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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Corrigenda

I

(Legislative acts)

REGULATIONS

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

(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 114 thereof,

Having regard to the proposal from the European Commission,

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

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

Having regard to the opinion of the European Economic and Social Committee ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Robust prudential requirements are an integral part of the regulatory conditions under which financial institutions provide services within the Union. Investment firms are, together with credit institutions, subject to Regulation (EU) No 575/2013 of the European Parliament and of the Council ([4]) and to Directive 2013/36/EU of the European Parliament and of the Council ([5]) as regards their prudential treatment and supervision, while their authorisation and other organisational and conduct requirements are set out in Directive 2014/65/EU of the European Parliament and of the Council ([6]).

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of a large number of investment firms. The specific vulnerabilities and risks inherent to those investment firms should therefore be specifically addressed by means of appropriate and proportionate prudential arrangements at Union level.

([1]) OJ C 378, 19.10.2018, p. 5.

([2]) OJ C 262, 25.7.2018, p. 35.

([3]) Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 8 November 2019.

([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 176, 27.6.2013, p. 1).

([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]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(3) The risks which investment firms themselves incur and pose for their clients and the wider markets in which they operate depend on the nature and volume of their activities, including whether investment firms act as agents for their clients and are not party to the resulting transactions themselves, or whether they act as principals to the trades.

(4) Sound prudential requirements should ensure that investment firms are managed in an orderly way and in the best interests of their clients. They should take into account the potential for investment firms and their clients to engage in excessive risk-taking and the different degrees of risk assumed and posed by investment firms. Equally, such prudential requirements should aim to avoid imposing an undue administrative burden on investment firms.

(5) Many of the prudential requirements that stem from the framework of Regulation (EU) No 575/2013 and Directive 2013/36/EU are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address all of the different risk profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have a detrimental impact on overall financial stability is lower than in the case of credit institutions. The risks faced and posed by most investment firms are thus substantially different to the risks faced and posed by credit institutions and such differences should be clearly reflected in the prudential framework of the Union.

(6) The prudential requirements to which investment firms are subject under Regulation (EU) No 575/2013 and Directive 2013/36/EU are based on those of credit institutions. Investment firms the scope of whose authorisation is limited to specific investment services which are not targeted by the current prudential framework are subject to numerous exemptions from those requirements. Those exemptions recognise that those investment firms do not incur risks of the same nature as credit institutions. Investment firms which carry out activities that are targeted by the current prudential framework and that involve trading in financial instruments on a limited basis are subject to corresponding requirements of the framework in terms of capital but are eligible for exemptions in other areas, such as liquidity, large exposures and leverage. Investment firms the scope of whose authorisation is not subject to those limitations are subject to the same prudential requirements as credit institutions.

(7) The trading of financial instruments, whether for the purposes of risk management, hedging or liquidity management or for taking directional positions on the value of the instruments over time, is an activity in which both credit institutions and investment firms authorised for dealing on own account may engage and which is already addressed by the prudential framework under Regulation (EU) No 575/2013 and Directive 2013/36/EU. In order to avoid an unlevel playing field which could lead to regulatory arbitrage between credit institutions and investment firms in this area, the own funds requirements resulting from those rules that address the risk should therefore also continue to apply to those investment firms. The exposures of those investment firms to their trading counterparties in specific transactions and corresponding own funds requirements are also covered by the rules and should therefore also continue to apply to investment firms in a simplified way. Finally, the rules on large exposures in the current prudential framework are also relevant when the trading exposures of those investment firms to specific counterparties are particularly large and thereby generate an excessively concentrated source of risk for an investment firm from the default of the counterparty. Those rules should therefore also continue to apply to investment firms in a simplified way.

(8) Differences in the application of the existing prudential framework in different Member States threaten the level playing field for investment firms within the Union. Those differences stem from the overall complexity of the application of the framework to different investment firms based on the services that they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add-ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure harmonised prudential supervision of investment firms across the Union.

(9) A specific prudential regime is therefore required for investment firms which are not systemic by virtue of their size and interconnectedness with other financial and economic actors. Systemic investment firms should, however, remain subject to the existing prudential framework under Regulation (EU) No 575/2013 and Directive 2013/36/EU. Those investment firms are a subset of investment firms to which the framework laid down in Regulation (EU) No 575/2013 and Directive 2013/36/EU currently applies and which do not benefit from dedicated exemptions from any of their principle requirements. The largest and most interconnected investment firms have business models and risk profiles that are similar to those of significant credit institutions. They provide 'bank-like' services and underwrite risks on a significant scale. Furthermore, systemic investment firms are large enough to, and have business models and risk profiles which, represent a threat for the stable and orderly functioning of financial markets on a par with large credit institutions. Therefore it is appropriate that those investment firms remain subject to the rules set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU.

(10) The specific prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered to be systemic should address the specific business practices of different types of investment firms. Investment firms with the highest possibility of generating risks to clients, markets or the orderly functioning of the investment firms themselves should, in particular, be subject to clear and effective prudential requirements tailored to those specific risks. Those prudential requirements should be calibrated in a manner proportionate to the type of investment firm, the best interests of the clients of that type of investment firm and the promotion of the smooth and orderly functioning of the markets in which that type of investment firm operates. They should mitigate identified areas of risk and help ensure that, if an investment firm fails, it can be wound down in an orderly manner with minimal disruption to the stability of financial markets.

(11) The regime provided for in this Regulation should not affect the obligations of designated market makers at trading venues pursuant to Directive 2014/65/EU to provide quotes and be present in the market on a continuous basis.

(12) The prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered to be systemic should apply to each investment firm on an individual basis. However, in order to facilitate the application of prudential requirements for investment firms in the Union which are part of banking groups, to avoid disrupting certain business models the risks of which are already covered by the application of prudential rules, investment firms should be allowed to apply the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU where appropriate, subject to approval by the competent authorities, provided that their decision to do so is not driven by regulatory arbitrage purposes. Further, since the risks incurred by small and non-interconnected investment firms are limited for the most part, they should be allowed to avail themselves of an exemption from the specific prudential requirements for investment firms where they are part of a banking group or investment firm group headquartered and subject to consolidated supervision under Regulation (EU) No 575/2013 and Directive 2013/36/EU or under this Regulation and Directive (EU) 2019/2034 of the European Parliament and of the Council ([7]), as applicable, in the same Member State, as those prudential frameworks should adequately cover those risks in such cases. In order to mirror the existing treatment of investment firm groups under Regulation (EU) No 575/2013 and Directive 2013/36/EU, for groups consisting only of investment firms, or where consolidation under Regulation (EU) No 575/2013 does not apply, the parent undertaking in such groups should be required to comply with the requirements of this Regulation based on the consolidated situation of the group. Alternatively, instead of prudential consolidation, where such investment firm groups reflect simpler structures and risk profiles, competent authorities may allow the parent undertaking in the group to have sufficient capital to support the book value of its holdings in the subsidiaries. Where they are part of an insurance group, small and non-interconnected investment firms should also be allowed to avail themselves of an exemption from disclosure requirements.

(13) In order to allow investment firms to continue to rely on their existing own funds to meet their own funds requirements under the prudential framework specific to investment firms, the definition and composition of own funds should be aligned with Regulation (EU) No 575/2013. This includes full deductions of balance-sheet items from own funds in accordance with Regulation (EU) No 575/2013, such as deferred tax assets and holdings of capital instruments of other financial sector entities. However, investment firms should be able to exempt non-significant holdings of capital instruments in financial sector entities from deductions if held for trading purposes in order to support market making in those instruments. In order to align the composition of own funds with Regulation (EU) No 575/2013, the corresponding ratios of the types of own funds have been mirrored in the context of this Regulation. To ensure that the requirements are proportionate to the nature, scope and complexity

([7]) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (see page 64 of this Official Journal).

of the activities of the investment firms and that they are readily accessible to the investment firms within this Regulation, the Commission should review the appropriateness of continuing to align the definition and composition of own funds with that of Regulation (EU) No 575/2013.

(14) In order to ensure that investment firms always operate on the basis of the level of own funds required for their authorisation, all investment firms should, at all times, meet a permanent minimum capital requirement equal to the initial capital required for authorisation to conduct the relevant investment services set in accordance with Directive (EU) 2019/2034.

(15) In order to ensure a simple application of the minimum own funds requirement for small and non-interconnected investment firms, they should have own funds equal to the higher of their permanent minimum capital requirement or a quarter of their fixed overheads measured on the basis of their activity of the preceding year. Small and non-interconnected investment firms that prefer to exercise further caution and avoid cliff effects in the case of reclassification should not be prevented from holding own funds in excess of, or applying measures stricter than, those required by this Regulation.

(16) To account for the higher risks of investment firms which are not small and non-interconnected, the minimum own funds requirement for such firms should be the higher of their permanent minimum capital requirement, a quarter of their fixed overheads for the preceding year, or the sum of their requirement under the set of risk factors tailored to investment firms ('K-factors') which sets capital in relation to the risks in specific business areas of investment firms.

(17) Investment firms should be considered to be small and non-interconnected for the purposes of the specific prudential requirements for investment firms where they do not conduct investment services which carry a high risk for clients, markets or themselves and where their size means they are less likely to cause widespread negative impacts for clients and markets if risks inherent in their business materialise or if they fail. Accordingly, small and non-interconnected investment firms should be defined as those that do not deal on own account or incur risk from trading financial instruments, hold no client assets or money, have assets under both discretionary portfolio management and non-discretionary (advisory) arrangements of less than EUR 1,2 billion, handle less than EUR 100 million per day of client orders in cash trades or less than EUR 1 billion per day of client orders in derivatives, and have a balance sheet smaller than EUR 100 million including off-balance-sheet items and total gross annual revenues from the performance of their investment services of less than EUR 30 million.

(18) In order to prevent regulatory arbitrage and to reduce the incentives for investment firms to restructure their operations to avoid exceeding the thresholds above which they do not qualify as small and non-interconnected investment firms, the thresholds for assets under management, client orders handled, balance sheet size and total gross annual revenues should be applied on a combined basis for all investment firms that are part of the same group. The other conditions, namely whether an investment firm holds client money, administers or safeguards client assets, or trades financial instruments and incurs market or counterparty risk, are binary and leave no scope for such restructuring, and should therefore be assessed on an individual basis. In order to capture evolving business models and the risks they represent on an ongoing basis, those conditions and thresholds should be assessed on an end-of-day basis with the exception of holding client money, which should be assessed on an intraday basis, and balance sheet size and total annual gross revenues, which should be assessed based on the situation of the investment firm at the end of the previous financial year.

(19) An investment firm that exceeds the regulatory thresholds or fails to meet the other conditions should not be considered small and non-interconnected and should be subject to the requirements for other investment firms, subject to the specific transitional provisions set out in this Regulation. This should encourage investment firms to plan their business activities so as to clearly qualify as small and non-interconnected investment firms. For an investment firm which does not satisfy the requirements to be considered small and non-interconnected to qualify for such treatment, a monitoring phase should be provided where that investment firm meets the conditions and remains below the relevant thresholds for at least six consecutive months.

(20) All investment firms should calculate their own funds requirement by reference to a set of K-factors which capture Risk-To-Client ('RtC'), Risk-to-Market ('RtM') and Risk-to-Firm ('RtF'). The K-factors under RtC capture client assets under management and ongoing advice (K-AUM), client money held (K-CMH), assets safeguarded and administered (K-ASA), and client orders handled (K-COH).

(21) The K-factor under RtM captures net position risk (K-NPR) in accordance with the market risk provisions of Regulation (EU) No 575/2013 or, where permitted by the competent authority for specific types of investment firms which deal on own account through clearing members, based on the total margins required by an investment firm's clearing member (K-CMG). Investment firms should have an option to apply K-NPR and K-CMG simultaneously on a portfolio basis.

