management body of a credit institution permanently affiliated to a central body shall not in itself constitute an obstacle for acting with independence of mind.

4. The management body shall possess collective knowledge, skills and experience to be able to adequately understand the institution's activities, as well as the associated risks it is exposed to, in the short, medium and long term, taking into account the environmental, social and governance factors. The overall composition of the management body shall reflect an adequately broad range of experience.

5. The number of directorships which a member of the management body may hold simultaneously shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Unless where members of the management body represent the interests of a Member State, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships simultaneously:

(a) one executive directorship with two non-executive directorships;

(b) four non-executive directorships.

6. For the purposes of paragraph 5, the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same group.

(b) executive or non-executive directorships held within either of the following:

(i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled;

(ii) undertakings, including non-financial entities, in which the institution holds a qualifying holding.

For the purposes of point (a) of this paragraph, a group shall mean a group of undertakings that are related to each other as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council[*13].

7. Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 5.

8. Competent authorities may authorise members of the management body to hold one non-executive directorship on top of the directorships referred to in paragraph 5, points (a) and (b).

9. The entities shall devote adequate human and financial resources to the induction and training of members of the management body.

10. Member States or competent authorities shall require entities and their respective nomination committees, where established, to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity in the management body.

11. Competent authorities shall collect the information disclosed in accordance with Article 435(2), point (c), of Regulation (EU) No 575/2013 and shall use that information to benchmark diversity practices. Competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.

12. EBA shall issue guidelines on the following:

(a) the notion of sufficient time commitment of a member of the management body to perform his or her functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution;

(b) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 3;

(c) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 4;

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 9;

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 10;

EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

13. This Article and Articles 91a to 91d shall be without prejudice to provisions of the Member States on the representation of employees in the management body.';

[*13] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council (OJ L 182, 29.6.2013)

(20) the following Articles 91a to 91d are inserted:

'Article 91a

Suitability assessment of members of the management body by the entities

1. The entities as referred to in Article 91(1) shall ensure that members of the management body fulfil the criteria and requirements set out in Article 91(1) to (8) at all times.

2. The entities shall assess the suitability of members of the management body before those members take up their positions. Where the entities conclude, based on the suitability assessment, that the member concerned does not fulfil the criteria and requirements set out in paragraph 1, the entities shall ensure that the member concerned does not take up the position considered.

However, where it is strictly necessary to replace a member of the management body immediately, the entities may assess the suitability of such replacement members after they have taken up their positions. The entities shall be able to duly justify such immediate replacement.

3. The entities shall ensure that information about the suitability of the members of the management body remains up-to-date. Where requested, the entities shall communicate that information to the competent authorities.

4. The entities that renew the mandate of members of the management body shall inform in writing the competent authorities within 15 working days of the date of that renewal of the mandate.

Article 91b

Suitability assessment of members of the management body of the entities by competent authorities

1. Member States shall ensure that competent authorities assess whether members of the management body of the entities as referred to in Article 91(1) fulfil the criteria and requirements set out in Article 91(1) to (8) at all times.

2. For the assessment referred to in paragraph 1, the entities shall submit the initial application of the relevant member of the management body to the competent authorities without undue delay after the internal suitability assessment is completed. That application shall be accompanied by all the information and documentation necessary for competent authorities to carry out the suitability assessment effectively.

3. Competent authorities shall acknowledge in writing the receipt of the application and the documentation required in accordance with paragraph 2 within two working days.

Competent authorities shall complete the assessment referred to in paragraph 1 within 80 working days ('assessment period') as from the date of the written acknowledgement referred to in the first subparagraph of this paragraph.

4. Competent authorities that request from the entities additional information or documentation, including interviews or hearings, may extend the assessment period for a maximum of 40 working days. However, the assessment period shall not exceed 120 working days. Request for additional information or documentation shall be made in writing and shall be specific. The entities shall acknowledge receipt of request for additional information or documentation within two working days and provide the requested additional information or documentation within 10 working days as of the date of the written acknowledgement of the request from competent authorities.

5. As soon as any new facts or other issues that may affect the suitability of the member of the management body are known to the entities or the relevant member of the management body, the entities shall inform without undue delay the relevant competent authorities thereof.

6. Competent authorities shall not reassess the suitability of members of the management body when their mandate is renewed, unless relevant information that is known to competent authorities has changed and such change may affect the suitability of the member concerned.