(22) The K-factors under RtF capture an investment firm's exposure to the default of their trading counterparties (K-TCD) in accordance with simplified provisions for counterparty credit risk based on Regulation (EU) No 575/2013, concentration risk in an investment firm's large exposures to specific counterparties based on the provisions of that Regulation that apply to large exposures in the trading book (K-CON), and operational risks from an investment firm's daily trading flow (K-DTF).

(23) The overall own funds requirement under the K-factors is the sum of the requirements of the K-factors under RtC, RtM and RtF. K-AUM, K-ASA, K-CMH, K-COH and K-DTF relate to the volume of activity referred to by each K-factor. The volumes for K-CMH, K-ASA, and K-DTF are calculated on the basis of a rolling average from the previous nine months. The volume for K-COH is calculated on the basis of a rolling average from the previous six months, while for K-AUM it is based on the previous 15 months. The volumes are multiplied by the corresponding coefficients set out in this Regulation in order to determine the own funds requirement. The own funds requirements for K-NPR are derived from Regulation (EU) No 575/2013, while the own funds requirements for K-CON and K-TCD use a simplified application of the corresponding requirements under that Regulation for, respectively, the treatment of large exposures in the trading book and of counterparty credit risk. The amount of a K-factor is zero if an investment firm does not undertake the relevant activity.

(24) The K-factors under RtC are proxies covering the business areas of investment firms from which harm to clients can conceivably be generated in case of problems. K-AUM captures the risk of harm to clients from an incorrect discretionary management of client portfolios or poor execution and provides reassurance and client benefits in terms of the continuity of service of ongoing portfolio management and investment advice. K-ASA captures the risk of safeguarding and administering client assets, and ensures that investment firms hold capital in proportion to such balances, regardless of whether they are on its own balance sheet or in third-party accounts. K-CMH captures the risk of potential for harm where an investment firm holds the money of its clients, taking into account whether they are on its own balance sheet or in third-party accounts and arrangements under applicable national law provide that client money is safeguarded in the event of bankruptcy, insolvency, or entry into resolution or administration of the investment firm. K-CMH excludes client money that is deposited on a (custodian) bank account in the name of the client itself, where the investment firm has access to the client money via a third-party mandate. K-COH captures the potential risk to clients of an investment firm which executes orders (in the name of the client, and not in the name of the investment firm itself), for example as part of execution-only services to clients or when an investment firm is part of a chain for client orders.

(25) The K-factor for RtM for investment firms which deal on own account is based on the rules for market risk for positions in financial instruments, in foreign exchange, and in commodities in accordance with Regulation (EU) No 575/2013. This allows investment firms to choose to apply the standardised approach, the alternative standardised approach under Regulation (EU) No 575/2013, or the option to use internal models, once those latter two approaches become applicable to credit institutions not only for reporting purposes but also for own funds requirements purposes. In the meantime, and at least during the five years after the date of application of this Regulation, investment firms should apply the market risk framework (standardised approach or, if applicable, internal models) of Regulation (EU) No 575/2013 for the purpose of calculating their K-NPR. If the provisions set

out in Chapters 1a and 1b of Title IV of Part Three of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council ([8]) do not become applicable to credit institutions for own funds requirements purposes, investment firms should continue to apply the requirements set out in Title IV of Part Three of Regulation (EU) No 575/2013 for the purpose of calculating K-NPR. Alternatively, the own funds requirement of investment firms trading financial instruments with positions that are subject to clearing may, subject to the approval of the competent authority and certain conditions, be equal to the amount of total margins required by their clearing member, multiplied by a fixed multiplier. The use of K-CMG should be predicated primarily on an investment firm's trading activity falling entirely or substantially under this approach. However, the investment firm's competent authority may also allow the investment firm to make partial use of the K-CMG approach, provided that this approach is used for all positions that are subject to clearing or margining and one of the three alternative methods for K-NPR is applied to portfolios that are not subject to clearing. In order to ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and that they are readily accessible to the investment firms within this Regulation, any review that subsequently takes place concerning the application of the methods for calculating the K-factors should include the appropriateness of continuing to align the calculation of K-NPR with the rules for market risk for trading book positions in financial instruments, in foreign exchange, and in commodities in accordance with Regulation (EU) No 575/2013.

(26) For investment firms which deal on own account, the K-factors for K-TCD and K-CON under RtF constitute a simplified application of the rules laid down in Regulation (EU) No 575/2013 on counterparty credit risk and large exposure risk, respectively. K-TCD captures the risk to an investment firm by counterparties to over-the-counter (OTC) derivatives, repurchase transactions, securities and commodities lending or borrowing transactions, long settlement transactions, margin lending transactions, or any other securities financing transactions, as well as by recipients of loans granted by the investment firm on an ancillary basis as part of an investment service that fail to fulfil their obligations, by multiplying the value of the exposures, based on replacement cost and an add-on for potential future exposure, by risk factors based on Regulation (EU) No 575/2013, accounting for the mitigating effects of effective netting and the exchange of collateral. In order to further align the treatment of counterparty credit risk with Regulation (EU) No 575/2013, a fixed multiplier of 1,2 and a multiplier for credit valuation adjustment (CVA) to reflect the current market value of the credit risk of the counterparty to the investment firm in specific transactions should also be added. K-CON captures concentration risk in relation to individual or highly connected private sector counterparties with whom firms have exposures above 25 % of their own funds, or specific alternative thresholds in relation to credit institutions or other investment firms, by imposing a capital add-on in line with Regulation (EU) No 575/2013 for excess exposures above those limits. Finally, K-DTF captures the operational risks to an investment firm in large volumes of trades concluded for its own account or for clients in its own name in one day which could result from inadequate or failed internal processes, people and systems or from external events, based on the notional value of daily trades, adjusted for the time to maturity of interest rate derivatives in order to limit increases in own funds requirements, in particular for short-term contracts where perceived operational risks are lower.

(27) All investment firms should monitor and control their concentration risk, including in respect of their clients. However, only investment firms which are subject to a minimum own funds requirement under the K-factors should report to competent authorities on their concentration risks. For investment firms specialised in commodity derivatives or emission allowances or derivatives thereof with large concentrated exposures to non-financial counterparties, the limits for concentration risk may be exceeded without additional capital under K-CON as long as they serve commercial, treasury or risk management purposes.

(28) All investment firms should have internal procedures to monitor and manage their liquidity requirements. Those procedures are intended to help ensure that investment firms can function in an orderly manner over time, without the need to set aside liquidity specifically for times of stress. To that end, all investment firms should hold a minimum of one third of their fixed overheads requirement in liquid assets at all times. However, competent authorities should be allowed to exempt small and non-interconnected investment firms from that requirement. Those liquid assets should be of high quality and aligned with those listed in Commission Delegated Regulation

([8]) 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).

(EU) 2015/61 ([9]), together with the haircuts which apply to those assets under that Delegated Regulation. To account for the difference in liquidity profiles of investment firms compared to credit institutions, the list of appropriate liquid assets should be supplemented by the unencumbered own cash and short-term deposits of the investment firm (which should not include any client money or financial instruments belonging to clients), and certain financial instruments for which there is a liquid market. If not exempt from liquidity requirements, small and non-interconnected investment firms, as well as investment firms which are not licensed to carry out trading or underwriting activities, could further include items related to trade debtors and fees or commissions receivable within 30 days as liquid assets, provided that these items do not exceed one-third of the minimum liquidity requirement, that they do not count towards any additional liquidity requirements imposed by the competent authority, and that they are subject to a haircut of 50 %. In exceptional circumstances, investment firms should be permitted to fall below the required threshold by monetising their liquid assets to cover liquidity requirements, provided that they notify their competent authority immediately. All financial guarantees provided to clients which can give rise to increased liquidity needs if triggered should reduce the amount of available liquid assets by at least 1,6 % of the total value of such guarantees. To ensure that the requirements are proportionate to the nature, scope and complexity of the activities of the investment firms and that they are readily accessible to the investment firms within the scope of this Regulation, a review should subsequently take place regarding the appropriateness of the liquid assets which are eligible for meeting the minimum liquidity requirement, including the continued alignment with those listed in Delegated Regulation (EU) 2015/61, together with the haircuts applying to those assets under that Delegated Regulation.

(29) A proportionate corresponding regulatory reporting framework should be developed in conjunction with the new prudential regime and should be carefully tailored to the business of investment firms and the requirements of the prudential framework. Reporting requirements for investment firms should concern the level and composition of their own funds, their own funds requirements, the basis for the calculation of their own funds requirements, their activity profile and size in relation to the parameters for considering investment firms to be small and non-interconnected, their liquidity requirements and their adherence to the provisions on concentration risk. Small and non-interconnected investment firms should be exempt from reporting on concentration risk and should be required to report on liquidity requirements only where such requirements apply to them. The European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([10]) (EBA) should develop draft implementing technical standards to further specify the detailed templates and arrangements for that regulatory reporting and to specify the templates for own funds disclosures. Those standards should be proportionate to the scale and complexity of different investment firms and should, in particular, take account of whether investment firms are considered to be small and non-interconnected.

(30) In order to provide transparency to their investors and the wider markets, investment firms which are not considered to be small and non-interconnected should publicly disclose their levels of own funds, own funds requirements, governance arrangements, and remuneration policies and practices. Small and non-interconnected investment firms should not be subject to public disclosure requirements, except where they issue Additional Tier 1 instruments in order to provide transparency to the investors in those instruments.

(31) Investment firms should apply gender-neutral remuneration policies in accordance with the principle laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU). Some clarifications should be made to the remuneration disclosures. The disclosure requirements relating to remuneration set out in this Regulation should be compatible with the aims of the remuneration rules, namely to establish and maintain, for categories of staff whose professional activities have a material impact on the risk profile of investment firms, remuneration policies and practices that are consistent with effective risk management. Furthermore, investment firms benefitting from a derogation from certain remuneration rules should be required to disclose information concerning such derogation.

([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).

([10]) 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).

(32) In order to facilitate a smooth transition for investment firms from the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU to the requirements under this Regulation and Directive (EU) 2019/2034, it is appropriate to provide for appropriate transitional measures. In particular, for a period of five years from the date of application of this Regulation, investment firms for which own funds requirements under this Regulation would more than double compared to their own funds requirement under Regulation (EU) No 575/2013 and Directive 2013/36/EU should be able to mitigate the effects of potential increases by limiting the own funds requirement to twice their relevant own funds requirement under Regulation (EU) No 575/2013 and Directive 2013/36/EU.

(33) In order not to disadvantage new investment firms with similar profiles to existing investment firms, investment firms which were never subject to own funds requirements under Regulation (EU) No 575/2013 and Directive 2013/36/EU should be able to limit their own funds requirements under this Regulation to twice their fixed overheads requirement for a period of five years from the date of application of this Regulation.

(34) Equally, investment firms which were subject only to a requirement for initial capital under Regulation (EU) No 575/2013 and Directive 2013/36/EU and for which own funds requirements under this Regulation would more than double compared to their situation under Regulation (EU) No 575/2013 and Directive 2013/36/EU should be able to limit their own funds requirement under this Regulation to twice their initial capital requirement under Regulation (EU) No 575/2013 and Directive 2013/36/EU for a period of five years from the date of application of this Regulation, with the exception of local firms referred to in point (2)(b) of Article 4(1) of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, which should be subject to a specific transitional own funds requirement reflecting their greater level of risk. For the purposes of proportionality, specific transitional own funds requirements should also be provided for smaller investment firms and those which provide a limited range of investment services where they would not benefit from a limitation of the own funds requirements under this Regulation to twice their initial capital requirements under Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630 of the European Parliament and of the Council ([11]), and Directive 2013/36/EU, as amended by Directive (EU) 2019/878 of the European Parliament and of the Council ([12]), but whose binding own funds requirement under this Regulation would increase compared to their situation under Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630.

(35) Those transitional measures should, where applicable, also be available to investment firms referred to in Article 498 of Regulation (EU) No 575/2013, which exempts those investment firms from own funds requirements under that Regulation, whereas the requirements for initial capital with respect to those investment firms depend on the investment services or activities they provide. For a period of five years from the date of application of this Regulation, their own funds requirements under the transitional provisions of this Regulation should be calculated in view of those applicable levels.

(36) For a period of five years from the date of application of this Regulation, or until the date of application of the changes adopted to Regulation (EU) No 575/2013 and Directive 2013/36/EU as regards own funds requirements for market risk pursuant to Chapters 1a and 1b of Title IV of Part Three of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, whichever is later, investment firms subject to the corresponding provisions of this Regulation should continue to calculate their own funds requirement for the trading book in accordance with Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630.

(37) The largest investment firms that provide key wholesale market and investment banking services (dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis) have business models and risk profiles that are similar to those of significant credit institutions. Their activities expose them to credit risk, mainly in the form of counterparty credit risk, as well as to market risk for positions they take on own account, client related or not. As such, they present a risk to financial stability, given their size and systemic importance.

([11]) Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures (OJ L 111, 25.4.2019, p. 4).

([12]) 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 (OJ L 150, 7.6.2019, p. 253).

(38) Those large investment firms present an additional challenge with regard to their effective prudential supervision by national competent authorities. Even though the largest investment firms provide cross-border investment banking services on a significant scale, as investment firms they are subject to prudential supervision by authorities designated under Directive 2014/65/EU, which are not necessarily the same competent authorities as those designated under Directive 2013/36/EU. This may result in an unlevel playing field in the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU within the Union and prevents supervisors from obtaining an overall prudential perspective which is essential for effectively addressing the risks associated with large cross-border investment firms. As a consequence, prudential supervision may become less effective and may also distort competition within the Union. The largest investment firms should therefore be given the status of credit institutions so as to create synergies with regard to the supervision of cross-border wholesale market activities in a peer group, promoting a level playing field, and allowing for consistent supervision across groups.

(39) Those investment firms, by virtue of becoming credit institutions, should therefore continue to be subject to Regulation (EU) No 575/2013 and Directive 2013/36/EU and to supervision by competent authorities, including by the European Central Bank in the framework of the Single Supervisory Mechanism, in charge of credit institutions. This would ensure that the prudential supervision of credit institutions is implemented in a coherent and effective manner, and that the single rulebook for financial services is applied in the same manner to all credit institutions in light of their systemic importance. In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should endeavour to avoid situations where potentially systemic groups would structure their operations in such a way as to not exceed the thresholds set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and circumvent the obligation to seek authorisation as credit institutions pursuant to Article 8a of Directive 2013/36/EU.

(40) Large investment firms converted into credit institutions should be allowed to take deposits or other repayable funds from the public and to grant credits for their own account only once they have obtained the authorisation for those activities in accordance with Directive 2013/36/EU. Carrying out all such activities, including taking deposits or other repayable funds from the public and granting credits for their own account, should not be a necessary requirement for undertakings to be considered to be credit institutions. The change in the definition of credit institution introduced by this Regulation should therefore be without prejudice to the national authorisation regimes implemented by Member States in accordance with Directives 2013/36/EU and (EU) 2019/2034, including any provisions that Member States may consider to be appropriate for the purpose of clarifying the activities which large investment firms that fall within the amended definition of credit institutions are permitted to take up.

(41) In addition, the supervision of credit institutions on a consolidated basis aims to ensure, inter alia, the stability of the financial system and, in order to be effective, should be applied to all groups, including those the parent undertakings of which are not credit institutions or investment firms. Therefore, all credit institutions, including those that previously had the status of investment firms, should be subject to the rules on individual and consolidated supervision of the parent undertaking by the competent authorities pursuant to Section I of Chapter 3 of Title VII of Directive 2013/36/EU.

(42) Furthermore, it is possible that large investment firms which are not of systemic importance but which deal on own account, underwrite financial instruments or place financial instruments on a firm commitment basis have business models and risk profiles that are similar to those of other systemic institutions. Given their size and activities, it is possible that such investment firms present some risks to financial stability and, although their conversion into credit institutions is not deemed to be appropriate in light of their nature and complexity, they should remain subject to the same prudential treatment as credit institutions. In order to prevent regulatory arbitrage and reduce the risks of circumvention, competent authorities should also endeavour to avoid situations where investment firms structure their operations in such a way as to not exceed the EUR 15 billion threshold related to the total value of the assets at individual or group level, or to unduly limit the discretion of competent authorities to subject investment firms to the requirements of Regulation (EU) No 575/2013 and to compliance with the prudential requirements laid down in Directive 2013/36/EU, in accordance with Article 5 of Directive (EU) 2019/2034.

(43) Regulation (EU) No 600/2014 of the European Parliament and of the Council ([13]) introduced a Union harmonised regime for granting access to third-country firms providing investment services or activities to eligible counterparties and professional clients that are established in the Union. Access to the internal market is conditional on the Commission adopting an equivalence decision and on the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([14]) (ESMA) registering the third-country firm. It is important that the assessment of equivalence is done on the basis of the relevant applicable Union law and that effective tools to monitor that the conditions under which equivalence is granted are in place. For those reasons, third-country registered firms should be required to report annually to ESMA information concerning the scale and scope of services provided, and activities carried out, in the Union. Supervisory cooperation in relation to monitoring, enforcement and the fulfilment of the equivalence conditions should also be improved.

(44) With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and execution prices to the tick size regime when dealing in all sizes. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to the extended scope of Regulation (EU) No 600/2014.

(45) To ensure investor protection and the integrity and the stability of financial markets in the Union, the Commission, when adopting an equivalence decision, should take into account the potential risks posed by the services and the activities that firms from that third country could carry out in the Union following that decision. Their systemic importance should be considered based on criteria such as the likely scale and scope of service provision and performance of activities by firms from the third country concerned. For the same purpose, the Commission should be able to take into account whether the third country is identified as a non-cooperative jurisdiction for tax purposes under the relevant Union policy or as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council ([15]). The Commission should consider specific prudential, organisational or business conduct requirements to be equivalent only where the same effect is achieved. Furthermore, the Commission should be able, where appropriate, to adopt equivalence decisions limited to specific services and activities or categories of services and activities listed in Section A of Annex I to Directive 2014/65/EU.

(46) EBA, with the participation of ESMA, has issued a report based on thorough background analysis, data collection and consultation for a bespoke prudential regime for all non-systemic investment firms which serves as the basis for the revised prudential framework for investment firms.

(47) In order to ensure the harmonised application of this Regulation, EBA should develop draft regulatory technical standards to specify the scope and methods for prudential consolidation of investment firm groups, the calculation of fixed overheads, measuring the K-factors, specifying the notion of segregated accounts in relation to client money, adjusting the coefficients for K-DTF in the case of stressed market conditions, the calculation for setting own funds requirements equal to the total margin required by clearing members, the templates for the public disclosures including as regards investment firms' investment policy and regulatory reporting required under this Regulation and the information to be provided to competent authorities related to the thresholds for requiring authorisation as a credit institution. The Commission should be empowered to supplement this Regulation by adopting the regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The Commission and EBA should ensure that those regulatory technical standards can be applied by all investment firms concerned in a manner that is proportionate to the nature, scale and complexity of those investment firms and their activities.

([13]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

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

([15]) 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).

(48) The Commission should also be empowered to adopt the implementing technical standards developed by EBA and by ESMA by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 15 Regulation (EU) No 1095/2010.

(49) In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by clarifying the definitions in this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([16]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(50) In order to ensure legal certainty and avoid overlaps between the current prudential framework applicable to both credit institutions and investment firms and this Regulation, Regulation (EU) No 575/2013 and Directive 2013/36/EU should be amended in order to remove investment firms from their scope. However, investment firms which are part of a banking group should remain subject to those provisions in Regulation (EU) No 575/2013 and Directive 2013/36/EU which are relevant to the banking group, such as the provisions on the intermediate EU parent undertaking referred to in Article 21b of Directive 2013/36/EU and to the rules on prudential consolidation set out in Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013.

(51) Since the objective of this Regulation, namely to set up an effective and proportionate prudential framework to ensure that investment firms which are authorised to operate within the Union operate on a sound financial basis and are managed in an orderly way including, where relevant, in the best interests of their clients, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

PART ONE

GENERAL PROVISIONS

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation lays down uniform prudential requirements which apply to investment firms authorised and supervised under Directive 2014/65/EU and supervised for compliance with prudential requirements under Directive (EU) 2019/2034 in relation to the following:

(a) own funds requirements relating to quantifiable, uniform and standardised elements of risk-to-firm, risk-to-client and risk-to-market;

(b) requirements limiting concentration risk;

(c) liquidity requirements relating to quantifiable, uniform and standardised elements of liquidity risk;

([16]) OJ L 123, 12.5.2016, p. 1.

(d) reporting requirements related to points (a), (b) and (c);

(e) public disclosure requirements.

2. By way of derogation from paragraph 1, an investment firm authorised and supervised under Directive 2014/65/EU, which carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, shall apply the requirements of Regulation (EU) No 575/2013 where the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking, and any of the following conditions apply:

(a) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 15 billion, calculated as an average of the previous 12 months excluding the value of the individual assets of any subsidiaries established outside the Union that carry out any of the activities referred to in this subparagraph;

(b) the total value of the consolidated assets of the investment firm is less than EUR 15 billion, and the investment firm is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than EUR 15 billion and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 15 billion, all calculated as an average of the previous 12 months, excluding the value of the individual assets of any subsidiaries established outside the Union that carry out either of the activities referred to in this subparagraph; or

(c) the investment firm is subject to a decision by the competent authority in accordance with Article 5 of Directive (EU) 2019/2034.

Investment firms referred to in this paragraph shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU, including for the purposes of the determination of the consolidating supervisor where such investment firms belong to an investment firm group as defined in point (25) of Article 4(1) of this Regulation.

3. The derogation provided for in paragraph 2 does not apply where an investment firm no longer meets any of the thresholds set out in that paragraph, calculated over a period of 12 consecutive months, or where a competent authority so decides in accordance with Article 5 of Directive (EU) 2019/2034. The investment firm shall notify the competent authority without undue delay any breach of a threshold during that period.

4. Investment firms that meet the conditions set out in paragraph 2 shall remain subject to the requirements of Articles 55 and 59.

5. By way of derogation from paragraph 1, competent authorities may allow an investment firm authorised and supervised under Directive 2014/65/EU that carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU to apply the requirements of Regulation (EU) No 575/2013 where all of the following conditions are fulfilled:

(a) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013;

(b) the investment firm notifies the competent authority under this Regulation and the consolidating supervisor, if applicable;

(c) the competent authority is satisfied that the application of the own funds requirements of Regulation (EU) No 575/2013 on an individual basis to the investment firm and on a consolidated basis to the group, as applicable, is prudentially sound, does not result in a reduction of the own funds requirements of the investment firm under this Regulation, and is not undertaken for the purposes of regulatory arbitrage.

Competent authorities shall inform the investment firm of a decision to allow the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU pursuant to the first subparagraph within two months from the receipt of a notification referred to in point (b) of the first subparagraph of this paragraph, and shall inform EBA thereof. Where a competent authority refuses to allow the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU, it shall provide full reasons.

Investment firms referred to in this paragraph shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU, including for the purposes of the determination of the consolidating supervisor where such investment firms belong to an investment firm group as defined in point (25) of Article 4(1) of this Regulation.

For the purposes of this paragraph, Article 7 of Regulation (EU) No 575/2013 shall not apply.

Article 2

Supervisory powers

For the purpose of ensuring compliance with this Regulation, competent authorities shall have the powers and shall follow the procedures set out in Directive (EU) 2019/2034.

Article 3

Application of stricter requirements by investment firms

This Regulation shall not prevent investment firms from holding own funds and their components and liquid assets in excess of, or applying measures that are stricter than, those required by this Regulation.