7. Where members of the management body do not fulfil the requirements set out in Article 91(1) to (8) at all times or where the entities do not comply with the obligations and deadlines laid down in paragraphs 2 or 4 of this Article, Member States shall ensure that competent authorities have the necessary powers to:

(a) prevent such members to be part of the management body;

(b) remove such members from the management body;

(c) require the entities concerned to take the measures necessary to ensure that such member is suitable for the position concerned.

8. In accordance with paragraphs 1 to 7, competent authorities shall carry out the suitability assessment before members of the management body take up their positions in the following entities:

(a) the EU parent institution that qualifies as large institution;

(b) the parent institution in a Member State that qualifies as large institution;

(c) central body that qualifies as large institution or that supervises large institutions affiliated to it;

(d) stand-alone institution in the EU that qualifies as large institution;

(e) relevant subsidiary;

(f) the parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, having large institutions or relevant subsidiaries within their group.

However, where it is strictly necessary to replace a member of the management body immediately, competent authorities may carry out the suitability assessment of members of the management body after they take up their positions. The entities shall be able to duly justify such immediate replacement.

9. For the purposes of paragraph 2, EBA shall develop draft regulatory technical standards specifying information or accompanying documents required to be submitted to the competent authorities for performing the suitability assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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 on standard forms, templates and procedures for the provision of the information referred to in paragraph 2.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

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 91c

Suitability criteria and assessment by the entities of key function holders

1. The entities as referred to in Article 91(1) shall have the primary responsibility for ensuring that key function holders are of good repute, have honesty and integrity and possess the knowledge, skills and experience necessary to perform their duties at all times.

2. Where the entities conclude, based on the assessment referred to in paragraph 1, that the person does not fulfil the requirements set out in that paragraph, they shall not appoint that person as a key function holder. The entities shall take all measures necessary to ensure the appropriate functioning of that position.

3. The entities shall ensure that information about the suitability of the key function holders remains up-to-date. Where requested, the entities shall communicate that information to competent authorities.

Article 91d

Suitability assessment by competent authorities of the heads of internal control functions and chief financial officer

1. Member States shall ensure that competent authorities assess before the heads of internal control functions and the chief financial officer take up their positions whether they fulfil the suitability criteria set out in Article 91c(1), where those heads or officer are to be appointed for roles in the following entities:

(a) the EU parent institution that qualifies as large institution;

(b) the parent institution in a Member State that qualifies as large institution;

(c) central body that qualifies as large institution or that supervises large institutions affiliated to it;

(d) stand-alone institution in the EU that qualifies as a large institution;

(e) relevant subsidiary.

2. For the assessment of the suitability of the heads of internal control functions and chief financial officer as referred to in paragraph 1, the entities referred to in that paragraph shall submit the initial application of the person concerned to the competent authorities without undue delay after the internal suitability assessment is completed. That application shall be accompanied by all the information and documentation necessary to competent authorities to carry out the suitability assessment effectively.

3. Competent authorities shall acknowledge in writing the receipt of the application and the documentation required in accordance with paragraph 2 within two working days.

Competent authorities shall assess the suitability of the heads of internal control functions and chief financial officer within 80 working days (‘assessment period’) as from the date of the written acknowledgement referred to in the first subparagraph.

4. Competent authorities that request from the entities referred to paragraph 1 additional information or documentation, including interviews or hearings, may extend the assessment period for maximum 40 working days. However, the assessment period shall not exceed 120 working days. Request for additional information or documentation shall be made in writing and shall be specific. The entities referred to paragraph 1 shall acknowledge receipt of request for additional information or documentation within two working days and provide the requested additional information or documentation within 10 working days as of the date of the written acknowledgement of the request from competent authorities.

5. As soon as any new facts or other issues that may affect the suitability of the member of the management body are known to the entities referred to in paragraph 1 or the relevant member of the management body, the entities referred to in that paragraph shall inform without undue delay the relevant competent authorities thereof.

6. Where the heads of internal control functions and chief financial officer do not fulfil the requirements set out in Article 91c(1), or where the entities referred to paragraph 1 of this Article do not comply with the obligations and deadlines in paragraphs 2 and 4 of this Article, Member States shall ensure that competent authorities have the necessary powers to:

(a) prevent such heads or officer to exercise their functions;

(b) remove such heads or officer;

(c) require the entities referred to paragraph 1 to take the appropriate measures to ensure that such heads or officer concerned are suitable for the position considered.

7. For the purposes of this Article, EBA shall develop draft regulatory technical standards specifying information or accompanying documents required to be submitted to the competent authorities for performing the suitability assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months after the date of entry into force of this amending Directive].

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.

8. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in paragraph 2.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

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.

9. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, facilitating the implementation and consistent application of procedural requirements laid down in Articles 91a to 91d of this Directive and the application of powers and actions to be taken by the competent authorities referred to in Article 91b(7) and 91d(6) of this Directive. EBA shall issue those guidelines by [OP-please insert the date = 12 months from date of entry into force of this Directive].';

(22) Article 92 is amended as follows:

(a) in paragraph 2, points (e) and (f) are replaced by the following:

'(e) staff engaged in internal 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 staff in the internal control functions is directly overseen by the remuneration committee referred to in Article 95 or, if such a committee has not been established, by the management body in its supervisory function;';

(b) in paragraph 3, point (b) is replaced by the following:

'(b) staff members with managerial responsibility over the institution's internal control functions or material business units;';

(23) Article 94 is amended as follows:

(a) in paragraph 1, point (g)(ii), the fifth indent is replaced by the following:

'- the institution shall, without delay, inform the competent authority of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the competent authorities shall use the information received to benchmark the practices of institutions in that regard. The competent authorities shall provide EBA with the benchmarks and EBA shall publish them on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this indent and to ensure the consistency of the information collected;';

(b) in paragraph 2, third subparagraph, point (a) is replaced by the following:

'(a) managerial responsibility and internal control functions;';

(c) in paragraph 3, point (a) is replaced by the following:

'(a) an institution that is not a large institution and the value of the assets of which is on average and on an individual basis in accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;';

(24) in Article 98, the following paragraph 9 is added:

'9. The review and evaluation performed by competent authorities shall include the assessment of institutions' governance and risk management processes for dealing with environmental, social and governance risks, as well as of the institutions' exposures to environmental, social and governance risks. In determining the adequacy of institutions' processes and exposures, competent authorities shall take into account the business models of those institutions.';

(25) in Article 100 the following paragraphs 3 and 4 are added:

'3. Institutions and any third parties acting in a consulting capacity to institutions shall refrain from activities that can impair a stress test, such as benchmarking, exchange of information among themselves, agreements on common behaviour, or optimisation of their submissions in stress tests. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013, competent authorities shall have all information gathering and investigatory powers that are necessary to detect those actions.

4. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines to ensure that consistency, long-term considerations and common standards for assessment methodologies are integrated into the stress testing of environmental, social and governance risks. Stress testing of environmental, social and governance risks by competent authorities should start with climate-related factors. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, explore how social and governance related risks can be integrated into stress testing.';

(26) Article 104 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory sentence is replaced by the following:

‘For the purposes of Article 97, Article 98(4) and (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’

(ii) the following point (m) is added:

‘(m) require institutions to reduce the risks arising from the institutions’ misalignment with relevant policy objectives of the Union and broader transition trends relating to environmental, social and governance factors over the short, medium and long term, including through adjustments to their business models, governance strategies and risk management.’;

(b) the following paragraph 3 is added:

‘3. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify how competent authorities may identify that the credit valuation adjustment (CVA) risks of institutions, referred to in Article 381 of Regulation (EU) No 575/2013, pose excessive risks to the soundness of those institutions.’;

(27) Article 104a is amended as follows:

(a) in paragraph 3, the second subparagraph is replaced by the following:

‘Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by Article 92(1), point (d), of Regulation (EU) No 575/2013, competent authorities shall determine the level of the additional own funds required under paragraph 1, point (a), of this Article as the difference between the capital considered adequate pursuant to paragraph 2 of this Article, except for the fifth subparagraph thereof, and the relevant own funds requirements set out in Parts Three and Seven of Regulation (EU) No 575/2013.’;

(b) the following paragraphs 6 and 7 are added:

‘6. Where an institution becomes bound by the output floor, the following shall apply:

(a) the nominal amount of additional own funds required by the institution’s competent authority in accordance with Article 104(1), point (a), to address risks other than the risk of excessive leverage shall not increase as a result of the institutions’ becoming bound by the output floor;

(b) the institution’s competent authority shall, without undue delay, and no later than by the end date of the next review and evaluation process, review the additional own funds it required from the institution in accordance with Article 104(1), point (a), and remove any parts thereof that would double-count the risks that are already fully covered by the fact that the institution is bound by the output floor.

For the purposes of this Article and Articles 131 and 133 of this Directive, an institution shall be considered as bound by the output floor when the institution’s total risk exposure amount calculated in accordance with Article 92(3), point (a), of Regulation (EU) No 575/2013 exceeds its un-floored total risk exposure amount calculated in accordance with Article 92(4) of that Regulation.