Article 4

Definitions

1. For the purposes of this Regulation, the following definitions apply:

(1) 'ancillary services undertaking' means an undertaking, the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms;

(2) 'asset management company' means an asset management company as defined in point (19) of Article 4(1) of Regulation (EU) No 575/2013;

(3) 'clearing member' means an undertaking established in a Member State which fulfils the definition in point (14) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([17]);

(4) 'client' means a client as defined in point (9) of Article 4(1) of Directive 2014/65/EU except that, for the purposes of Part Four of this Regulation, 'client' means any counterparty of the investment firm;

(5) 'commodity and emission allowance dealer' means a commodity and emission allowance dealer as defined in point (150) of Article 4(1) of Regulation (EU) No 575/2013;

(6) 'commodity derivatives' means commodity derivatives as defined in point (30) of Article 2(1) of Regulation (EU) No 600/2014;

(7) 'competent authority' means a competent authority as defined in point (5) of Article 3(1) of Directive (EU) 2019/2034;

(8) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(9) 'dealing on own account' means dealing on own account as defined in point (6) of Article 4(1) of Directive 2014/65/EU;

(10) 'derivatives' means derivatives as defined in point (29) of Article 2(1) of Regulation (EU) No 600/2014;

(11) 'consolidated situation' means the situation that results from applying the requirements of this Regulation in accordance with Article 7 to a Union parent investment firm, Union parent investment holding company or Union parent mixed financial holding company as if that undertaking formed, together with all the investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group, a single investment firm; for the purpose of this definition, the terms 'investment firm', 'financial institution', 'ancillary services undertaking' and 'tied agent' shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms;

(12) 'consolidated basis' means on the basis of the consolidated situation;

(13) 'execution of orders on behalf of clients' means execution of orders on behalf of clients as defined in point (5) of Article 4(1) of Directive 2014/65/EU;

([17]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(14) 'financial institution' means an undertaking other than a credit institution or investment firm, and other than a pure industrial holding company, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points (2) to (12) and point (15) of Annex I to Directive 2013/36/EU, including a financial holding company, a mixed financial holding company, an investment holding company, a payment institution within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council ([18]), and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in point (g) of Article 212(1) of Directive 2009/138/EC of the European Parliament and of the Council ([19]);

(15) 'financial instrument' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU;

(16) 'financial holding company' means a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;

(17) 'financial sector entity' means a financial sector entity as defined in point (27) of Article 4(1) of Regulation (EU) No 575/2013;

(18) 'initial capital' means initial capital as defined in point (18) of Article 3(1) of Directive (EU) 2019/2034;

(19) 'group of connected clients' means a group of connected clients as defined in point (39) of Article 4(1) of Regulation (EU) No 575/2013;

(20) 'investment advice' means investment advice as defined in point (4) of Article 4(1) of Directive 2014/65/EU;

(21) 'investment advice of an ongoing nature' means the recurring provision of investment advice as well as the continuous or periodic assessment and monitoring or review of a client portfolio of financial instruments, including of the investments undertaken by the client on the basis of a contractual arrangement;

(22) 'investment firm' means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;

(23) 'investment holding company' means a financial institution, the subsidiaries of which are exclusively or mainly investment firms or financial institutions, at least one of such subsidiaries being an investment firm, and which is not a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;

(24) 'investment services and activities' means investment services and activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU;

(25) 'investment firm group' means a group of undertakings which consists of a parent undertaking and its subsidiaries or of undertakings which meet the conditions set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ([20]), of which at least one is an investment firm and which does not include a credit institution;

(26) 'K-factors' means own funds requirements set out in Title II of Part Three for risks that an investment firm poses to clients, markets and to itself;

(27) 'assets under management' or 'AUM' means the value of assets that an investment firm manages for its clients under both discretionary portfolio management and nondiscretionary arrangements constituting investment advice of an ongoing nature;

(28) 'client money held' or 'CMH' means the amount of client money that an investment firm holds, taking into account the legal arrangements in relation to asset segregation and irrespective of the national accounting regime applicable to client money held by the investment firm;

(29) 'assets safeguarded and administered' or 'ASA' means the value of assets that an investment firm safeguards and administers for clients, irrespective of whether assets appear on the investment firm's own balance sheet or are in third-party accounts;

([18]) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

([19]) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

([20]) 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 and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(30) 'client orders handled' or 'COH' means the value of orders that an investment firm handles for clients, through the reception and transmission of client orders and through the execution of orders on behalf of clients;

(31) 'concentration risk' or 'CON' means the exposures in the trading book of an investment firm to a client or a group of connected clients the value of which exceeds the limits in Article 37(1);

(32) 'clearing margin given' or 'CMG' means the amount of total margin required by a clearing member or qualifying central counterparty, where the execution and settlement of transactions of an investment firm dealing on own account take place under the responsibility of a clearing member or qualifying central counterparty;

(33) 'daily trading flow' or 'DTF' means the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its own name, excluding the value of orders that an investment firm handles for clients through the reception and transmission of client orders and through the execution of orders on behalf of clients which are already taken into account in the scope of client orders handled;

(34) 'net position risk' or 'NPR' means the value of transactions recorded in the trading book of an investment firm;

(35) 'trading counterparty default' or 'TCD' means the exposures in the trading book of an investment firm in instruments and transactions referred to in Article 25 giving rise to the risk of trading counterparty default;

(36) 'current market value' or 'CMV' means the net market value of the portfolio of transactions or securities legs subject to netting in accordance with Article 31, where both positive and negative market values are used in computing CMV;

(37) 'long settlement transactions' means long settlement transactions as defined in point (2) of Article 272 of Regulation (EU) No 575/2013;

(38) 'margin lending transaction' means margin lending transactions as defined in point (10) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council ([21]);

(39) 'management body' means a management body as defined in point (36) of Article 4(1) of Directive 2014/65/EU;

(40) 'mixed financial holding company' means a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council ([22]);

(41) 'off-balance-sheet item' means any of the items referred to in Annex I to Regulation (EU) No 575/2013;

(42) 'parent undertaking' means a parent undertaking within the meaning of point (9) of Article 2 and Article 22 of Directive 2013/34/EU;

(43) 'participation' means participation as defined in point (35) of Article 4(1) of Regulation (EU) No 575/2013;

(44) 'profit' means profit as defined in point (121) of Article 4(1) of Regulation (EU) No 575/2013;

(45) 'qualifying central counterparty' or 'QCCP' means a qualifying central counterparty as defined in point (88) of Article 4(1) of Regulation (EU) No 575/2013;

(46) 'portfolio management' means portfolio management as defined in point (8) of Article 4(1) of Directive 2014/65/EU;

(47) 'qualifying holding' means a qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;

([21]) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

([22]) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

(48) 'securities financing transaction' or 'SFT' means SFT as defined in point (11) of Article 3 of Regulation (EU) 2015/2365;

(49) 'segregated accounts', for the purposes of Table 1 in Article 15(2), means accounts with entities where client money held by an investment firm is deposited in accordance with Article 4 of Commission Delegated Directive (EU) 2017/593 ([23]) and, where applicable, where national law provides that, in the event of insolvency or entry into resolution or administration of the investment firm, the client money cannot be used to satisfy claims in relation to the investment firm other than claims by the client;

(50) 'repurchase transaction' means a repurchase transaction as defined in point (9) of Article 3 of Regulation (EU) 2015/2365;

(51) 'subsidiary' means a subsidiary undertaking as defined in point (10) of Article 2 and within the meaning of Article 22 of Directive 2013/34/EU, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(52) 'tied agent' means a tied agent as defined in point (29) of Article 4(1) of Directive 2014/65/EU;

(53) 'total gross revenue' means the annual operating income of an investment firm, in connection with the investment firm's investment services and activities it is authorised to perform, including income stemming from interest receivable, from shares and other securities whether fixed yield or variable, from commission and fees, any gain and losses that the investment firm incurs on its trading assets, on assets held at fair value, or from hedging activities, but excluding any income which is not linked to the investment services and activities performed;

(54) 'trading book' means all positions in financial instruments and commodities held by an investment firm, either with trading intent or in order to hedge positions held with trading intent;

(55) 'positions held with trading intent' means any of the following:

(a) proprietary positions and positions arising from client servicing and market making;

(b) positions intended to be resold in the short term;

(c) positions intended to benefit from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations;

(56) 'Union parent investment firm' means an investment firm in a Member State which is part of an investment firm group and which has an investment firm or a financial institution as a subsidiary or which holds a participation in such an investment firm or financial institution, and which is not itself a subsidiary of another investment firm authorised in any Member State, or of an investment holding company or mixed financial holding company set up in any Member State;

(57) 'Union parent investment holding company' means an investment holding company in a Member State which is part of an investment firm group and which is not itself a subsidiary of an investment firm authorised in any Member State or of another investment holding company in any Member State;

(58) 'Union parent mixed financial holding company' means a parent undertaking of an investment firm group which is a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC.

2. The Commission is empowered to adopt delegated acts in accordance with Article 56 to supplement this Regulation by clarifying the definitions set out in paragraph 1 to:

(a) ensure uniform application of this Regulation;

(b) take account, in the application of this Regulation, of developments on financial markets.

([23]) Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

TITLE II

LEVEL OF APPLICATION OF REQUIREMENTS

CHAPTER 1

Application of requirements on an individual basis

Article 5

General principle

Investment firms shall comply with the requirements laid down in Parts Two to Seven on an individual basis.

Article 6

Exemptions

1. Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two, Three, Four, Six and Seven, where all of the following conditions apply:

(a) the investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1);

(b) one of the following conditions is satisfied:

(i) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013;

(ii) the investment firm is a subsidiary and is included in an investment firm group supervised on a consolidated basis in accordance with Article 7;

(c) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;

(d) the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption;

(e) own funds are distributed adequately between the parent undertaking and the investment firm, and all of the following conditions are satisfied:

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

(iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

2. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Six where all of the following conditions apply:

(a) the investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1);

(b) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC;

(c) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;

(d) the authorities competent for the supervision on a consolidated basis in accordance with Directive 2009/138/EC agree to such an exemption;

(e) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;

(iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and

(iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.

3. Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five where all of the following conditions are satisfied:

(a) the investment firm is included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 or is included in an investment firm group for which Article 7(3) of this Regulation applies and the exemption provided for in Article 7(4) does not apply;

(b) the parent undertaking, on a consolidated basis, monitors and has oversight at all times over the liquidity positions of all institutions and investment firms within the group or sub-group that are subject to a waiver and ensures a sufficient level of liquidity for all of those institutions and investment firms;

(c) the parent undertaking and the investment firm have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between the parent undertaking and the investment firm to enable them to meet their individual obligations and joint obligations as they become due;

(d) there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts referred to in point (c);

(e) the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption.

CHAPTER 2

Prudential consolidation and exemptions for an investment firm group

Article 7

Prudential consolidation

1. Union parent investment firms, Union parent investment holding companies and Union parent mixed financial holding companies shall comply with the obligations laid down in Parts Two, Three, Four, Six and Seven on the basis of their consolidated situation. The parent undertaking and those of its subsidiaries that are subject to this Regulation shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded. In particular, the parent undertaking shall ensure that subsidiaries that are not subject to this Regulation implement arrangements, processes and mechanisms to ensure proper consolidation.

2. For the purposes of paragraph 1 of this Article, when applying Part Two on a consolidated basis, the rules laid down in Title II of Part Two of Regulation (EU) No 575/2013 shall also apply to investment firms.

For that purpose, when applying the provisions of Article 84(1), Article 85(1) and Article 87(1) of Regulation (EU) No 575/2013 only the references to Article 92(1) of Regulation (EU) No 575/2013 shall apply and shall consequently be read as referring to the own funds requirements set out under the corresponding provisions in this Regulation.

3. Union parent investment firms, Union parent investment holding companies and Union parent mixed financial companies shall comply with the obligations laid down in Part Five on the basis of their consolidated situations.

4. By way of derogation from paragraph 3, competent authorities may exempt the parent undertaking from compliance with that paragraph, taking into account the nature, scale and complexity of the investment firm group.

5. EBA shall develop draft regulatory technical standards to specify the details of the scope and methods for prudential consolidation of an investment firm group, in particular for the purpose of calculating the fixed overheads requirement, the permanent minimum capital requirement, the K-factor requirement on the basis of the consolidated situation of the investment firm group, and the method and necessary details to properly implement paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

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

Article 8

The group capital test

1. By way of derogation from Article 7, competent authorities may allow the application of this Article in the case of group structures which are deemed to be sufficiently simple, provided that there are no significant risks to clients or to market stemming from the investment firm group as a whole that would otherwise require supervision on a consolidated basis. Competent authorities shall notify EBA when they allow the application of this Article.

2. For the purposes of this Article, the following shall apply:

(a) 'own funds instruments' means own funds as defined in Article 9 of this Regulation, without applying the deductions referred to in point (i) of Article 36(1), point (d) of Article 56, and point (d) of Article 66 of Regulation (EU) No 575/2013;

(b) the terms 'investment firm', 'financial institution', 'ancillary services undertaking' and 'tied agent' shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms in Article 4.

3. Union parent investment firms, Union parent investment holding companies, Union parent mixed financial holding companies and any other parent undertakings that are investment firms, financial institutions, ancillary services undertakings or tied agents in the investment firm group shall hold at least enough own funds instruments to cover the sum of the following:

(a) the sum of the full book value of all of their holdings, subordinated claims and instruments referred to in point (i) of Article 36(1), point (d) of Article 56, and point (d) of Article 66 of Regulation (EU) No 575/2013 in investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group; and

(b) the total amount of all of their contingent liabilities in favour of investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group.

4. Competent authorities may allow a Union parent investment holding company or a Union parent mixed financial holding company and any other parent undertaking that is an investment firm, a financial institution, an ancillary services undertaking or a tied agent in the investment firm group, to hold a lower amount of own funds than the amount calculated under paragraph 3, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis on its subsidiary investment firms, financial institutions, ancillary services undertakings and tied agents, and the total amount of any contingent liabilities in favour of those entities.

For the purposes of this paragraph, the own funds requirements for subsidiary undertakings as referred to in the first subparagraph which are located in third countries shall be notional own funds requirements that ensure a satisfactory level of prudence to cover for the risks arising from those subsidiary undertakings, as approved by the relevant competent authorities.

5. Union parent investment firms, Union parent investment holding companies, and Union parent mixed financial holding companies shall have systems in place to monitor and control the sources of capital and funding of all investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings and tied agents within the investment firm group.

PART TWO

OWN FUNDS

Article 9

Own funds composition

1. Investment firms shall have own funds consisting of the sum of their Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital, and shall meet all the following conditions at all times:

(a) $\frac{\text{Common Equity Tier 1 capital}}{D} \geq 56\ \%$,

(b) $\frac{\text{Common Equity Tier 1 capital + Additional Tier 1 capital}}{D} \geq 75\ \%$,

(c) $\frac{\text{Common Equity Tier 1 capital + Additional Tier 1 capital + Tier 2 capital}}{D} \geq 100\ \%$,

where:

(i) Common Equity Tier 1 capital is defined in accordance with Chapter 2 of Title I of Part Two of Regulation (EU) No 575/2013, Additional Tier 1 capital is defined in accordance with Chapter 3 of Title I of Part Two of Regulation (EU) No 575/2013, and Tier 2 capital is defined in accordance with Chapter 4 of Title I of Part Two of Regulation (EU) No 575/2013; and

(ii) *D* is defined in Article 11.

2. By way of derogation from paragraph 1:

(a) the deductions referred to in point (c) of Article 36(1) of Regulation (EU) No 575/2013 shall apply in full, without the application of Articles 39 and 48 of that Regulation;

(b) the deductions referred to in point (e) of Article 36(1) of Regulation (EU) No 575/2013 shall apply in full, without the application of Article 41 of that Regulation;

(c) the deductions referred to in point (h) of Article 36(1), point (c) of Article 56, and point (c) of Article 66 of Regulation (EU) No 575/2013, insofar as they relate to holdings of capital instruments which are not held in the trading book, shall apply in full, without the application of the mechanisms provided for in Articles 46, 60 and 70 of that Regulation;

(d) the deductions referred to in point (i) of Article 36(1) of Regulation (EU) No 575/2013 shall apply in full, without the application of Article 48 of that Regulation;

(e) the following provisions shall not apply to the determination of own funds of investment firms:

  (i) Article 49 of Regulation (EU) No 575/2013;

  (ii) the deductions referred to in point (h) of Article 36(1), point (c) of Article 56, point (c) of Article 66 of Regulation (EU) No 575/2013 and the related provisions in Articles 46, 60 and 70 of that Regulation, insofar as those deductions relate to holdings of capital instruments held in the trading book;

  (iii) the trigger event referred to in point (a) of Article 54(1) of Regulation (EU) No 575/2013; the trigger event shall instead be specified by the investment firm in the terms of the Additional Tier 1 instrument referred to in paragraph 1;

  (iv) the aggregate amount referred to in point (a) of Article 54(4) of Regulation (EU) No 575/2013; the amount to be written down or converted shall be the full principal amount of the Additional Tier 1 instrument referred to in paragraph 1.

3. Investment firms shall apply the relevant provisions set out in Chapter 6 of Title I of Part Two of Regulation (EU) No 575/2013 when determining the own funds requirements pursuant to this Regulation. In applying those provisions, the supervisory permission in accordance with Articles 77 and 78 of Regulation (EU) No 575/2013 shall be deemed to be granted if one of the conditions set out in point (a) of Article 78(1) or in Article 78(4) of that Regulation is fulfilled.

4. For the purpose of applying point (a) of paragraph 1, for investment firms which are not legal persons or joint-stock companies or which meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of this Regulation, competent authorities may, after consulting the EBA, permit further instruments or funds to qualify as own funds for those investment firms, provided that those instruments or funds also qualify for treatment under Article 22 of Council Directive 86/635/EEC ([24]). On the basis of information received from each competent authority, EBA, together with ESMA, shall establish, maintain and publish a list of all the forms of instruments or funds in each Member State that qualify as such own funds. The list shall be published for the first time by 26 December 2020.

5. Holdings of own funds instruments of a financial sector entity within an investment firm group shall not be deducted for the purpose of calculating own funds of any investment firm in the group on an individual basis, provided that all of the following conditions are met:

(a) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;

(b) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity;

(c) the derogation provided for in Article 8 is not used by the competent authorities.

Article 10

Qualifying holdings outside the financial sector

1. For the purposes of this Part, investment firms shall deduct amounts in excess of the limits specified in points (a) and (b) from the determination of Common Equity Tier 1 items referred to in Article 26 of Regulation (EU) No 575/2013:

(a) a qualifying holding, the amount of which exceeds 15 % of the own funds of the investment firm calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in point (k)(i) of Article 36 (1) of Regulation (EU) No 575/2013, in an undertaking which is not a financial sector entity;

(b) the total amount of the qualifying holdings of an investment firm in undertakings other than financial sector entities that exceeds 60 % of its own funds calculated in accordance with Article 9 of this Regulation but without applying the deduction referred to in point (k)(i) of Article 36(1) of Regulation (EU) No 575/2013.

2. Competent authorities may prohibit an investment firm from having qualifying holdings as referred to in paragraph 1 where the amount of those holdings exceed the percentages of own funds laid down in that paragraph. Competent authorities shall make public their decision exercising this power without delay.

3. Shares in undertakings other than financial sector entities shall not be included in the calculation specified in paragraph 1 where any of the following conditions is met:

(a) those shares are held temporarily during a financial assistance operation as referred to in Article 79 of Regulation (EU) No 575/2013;

(b) the holding of those shares is an underwriting position held for five working days or fewer;

(c) those shares are held in the own name of the investment firm and on behalf of others.

4. Shares which are not financial fixed assets as referred to in Article 35(2) of Directive 86/635/EEC shall not be included in the calculation specified in paragraph 1 of this Article.

([24]) 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).

PART THREE

CAPITAL REQUIREMENTS

TITLE I

GENERAL REQUIREMENTS

Article 11

Own funds requirements

1. Investment firms shall at all times have own funds in accordance with Article 9 which amount to at least *D*, where *D* is defined as the highest of the following:

(a) their fixed overheads requirement calculated in accordance with Article 13;

(b) their permanent minimum capital requirement in accordance with Article 14; or

(c) their K-factor requirement calculated in accordance with Article 15.

2. By way of derogation from paragraph 1, where an investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1), *D* shall be defined as the highest of the amounts specified in points (a) and (b) of paragraph 1.

3. Where competent authorities consider that there has been a material change in the business activities of an investment firm, they may require the investment firm to be subject to a different own funds requirement referred to in this Article, in accordance with Title IV, Chapter 2, Section 4 of Directive (EU) 2019/2034.

4. Investment firms shall notify the competent authority as soon as they become aware that they no longer satisfy or will no longer satisfy the requirements of this Article.

Article 12

Small and non-interconnected investment firms

1. Investment firms shall be deemed to be small and non-interconnected investment firms for the purposes of this Regulation where they meet all of the following conditions:

(a) AUM measured in accordance with Article 17 is less than EUR 1,2 billion;

(b) COH measured in accordance with Article 20 is less than either:

  (i) EUR 100 million/day for cash trades; or

  (ii) EUR 1 billion/day for derivatives;

(c) ASA measured in accordance with Article 19 is zero;

(d) CMH measured in accordance with Article 18 is zero;

(e) DTF measured in accordance with Article 33 is zero;

(f) NPR or CMG measured in accordance with Articles 22 and 23 is zero;

(g) TCD measured in accordance with Article 26 is zero;

(h) the on- and off-balance-sheet total of the investment firm is less than EUR 100 million;

(i) the total annual gross revenue from investment services and activities of the investment firm is less than EUR 30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.

By way of derogation from the provisions of Title II, for the purposes of points (a), (b), (c), (e), (f), insofar as that point relates to NPR, and (g) of the first subparagraph, end-of-day values shall apply.

For the purposes of point (f) of the first subparagraph, insofar as that point relates to CMG, intraday values shall apply.

For the purposes of point (d) of the first subparagraph of this paragraph, and without prejudice to Article 16(9) of Directive 2014/65/EU and Articles 2 and 4 of Delegated Directive (EU) 2017/593, intraday values shall apply, except where there has been an error in recordkeeping or in the reconciliation of accounts that incorrectly indicated that an investment firm breached the zero threshold referred to in point (d) of the first subparagraph of this paragraph and which is resolved before the end of the business day. The investment firm shall notify the competent authority without delay of the error, the reasons for its occurrence and its correction.

For the purposes of points (h) and (i) of the first subparagraph, the levels at the end of the last financial year for which accounts have been finalised and approved by the management body shall apply. Where accounts have not been finalised and approved after six months from the end of the last financial year, an investment firm shall use provisional accounts.

Investment firms may measure the values under points (a) and (b) of the first subparagraph by using the methods specified under Title II, with the exception that the measurement shall be done over 12 months, without the exclusion of the three most recent monthly values. Investment firms that choose this measurement method shall notify the competent authority accordingly and shall apply the chosen method for a continuous period of no less than 12 consecutive months.

2. The conditions set out in points (a), (b), (h) and (i) of paragraph 1 shall apply on a combined basis for all investment firms that are part of a group. For the purpose of measuring the total annual gross revenue referred to in point (i) of paragraph 1, those investment firms may exclude any double counting that may arise in respect of gross revenues generated within the group.

The conditions set out in points (c) to (g) of paragraph 1 shall apply to each investment firm on an individual basis.

3. Where an investment firm no longer meets all the conditions set out in paragraph 1, it shall cease to be considered to be a small and non-interconnected investment firm, with immediate effect.

By way of derogation from the first subparagraph, where an investment firm no longer meets the conditions set out in points (a), (b), (h) or (i) of paragraph 1 but continues to meet the conditions set out in points (c) to (g) of that paragraph, it shall cease to be considered to be a small and non-interconnected investment firm after a period of three months, calculated from the date on which the threshold was exceeded. The investment firm shall notify the competent authority without undue delay of any breach of a threshold.