7. For the purposes of paragraph 2, as long as an institution is bound by the output floor, the institution’s competent authority shall not impose an additional own funds requirement that would double-count the risks that are already fully covered by the fact that the institution is bound by the output floor.’;

(28) in Article 106, paragraph 1 is replaced by the following:

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

(a) to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for the submission of disclosure information by large and other institutions to EBA for its publication on a centralised EBA website;

(b) to use specific media and locations for publications other than the EBA website for centralised disclosures or the financial statements of institutions.’;

(29) Article 121 is replaced by the following:

‘Without prejudice to provisions applicable to financial holding company or mixed financial holding approved in accordance with Article 21a(1), Member States shall require that the members of the management body of a financial holding company or mixed financial holding, be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company’.

(30) In Title VII, Chapter 3, the following Section 0 is inserted:

‘SECTION 0

APPLICATION OF THIS CHAPTER TO INVESTMENT FIRM GROUPS

Article 110a

Scope of application to investment firm groups

This Chapter applies to investment firm groups, as defined in Article 4(1), point (25) of Regulation (EU) 2019/2033 of the European Parliament and of the Council[*], where at least one investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) of Regulation (EU) 2019/2033[*14].

This Chapter does not apply to investment firm groups where no investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) of Regulation (EU) 2019/2033.’;

[*14] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending

Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).';

(31) Article 131 is amended as follows:

(a) in paragraph 5, the following subparagraph is added:

'Where an O-SII becomes bound by the output floor, its competent or designated authority, as applicable, shall review the institutions O-SII buffer requirement to make sure that its calibration remains appropriate.';

(b) in paragraph 5a, the second sub-paragraph is replaced by the following:

'Within six weeks of receipt of the notification referred to in paragraph 7 of this Article, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 16a(1) of Regulation (EU) No 1093/2010.';

(c) in paragraph 15, the first subparagraph is replaced by the following:

'Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraph 10, 11 or 12 of Article 133 and the O-SII buffer rate or the G-SII buffer rate to which the same institution is subject to would be higher than 5 %, the procedure set out in paragraph 5a of this Article shall apply. For the purposes of this paragraph, where the decision to set a systemic risk buffer, O-SII buffer or G-SII buffer results in a decrease or no change from any of the previously set rates, the procedure set out in paragraph 5a of this Article shall not apply.';

(32) Article 133 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall ensure that it is possible to set a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector on all or a subset of exposures as referred to in paragraph 5 of this Article, in order to prevent and mitigate macroprudential or systemic risks not covered by Regulation (EU) No 575/2013 and by Articles 130 and 131 of this Directive, 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.';

(b) the following paragraph 2a is inserted:

'2a. Where an institution is bound by the output floor, both of the following shall apply:

(a) the amount of CET1 capital it is required to have in accordance with the first subparagraph shall be capped by the following amount:

$$r_T \cdot E_T^* + \sum_i r_i \cdot E_i^*$$

where:

E_T = the un-floored total risk exposure amount of the institution calculated in accordance with Article 92(4) of Regulation (EU) No 575/2013';

E_i = the un-floored risk exposure amount of the institution for the subset of exposures i calculated in accordance with Article 92(4) of Regulation (EU) No 575/2013;

r_T, r_i = r_T and r_i as defined in the first subparagraph.

(b) the competent or designated authority, as applicable, shall review without undue delay the calibration of the systemic risk buffer rate or rates, as applicable, to ensure they remain appropriate and do not double-count the risks that are already covered by the fact that the institution is bound by the output floor.

The calculation in point (a) shall apply until the designated authority has completed the revision set out in point (b) and has published a new decision on the calibration of the systemic risk buffer rate or rates in accordance with the procedure set out in this Article. As of that moment, the cap in point (a) shall no longer apply.';

(c) in paragraph 8, point (c) is replaced by the following:

'(c) the systemic risk buffer is not to be used to address any of the following:

(i) risks that are covered by Articles 130 and 131;

(ii) risks that are fully covered by the calculation set out in Article 92(3) of Regulation (EU) No 575/2013.';

(d) in paragraph 9, the following point (g) is added:

'(g) how the calculation set out in Article 92(3) of Regulation (EU) No 575/2013 affects the calibration of the systemic risk buffer rate or rates, as applicable, that the competent authority or the designated authority, as applicable, intends to impose.';

(e) paragraphs 11 and 12 are replaced by the following:

'11. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3 % and up to 5 % for any of those exposures, the competent authority or the designated authority of the Member State that sets that buffer shall request in the notification submitted in accordance with paragraph 9 the opinions of the Commission and the ESRB.