4. Where an investment firm which has not met all of the conditions set out in paragraph 1 subsequently meets them, it shall be considered to be a small and non-interconnected investment firm only after a period of six months from the date on which those conditions are met, provided that no breach of a threshold has occurred during that period and the investment firm has notified the competent authority accordingly without delay.

Article 13

Fixed overheads requirement

1. For the purposes of point (a) of Article 11(1), the fixed overheads requirement shall amount to at least one quarter of the fixed overheads of the preceding year. Investment firms shall use figures resulting from the applicable accounting framework.

2. Where the competent authority considers that there has been a material change in the activities of an investment firm, the competent authority may adjust the amount of capital referred to in paragraph 1.

3. Where an investment firm has not been in business for one year from the date on which it started providing investment services or performing investment activities, it shall use, for the purpose of calculation referred to in paragraph 1, the projected fixed overheads included in its projections for the first 12 months' trading, as submitted with its application for authorisation.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to supplement the calculation of the requirement referred to in paragraph 1 which includes at least the following items for deduction:

(a) staff bonuses and other remuneration, to the extent that they depend on the net profit of the investment firm in the respective year;

(b) employees', directors' and partners' shares in profits;

(c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;

(d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent on the actual receipt of the commission and fees receivable;

(e) fees to tied agents;

(f) non-recurring expenses from non-ordinary activities.

EBA shall also specify for the purposes of this Article the notion of a material change.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

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

Article 14

Permanent minimum capital requirement

For the purposes of point (b) of Article 11(1), the permanent minimum capital requirement shall amount to at least the levels of initial capital specified in Article 9 of Directive (EU) 2019/2034.

TITLE II

K-FACTOR REQUIREMENT

CHAPTER 1

General principles

Article 15

K-factor requirement and applicable coefficients

1. For the purposes of point (c) of Article 11(1), the K-factor requirement shall amount to at least the sum of the following:

(a) Risk-to-Client (RtC) K-factors calculated in accordance with Chapter 2;

(b) Risk-to-Market (RtM) K-factors calculated in accordance with Chapter 3;

(c) Risk-to-Firm (RtF) K-factors calculated in accordance with Chapter 4.

2. The following coefficients shall apply to the corresponding K-factors:

Table 1

K-FACTORS		COEFFICIENT
Assets under management under both discretionary portfolio management and nondiscretionary advisory arrangements of an ongoing nature	K-AUM	0,02 %
Client money held	K-CMH (on segregated accounts)	0,4 %
	K-CMH (on non-segregated accounts)	0,5 %
Assets safeguarded and administered	K-ASA	0,04 %
Client orders handled	K-COH cash trades	0,1 %
	K-COH derivatives	0,01 %
Daily trading flow	K-DTF cash trades	0,1 %
	K-DTF derivatives	0,01 %

3. Investment firms shall monitor the value of their K-factors for any trends that could leave them with a materially different own funds requirement for the purposes of Article 11 for the following reporting period under Part Seven and shall notify their competent authority of that materially different own funds requirement.

4. Where competent authorities consider that there has been a material change in the business activities of an investment firm that impacts the amount of a relevant K-factor, they may adjust the corresponding amount in accordance with point (a) of Article 39(2) of Directive (EU) 2019/2034.

5. In order to ensure the uniform application of this Regulation and to take account of developments in financial markets, EBA shall, in consultation with ESMA, develop draft regulatory technical standards to:

(a) specify the methods for measuring the K-factors in Title II of Part Three;

(b) specify the notion of segregated accounts for the purposes of this Regulation for the conditions that ensure the protection of client money in the event of the failure of an investment firm;

(c) specify adjustments to the K-DTF coefficients referred to in Table 1 of paragraph 2 of this Article in the event that, in stressed market condition as referred to in Commission Delegated Regulation (EU) 2017/578 ([25]), the K-DTF requirements seem overly restrictive and detrimental to financial stability.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

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

CHAPTER 2

RtC K-factors

Article 16

RtC K-factor requirement

The RtC K-factor requirement is determined by the following formula:

K-AUM + K-CMH + K-ASA + K-COH

where:

K-AUM is equal to AUM measured in accordance with Article 17, multiplied by the corresponding coefficient in Article 15 (2);

K-CMH is equal to CMH measured in accordance with Article 18, multiplied by the corresponding coefficient in Article 15 (2);

K-ASA is equal to ASA measured in accordance with Article 19, multiplied by the corresponding coefficient in Article 15 (2);

K-COH is equal to COH measured in accordance with Article 20, multiplied by the corresponding coefficient in Article 15 (2).

Article 17

Measuring AUM for the purpose of calculating K-AUM

1. For the purpose of calculating K-AUM, AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values.

([25]) Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (OJ L 87, 31.3.2017, p. 183).

AUM shall be the arithmetic mean of the remaining 12 monthly values.

K-AUM shall be calculated on the first business day of each month.

2. Where the investment firm has formally delegated the management of assets to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with paragraph 1.

Where another financial entity has formally delegated the management of assets to the investment firm, those assets shall be excluded from the total amount of assets under management measured in accordance with paragraph 1.

Where an investment firm has been managing assets for less than 15 months, or where it has done so for a longer period as a small and non-interconnected investment firm and now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under paragraph 1 as soon as such data becomes available to calculate K-AUM. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 18

Measuring CMH for the purpose of calculating K-CMH

1. For the purpose of calculating K-CMH, CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months.

CMH shall be the arithmetic mean of the daily values from the remaining six months.

K-CMH shall be calculated on the first business day of each month.

2. Where an investment firm has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under paragraph 1 as soon as such data becomes available to calculate K-CMH.

The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 19

Measuring ASA for the purpose of calculating K-ASA

1. For the purpose of calculating K-ASA, ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months.

ASA shall be the arithmetic mean of the daily values from the remaining six months.

K-ASA shall be calculated on the first business day of each month.

2. Where an investment firm has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the investment firm, those assets shall be included in the total amount of ASA which is measured in accordance with paragraph 1.

3. Where an investment firm has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph 1 as soon as such data becomes available to calculate K-ASA. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

Article 20

Measuring COH for the purpose of calculating K-COH

1. For the purpose of calculating K-COH, COH shall be the rolling average of the value of the total daily client orders handled, measured throughout each business day over the previous six months, excluding the three most recent months.

COH shall be the arithmetic mean of the daily values from the remaining three months.

K-COH shall be calculated on the first business day of each month.

2. COH shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:

(a) for cash trades, the value is the amount paid or received on each trade;

(b) for derivatives, the value of the trade is the notional amount of the contract.

The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of those contracts. The notional amount shall be multiplied by the duration set out in the following formula:

Duration = time to maturity(in years) / 10

Without prejudice to the fifth subparagraph, COH shall include transactions executed by investment firms providing portfolio management services on behalf of investment funds.

COH shall include transactions which arise from investment advice in respect of which an investment firm does not calculate K-AUM.

COH shall exclude transactions handled by the investment firm that arise from the servicing of a client's investment portfolio where the investment firm already calculates K-AUM in respect of that client's investments or where that activity relates to the delegation of management of assets to the investment firm not contributing to the AUM of that investment firm by virtue of Article 17(2).

COH shall exclude transactions executed by the investment firm in its own name either for itself or on behalf of a client.

Investment firms may exclude from the measurement of COH any orders which have not been executed, where such non-execution is due to the timely cancellation of the order by the client.

3. Where an investment firm has been handling client orders for less than six months, or has done so for a longer period as a small and non-interconnected investment firm, it shall use historical data for COH for the period specified under paragraph 1 as soon as such data becomes available to calculate K-COH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

CHAPTER 3

RtM K-Factors

Article 21

RtM K-factor requirement

1. The RtM K-factor requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client shall be either K-NPR calculated in accordance with Article 22 or K-CMG calculated in accordance with Article 23.

2. Investment firms shall manage their trading book in accordance with Chapter 3 of Title I of Part Three of Regulation (EU) No 575/2013.

3. The RtM K-factor requirement applies to all trading book positions, which include in particular positions in debt instruments (including securitisation instruments), equity instruments, collective investment undertakings (CIUs), foreign exchange and gold, and commodities (including emission allowances).

4. For the purpose of calculating the RtM K-factor requirement, an investment firm shall include positions other than trading book positions where those give rise to foreign exchange risk or commodity risk.

Article 22

Calculating K-NPR

For the purpose of calculating K-NPR, the own funds requirement for the trading book positions of an investment firm dealing on own account, whether for itself or on behalf of a client, shall be calculated using one of the following approaches:

(a) the standardised approach set out in Chapters 2, 3 and 4 of Title IV of Part Three of Regulation (EU) No 575/2013;

(b) the alternative standardised approach set out in Chapter 1a of Title IV of Part Three of the Regulation No (EU) No 575/2013;

(c) the alternative internal model approach set out in Chapter 1b of Title IV of Part Three of the Regulation No (EU) No 575/2013.

Article 23

Calculating K-CMG

1. For the purposes of Article 21, the competent authority shall allow an investment firm to calculate K-CMG for all positions that are subject to clearing, or on a portfolio basis, where the whole portfolio is subject to clearing or margining, under the following conditions:

(a) the investment firm is not part of a group containing a credit institution;

(b) the clearing and settlement of these transactions take place under the responsibility of a clearing member of a QCCP and that clearing member is a credit institution or an investment firm referred to in Article 1(2) of this Regulation, and the transactions are either centrally cleared in a QCCP or otherwise settled on a delivery versus payment basis under the responsibility of that clearing member;

(c) the calculation of the total margin required by the clearing member is based on a margin model of the clearing member;

(d) the investment firm has demonstrated to the competent authority that the choice of calculating RtM with K-CMG is justified by certain criteria, which may include the nature of the main activities of the investment firm which shall essentially be trading activities subject to clearing and margining under the responsibility of a clearing member, and the fact that other activities performed by the investment firm are immaterial in comparison to those main activities; and

(e) the competent authority has assessed that the choice of the portfolio(s) subject to K-CMG has not been made with a view to engaging in regulatory arbitrage of the own funds requirements in a disproportionate or prudentially unsound manner.

For the purpose of point (c) of the first subparagraph, the competent authority shall carry out a regular assessment to confirm that the margin model leads to margin requirements that reflect the risk characteristics of the products the investment firms trade in and takes into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction.

The margin requirements shall be sufficient to cover losses that may result from at least 99 % of the exposures movements over an appropriate time horizon with at least a two-business days holding period. The margin models used by that clearing member to call the margin referred to in point (c) of the first subparagraph of this paragraph shall always be designed to achieve a level of prudence similar to that required in the provisions on margin requirements in Article 41 of Regulation (EU) No 648/2012.

2. K-CMG shall be the third highest amount of total margin required on a daily basis by the clearing member from the investment firm over the preceding three months, multiplied by a factor of 1,3.

3. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the calculation of the amount of the total margin required and the method of calculation of K-CMG as referred to in paragraph 2, in particular where K-CMG is applied on a portfolio basis, and the conditions for the fulfilment of the provisions in point (e) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

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

CHAPTER 4

RtF K-factors

Article 24

RtF K-factor requirement

The RtF K-factor requirement is determined by the following formula:

K-TCD + K-DTF + K-CON

where:

K-TCD is equal to the amount calculated in accordance with Article 26;

K-DTF is equal to DTF measured in accordance with Article 33, multiplied by the corresponding coefficient established in Article 15(2) and

K-CON is equal to the amount calculated in accordance with Article 39.

K-TCD and K-CON shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client.

K-DTF shall be based on the transactions recorded in the trading book of an investment firm dealing on own account, whether for itself or on behalf of a client, and the transactions that an investment firm enters into through the execution of orders on behalf of clients in its own name.