Within a month of receipt of the notification referred to in paragraph 9, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer rate or rates is deemed appropriate. Within two months of receipt of the notification, the Commission, taking into account the assessment of the ESRB, shall provide its opinion as to whether it considers that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market.

Where the opinion of the Commission is negative, the competent authority or the designated authority, as applicable, of the Member State that sets that systemic risk buffer shall comply with that opinion or give reasons for not doing so.

Where one or more institutions to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State, the ESRB and the Commission shall also consider in their opinions whether applying the systemic risk buffer rate or rates to those institutions is deemed appropriate.

Where the authorities of the subsidiary and of the parent disagree on the systemic risk buffer rate or rates applicable to that institution and in the case of a negative opinion of both the Commission and the ESRB, the competent authority or the designated authority, as applicable, may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the systemic risk buffer rate or rates for those exposures shall be suspended until EBA has taken a decision.

For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the thresholds referred to in the first subparagraph of this paragraph.

12. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate higher than 5 % for any of those exposures, the competent authority or the designated authority, as applicable, shall seek the authorisation of the Commission before implementing a systemic risk buffer.

Within six weeks of receipt of the notification referred to in paragraph 9 of this Article, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer is deemed appropriate. EBA may also provide the Commission with its opinion on that systemic risk buffer in accordance with Article 16a(1) of Regulation (EU) No 1093/2010, within six weeks of receipt of the notification.

Within three months of receipt of the notification referred to in paragraph 9, the Commission, taking into account the assessment of the ESRB and EBA, where relevant, and where it is satisfied that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an act authorising the competent authority or the designated authority, as applicable, to adopt the proposed measure.

For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the threshold referred to in the first subparagraph of this paragraph.';

(33) Article 142 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

'(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement or, where applicable, the leverage ratio buffer requirement;';

(b) paragraph 3 is replaced by the following:

‘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 requirement or, where applicable, its leverage ratio buffer requirement within a period which the competent authority considers appropriate.’;

(c) in paragraph 4, point (b) is replaced by the following:

‘(b) exercise its powers under Article 102 to impose more stringent restrictions on distributions than those required by Articles 141 and 141b, as applicable.’;

(34) in Article 161, paragraph 3 is deleted.

Article 2

Amendments to Directive 2014/59/EU

Directive 2014/59/EU[*15] is amended as follows:

(1) in Article 27, the following paragraphs 6, 7 and 8 are added:

‘6. When new members of the management body or senior management are appointed under this Article and Article 28 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders as required by Article 91d(1) of that Directive only after they take up their position.

Article 91a(2) and Article 91c(2) of Directive 2013/36/EU shall not apply to the appointment of new members of the management body or senior management referred to in the first subparagraph.

7. Competent authorities shall ensure that they perform the assessments referred to in paragraph 6 without undue delay. They shall complete the assessments at the latest 20 working days from the date they receive the notification of appointment.

8. Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 6.’;

(2) in Article 34, the following paragraphs 7, 8 and 9 are added:

‘7. When new members of the management body or senior management are appointed under this Article and Article 63 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders as required by Article 91d(1) of that Directive only after they take up their position.

Article 91a(2) and Article 91c(2) of Directive 2013/36/EU shall not apply to the appointment of new members of the management body or senior management referred to in the first subparagraph.

The first and second subparagraphs shall also apply to the assessment of the members of the management body of the bridge institution appointed under Article 41 immediately after taking resolution action.

8. Competent authorities shall ensure that they perform the assessments referred to in paragraph 7 without undue delay. They shall complete the assessments at the latest 20 working days from the date they receive the notification of appointment.

9. Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 7.';

[*15] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190)

Article 3

Transposition

1. Member States shall adopt and publish by [OP please insert the date = 18 months from the date of entry into force of this amending Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [OP please insert the date = 1 day after the transposition date of this amending Directive].

However, the provisions necessary to comply with the amendments set out in Article 1, point (8), on the prudential supervision of third country branches shall apply from [OP please insert the date = 12 months from date of application of this amending Directive].

By derogation from the preceding subparagraph, Member States shall apply the provisions on reporting on third country branches in Title VI, Chapter 1, Section II, Sub-section 4 of Directive 2013/36/EU, as inserted by this Directive, from the date of application laid down in the second subparagraph of this Article.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament *The President*	*For the Council* *The President*