Section 1

Trading counterparty default

Article 25

Scope

1. This Section applies to the following contracts and transactions:

(a) derivative contracts listed in Annex II to Regulation (EU) No 575/2013, with the exception of the following:

(i) derivative contracts directly or indirectly cleared through a central counterparty (CCP) where all of the following conditions are met:

— the positions and assets of the investment firm related to those contracts are distinguished and segregated, at the level of both the clearing member and the CCP, from the positions and assets of both the clearing member and the other clients of that clearing member and, as a result of that distinction and segregation, those positions and assets are bankruptcy remote under national law in the event of the default or insolvency of the clearing member or one or more of its other clients,

— laws, regulations, rules and contractual arrangements applicable to or binding the clearing member facilitate the transfer of the client's positions relating to those contracts and of the corresponding collateral to another clearing member within the applicable margin period of risk in the event of default or insolvency of the original clearing member,

— the investment firm has obtained an independent, written and reasoned legal opinion which concludes that, in the event of a legal challenge, the investment firm would bear no losses on account of the insolvency of its clearing member or of any of its clearing member's clients;

(ii) exchange-traded derivative contracts;

(iii) derivative contracts held for hedging a position of the investment firm resulting from a non-trading book activity;

(b) long settlement transactions;

(c) repurchase transactions;

(d) securities or commodities lending or borrowing transactions;

(e) margin lending transactions;

(f) any other type of SFTs;

(g) credits and loans referred to in point (2) of Section B of Annex I to Directive 2014/65/EU, if the investment firm is executing the trade in the name of the client or receiving and transmitting the order without executing it.

For the purposes of point (a)(i) of the first subparagraph, derivative contracts directly or indirectly cleared through a QCCP shall be deemed to meet the conditions set out in that point.

2. Transactions with the following types of counterparties shall be excluded from the calculation of K-TCD:

(a) central governments and central banks, where the underlying exposures would receive a 0 % risk weight under Article 114 of Regulation (EU) No 575/2013;

(b) multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;

(c) international organisations listed in Article 118 of Regulation (EU) No 575/2013.

3. Subject to the prior approval of the competent authorities, an investment firm may exclude from the scope of the calculation of K-TCD transactions with a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or an undertaking linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU. Competent authorities shall grant approval if the following conditions are fulfilled:

(a) the counterparty is a credit institution, an investment firm, or a financial institution, subject to appropriate prudential requirements;

(b) the counterparty is included in the same prudential consolidation as the investment firm on a full basis in accordance with Regulation (EU) No 575/2013 or Article 7 of this Regulation, or the counterparty and the investment firm are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the investment firm;

(d) the counterparty is established in the same Member State as the investment firm;

(e) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the investment firm.

4. By way of derogation from this Section, an investment firm may, subject to the approval of the competent authority, calculate the exposure value of derivative contracts listed in Annex II to Regulation (EU) No 575/2013 and for the transactions referred to in points (b) to (f) of paragraph 1 of this Article by applying one of the methods set out in Section 3, 4 or 5, Chapter 6, Title II, Part Three of Regulation (EU) No 575/2013 and calculate the related own funds requirements by multiplying the exposure value by the risk factor defined per counterparty type as set out in Table 2 in Article 26 of this Regulation.

Investment firms included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 may calculate the related own funds requirement by multiplying the risk weighted exposure amounts, calculated in accordance with Section 1 of Chapter 2 of Title II of Part Three of Regulation (EU) No 575/2013, by 8 %.

5. When applying the derogation in paragraph 4 of this Article, investment firms shall also apply a credit valuation adjustment (CVA) factor by multiplying the own funds requirement, calculated in accordance with paragraph 2 of this Article, by the CVA calculated in accordance with Article 32.

Rather than applying the CVA factor multiplier, investment firms included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 may calculate own funds requirements for credit valuation adjustment risk in accordance with Title VI of Part Three of Regulation (EU) No 575/2013.

Article 26

Calculating K-TCD

For the purpose of calculating K-TCD, the own funds requirement shall be determined by the following formula:

$$\text{Own funds requirement} = \alpha \bullet EV \bullet RF \bullet CVA$$

where:

$\alpha = 1{,}2$;

EV = the exposure value calculated in accordance with Article 27;

RF = the risk factor defined per counterparty type as set out in Table 2; and

CVA = the credit valuation adjustment calculated in accordance with Article 32.

Table 2

Counterparty type	Risk factor
Central governments, central banks and public sector entities	1,6 %
Credit institutions and investment firms	1,6 %
Other counterparties	8 %

Article 27

Calculation of exposure value

The calculation of the exposure value shall be determined in accordance with the following formula:

$$\text{Exposure value} = \text{Max}(0; RC + PFE - C)$$

where:

RC = replacement cost as determined in Article 28;

PFE = potential future exposure as determined in Article 29; and

C = collateral as determined in Article 30.

The replacement cost (RC) and collateral (C) shall apply to all transactions referred to in Article 25.

The potential future exposure (PFE) applies only to derivative contracts.

An investment firm may calculate a single exposure value at netting level for all the transactions covered by a contractual netting agreement, subject to the conditions laid down in Article 31. Where any of those conditions is not met, the investment firm shall treat each transaction as if it was its own netting set.

Article 28

Replacement cost (RC)

The replacement cost referred to in Article 27 shall be determined as follows:

(a) for derivative contracts, RC is determined as the CMV;

(b) for long settlement transactions, RC is determined as the settlement amount of cash to be paid or to be received by the investment firm upon settlement; a receivable is to be treated as a positive amount and a payable is to be treated as a negative amount;

(c) for repurchase transactions and securities or commodities lending or borrowing transactions, RC is determined as the amount of cash lent or borrowed; cash lent by the investment firm is to be treated as a positive amount and cash borrowed by the investment firm is to be treated as a negative amount;

(d) for securities financing transactions, where both legs of the transaction are securities, RC is determined by the CMV of the security lent by the investment firm; the CMV shall be increased using the corresponding volatility adjustment in Table 4 of Article 30;

(e) for margin lending transactions and credits and loans referred to in point (g) of Article 25(1), RC is determined by the book value of the asset in accordance with the applicable accounting framework.

Article 29

Potential future exposure

1. The potential future exposure (PFE) referred to in Article 27 shall be calculated for each derivative as the product of:

(a) the effective notional (EN) amount of the transaction set in accordance with paragraphs 2 to 6 of this Article; and

(b) the supervisory factor (SF) set in accordance with paragraph 7 of this Article.

2. The effective notional (EN) amount shall be the product of the notional amount calculated in accordance with paragraph 3, its duration calculated in accordance with paragraph 4, and its supervisory delta calculated in accordance with paragraph 6.

3. The notional amount, unless clearly stated and fixed until maturity, shall be determined as follows:

(a) for foreign exchange derivative contracts, the notional amount is defined as the notional amount of the foreign currency leg of the contract, converted to the domestic currency; if both legs of a foreign exchange derivative are denominated in currencies other than the domestic currency, the notional amount of each leg is converted to the domestic currency and the leg with the larger domestic currency value is the notional amount;

(b) for equity and commodity derivatives contracts and emission allowances and derivatives thereof, the notional amount is defined as the product of the market price of one unit of the instrument and the number of units referenced by the trade;

(c) for transactions with multiple payoffs that are state contingent including digital options or target redemption forwards, an investment firm shall calculate the notional amount for each state and use the largest resulting calculation;

(d) where the notional is a formula of market values, the investment firm shall enter the CMVs to determine the trade notional amount;

(e) for variable notional swaps such as amortising and accreting swaps, investment firms shall use the average notional over the remaining life of the swap as the trade notional amount;

(f) leveraged swaps shall be converted to the notional amount of the equivalent unleveraged swap so that where all rates in a swap are multiplied by a factor, the stated notional amount is multiplied by the factor on the interest rates to determine the notional amount;

(g) for a derivative contract with multiple exchanges of principal, the notional amount shall be multiplied by the number of exchanges of principal in the derivative contract to determine the notional amount.

4. The notional amount of interest rate contracts and credit derivative contracts for the time to maturity (in years) of those contracts shall be adjusted according to the duration set out in the following formula:

$$\text{Duration} = (1 - \exp(-0{,}05 \bullet \text{time to maturity})) / 0{,}05$$

For derivative contracts other than interest rate contracts and credit derivative contracts the duration shall be 1.

5. The maturity of a contract shall be the latest date on which the contract may still be executed.

If the derivative references the value of another interest rate or credit instrument, the time period shall be determined on the basis of the underlying instrument.

For options, the maturity shall be the latest contractual exercise date as specified by the contract.

For a derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity shall equal the time until the next reset date.

6. The supervisory delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model subject to the approval of competent authorities. The model shall estimate the rate of change of the value of the option with respect to small changes in the market value of the underlying. For transactions other than options and swaptions or where no model has been approved by the competent authorities, the delta shall be 1.

7. The supervisory factor (SF) for each asset class shall be set in accordance with the following table:

Table 3

Asset class	Supervisory factor
Interest rate	0,5 %
Foreign exchange	4 %
Credit	1 %
Equity single name	32 %
Equity index	20 %
Commodity and emission allowance	18 %
Other	32 %

8. The potential future exposure of a netting set is the sum of the potential future exposure of all transactions included in the netting set, multiplied by:

(a) 0,42, for netting sets of transactions with financial and non-financial counterparties for which collateral is exchanged bilaterally with the counterparty, if required, in accordance with the conditions laid down in Article 11 of Regulation (EU) No 648/2012;

(b) 1, for other netting sets.

Article 30

Collateral

1. All collateral for both bilateral and cleared transactions referred to in Article 25 shall be subject to volatility adjustments in accordance with the following table:

Table 4

Asset class		Volatility adjustment repurchase transactions	Volatility adjustment other transactions
Debt securities issued by central governments or central banks	≤ 1 year	0,707 %	1 %
	> 1 year ≤ 5 years	2,121 %	3 %
	> 5 years	4,243 %	6 %
Debt securities issued by other entities	≤ 1 year	1,414 %	2 %
	> 1 year ≤ 5 years	4,243 %	6 %
	> 5 years	8,485 %	12 %
Securitisation positions	≤ 1 year	2,828 %	4 %
	> 1 year ≤ 5 years	8,485 %	12 %
	> 5 years	16,970 %	24 %
Listed equities and convertibles		14,143 %	20 %
Other securities and commodities		17,678 %	25 %
Gold		10,607 %	15 %
Cash		0 %	0 %

For the purposes of Table 4, securitisation positions shall not include re-securitisation positions.

Competent authorities may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices. They shall notify EBA of such decisions together with the reasons for the changes.

2. The value of collateral shall be determined as follows:

(a) for the purposes of points (a), (e) and (g) of Article 25(1), by the amount of collateral received by the investment firm from its counterparty decreased in accordance with Table 4;

(b) for the transactions referred to in points (b), (c), (d) and (f) of Article 25(1), by the sum of the CMV of the security leg and the net amount of collateral posted or received by the investment firm.

For securities financing transactions, where both legs of the transaction are securities, collateral is determined by the CMV of the security borrowed by the investment firm.

Where the investment firm is purchasing or has lent the security, the CMV of the security shall be treated as a negative amount and shall be decreased to a larger negative amount, using the volatility adjustment in Table 4. Where the investment firm is selling or has borrowed the security, the CMV of the security shall be treated as a positive amount and be decreased using the volatility adjustment in Table 4.

Where different types of transactions are covered by a contractual netting agreement, subject to the conditions laid down in Article 31, the applicable volatility adjustments for 'other transactions' of Table 4 shall be applied to the respective amounts calculated under points (a) and (b) of the first subparagraph on an issuer basis within each asset class.

3. Where there is a currency mismatch between the transaction and the collateral received or posted, an additional currency mismatch volatility adjustment of 8 % shall apply.

Article 31

Netting

For the purposes of this Section, an investment firm may, first, treat perfectly matching contracts included in a netting agreement as if they were a single contract with a notional principal equivalent to the net receipts, second, net other transactions subject to novation under which all obligations between the investment firm and its counterparty are automatically amalgamated in such a way that the novation legally substitutes one single net amount for the previous gross obligations, and third, net other transactions where the investment firm ensures that the following conditions have been met:

(a) a netting contract with the counterparty or other agreement which creates a single legal obligation covers all included transactions, such that the investment firm would have either a claim to receive or obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions in the event a counterparty fails to perform due to any of the following:

  (i) default;

  (ii) bankruptcy;

  (iii) liquidation; or

  (iv) similar circumstances;

(b) the netting contract does not contain any clause which, in the event of default of a counterparty, permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party, even if the defaulting party is a net creditor;

(c) the investment firm has obtained an independent, written and reasoned legal opinion that, in the event of a legal challenge of the netting agreement, the investment firm's claims and obligations would be equivalent to those referred to in point (a) under the following legal regime:

  (i) the law of the jurisdiction in which the counterparty is incorporated;

  (ii) if a foreign branch of a counterparty is involved, the law of jurisdiction in which the branch is located;

  (iii) the law that governs the individual transactions included in the netting agreement; or

  (iv) the law that governs any contract or agreement necessary to effect the netting.

Article 32

Credit valuation adjustment

For the purposes of this Section, CVA means an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty which reflects the CMV of the credit risk of the counterparty to the investment firm, but does not reflect the CMV of the credit risk of the investment firm to the counterparty.

CVA shall be 1,5 for all transactions other than the following transactions, for which CVA shall be 1:

(a) transactions with non-financial counterparties as defined in point (9) of Article 2 of Regulation (EU) No 648/2012, or with non-financial counterparties established in a third country, where those transactions do not exceed the clearing threshold as specified in Article 10(3) and (4) of that Regulation;

(b) intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012;

(c) long settlement transactions;

(d) SFTs, including margin lending transactions, unless the competent authority determines that the investment firm's CVA risk exposures arising from those transactions are material; and

(e) credits and loans referred to in point (g) of Article 25(1).

Section 2

Daily trading flow

Article 33

Measuring DTF for the purpose of calculating K-DTF

1. For the purpose of calculating K-DTF, DTF shall be the rolling average of the value of the total daily trading flow, measured throughout each business day over the previous nine months, excluding the three most recent months.

DTF shall be the arithmetic mean of the daily values from the remaining six months.

K-DTF shall be calculated on the first business day of each month.

2. DTF shall be measured as the sum of the absolute value of buys and the absolute value of sells for both cash trades and derivatives in accordance with the following:

(a) for cash trades, the value is the amount paid or received on each trade;

(b) for derivatives, the value of the trade is the notional amount of the contract.

The notional amount of interest rate derivatives shall be adjusted for the time to maturity (in years) of those contracts. The notional amount shall be multiplied by the duration set out in the following formula:

Duration = time to maturity(in years) / 10

3. DTF shall exclude transactions executed by an investment firm for the purpose of providing portfolio management services on behalf of investment funds.

DTF shall include transactions executed by an investment firm in its own name either for itself or on behalf of a client.

4. Where an investment firm has had a daily trading flow for less than nine months, it shall use historical data for DTF for the period specified under paragraph 1 as soon as such data becomes available to calculate K-DTF. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.

CHAPTER 5

Environmental and social objectives

Article 34

Prudential treatment of assets exposed to activities associated with environmental or social objectives

1. EBA, after consulting the European Systemic Risk Board, shall assess, on the basis of available data and the findings of the Commission's High-Level Expert Group on Sustainable Finance, whether dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted K-factors or adjusted K-factor coefficients, would be justified from a prudential perspective. In particular, EBA shall assess the following:

(a) methodological options for assessing the exposures of asset classes to activities substantially associated with environmental or social objectives;

(b) specific risk profiles of assets exposed to activities associated substantially with environmental or social objectives;

(c) risks related to the depreciation of assets due to regulatory changes such as climate change mitigation;

(d) potential effects of dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives on financial stability.

2. EBA shall submit a report on its findings to the European Parliament, to the Council and to the Commission by 26 December 2021.

3. On the basis of the report referred to in paragraph 2, the Commission shall, if appropriate, submit a legislative proposal to the European Parliament and the Council.

PART FOUR

CONCENTRATION RISK

Article 35

Monitoring obligation

1. Investment firms shall monitor and control their concentration risk in accordance with this Part by means of sound administrative and accounting procedures and robust internal control mechanisms.

2. For the purposes of this Part, the terms 'credit institution' and 'investment firm' include private or public undertakings, including the branches of such undertakings, provided that those undertakings, if they were established in the Union, would be credit institutions or investment firms as defined in this Regulation, and provided that those undertakings have been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

Article 36

Calculation of the exposure value

1. Investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) shall calculate the exposure value with regard to a client or group of connected clients for the purposes of this Part by adding together the following items:

(a) the positive excess of the investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position for each instrument calculated in accordance with the provisions referred to in points (a), (b) and (c) of Article 22;

(b) the exposure value of contracts and transactions referred to in Article 25(1) with the client in question, calculated in the manner laid down in Article 27.

For the purposes of point (a) of the first subparagraph, an investment firm that, for the purposes of the RtM K-factor requirement, calculates own funds requirements for the trading book positions in accordance with the approach specified in Article 23 shall calculate the net position for the purposes of the concentration risk of those positions in accordance with the provisions referred to in point (a) of Article 22.

For the purposes of point (b) of the first subparagraph of this paragraph, an investment firm that, for the purposes of K-TCD, calculates own funds requirements by applying the methods referred to in Article 25(4) of this Regulation shall calculate the exposure value of the contracts and transactions referred to in Article 25(1) of this Regulation by applying the methods set out in Section 3, 4 or 5 of Chapter 6 of Title II of Part Three of Regulation (EU) No 575/2013.

2. The exposure value with regard to a group of connected clients shall be calculated by adding together the exposures to the individual clients within the group, which shall be treated as a single exposure.

3. In calculating the exposure value with regard to a client or a group of connected clients, an investment firm shall take all reasonable steps to identify underlying assets in relevant transactions and the counterparty of the underlying exposures.

Article 37

Limits with regard to concentration risk and exposure value excess

1. An investment firm's limit with regard to the concentration risk of an exposure value with regard to an individual client or group of connected clients shall be 25 % of its own funds.

Where that individual client is a credit institution or an investment firm, or where a group of connected clients includes one or more credit institutions or investment firms, the limit with regard to concentration risk shall be the higher of 25 % of the investment firm's own funds or EUR 150 million provided that for the sum of exposure values with regard to all connected clients that are not credit institutions or investment firms, the limit with regard to concentration risk remains at 25 % of the investment firms' own funds.

Where the amount of EUR 150 million is higher than 25 % of the investment firm's own funds, the limit with regard to concentration risk shall not exceed 100 % of the investment firm's own funds.

2. Where the limits referred to in paragraph 1 are exceeded, an investment firm shall meet the obligation to notify set out in Article 38 and meet an own funds requirement on the exposure value excess in accordance with Article 39.

Investment firms shall calculate an exposure value excess with regard to an individual client or group of connected clients in accordance with the following formula:

$$\text{exposure value excess} = EV - L$$

where:

EV = exposure value calculated in the manner laid down in Article 36; and

L = limit with regard to concentration risk as determined in paragraph 1 of this Article.

3. The exposure value with regard to an individual client or group of connected clients shall not exceed:

(a) 500 % of the investment firm's own funds, where 10 days or less have elapsed since the excess occurred;

(b) in aggregate, 600 % of the investment firm's own funds, for any excesses that have persisted for more than 10 days.

Article 38

Obligation to notify

1. Where the limits referred to in Article 37 are exceeded, an investment firm shall notify the competent authorities of the amount of the excess, the name of the individual client concerned and, where applicable, the name of the group of connected clients concerned, without delay.

2. Competent authorities may grant the investment firm a limited period to comply with the limit referred to in Article 37.

Article 39

Calculating K-CON

1. The K-CON own funds requirement shall be the aggregate amount of the own funds requirement calculated for each client or group of connected clients as the own funds requirement of the appropriate line in Column 1 in Table 6 that accounts for a part of the total individual excess, multiplied by:

(a) 200 %, where the excess has not persisted for more than 10 days;

(b) the corresponding factor in Column 2 of Table 6, after the period of 10 days calculated from the date on which the excess has occurred, by allocating each proportion of the excess to the appropriate line in Column 1 of Table 6.

2. The own funds requirement of the excess referred to in paragraph 1 shall be calculated in accordance with the following formula:

$$\mathrm{OFRE} = \frac{\mathrm{OFR}}{\mathrm{EV}} \cdot \mathrm{EVE}$$

where:

OFRE = own funds requirement for the excess;

OFR = own funds requirement of exposures to an individual client or groups of connected clients, calculated by adding together the own funds requirements of the exposures to the individual clients within the group, which shall be treated as a single exposure;

EV = exposure value calculated in the manner laid down in Article 36;

EVE = exposure value excess calculated in the manner laid down in Article 37(2).

For the purpose of calculating K-CON, the own funds requirements of exposures arising from the positive excess of an investment firm's long positions over its short positions in all the trading book financial instruments issued by the client in question, the net position of each instrument calculated in accordance with the provisions referred to in points (a), (b) and (c) of Article 22 shall only include specific-risk requirements.

An investment firm that, for the purposes of the RtM K-factor requirement, calculates own funds requirements for trading book positions in accordance with the approach specified in Article 23 shall calculate the own funds requirement of the exposure for the purposes of the concentration risk of those positions in accordance with the provisions referred to in point (a) of Article 22.

Table 6

Column 1: Exposure value excess as a percentage of own funds	Column 2: Factors
Up to 40 %	200 %
From 40 % to 60 %	300 %
From 60 % to 80 %	400 %
From 80 % to 100 %	500 %
From 100 % to 250 %	600 %
Over 250 %	900 %

Article 40

Procedures to prevent investment firms from avoiding the K-CON own funds requirement

1. Investment firms shall not temporarily transfer exposures exceeding the limit laid down in Article 37(1) to another company, whether within the same group or not, or enter into artificial transactions to close out those exposures during the 10-day period referred to in Article 39 and create new exposures.

2. Investment firms shall maintain systems which ensure that any transfer as referred to in paragraph 1 is immediately reported to the competent authorities.

Article 41

Exclusions

1. The following exposures shall be excluded from the requirements set out in Article 37:

(a) exposures which are entirely deducted from an investment firm's own funds;

(b) exposures incurred in the ordinary course of the settlement of payment services, foreign currency transactions, securities transactions and the provision of money transmission;

(c) exposures constituting claims against:

(i) central governments, central banks, public sector entities, international organisations or multilateral development banks and exposures guaranteed by or attributable to such persons, where those exposures receive a 0 % risk weight under Articles 114 to 118 of Regulation (EU) No 575/2013;

(ii) the regional governments and local authorities of countries that are members of the European Economic Area;

(iii) central counterparties and default fund contributions to central counterparties.

2. Competent authorities may fully or partially exempt the following exposures from the application of Article 37:

(a) covered bonds;

(b) exposures incurred by an investment firm to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, insofar as those undertakings are supervised on a consolidated basis in accordance with Article 7 of this Regulation or with Regulation (EU) No 575/2013, are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation, or are supervised in accordance with equivalent standards in force in a third country, and provided that the following conditions are met:

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; and

(ii) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.

Article 42

Exemption for commodity and emission allowance dealers

1. The provisions of this Part shall not apply to commodity and emission allowance dealers where all the following conditions are met:

(a) the other counterparty is a non-financial counterparty;

(b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(c) the transaction can be assessed as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

2. Investment firms shall notify the competent authority before using the exemption referred to in paragraph 1.

PART FIVE

LIQUIDITY

Article 43

Liquidity requirement

1. Investment firms shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirement calculated in accordance with Article 13(1).

By way of derogation from the first subparagraph of this paragraph, competent authorities may exempt investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) from the application of the first subparagraph of this paragraph and shall duly inform EBA thereof.

For the purposes of the first subparagraph, liquid assets shall be any of the following, without limitation to their composition:

(a) the assets referred to in Articles 10 to 13 of Delegated Regulation (EU) 2015/61, subject to the same conditions regarding eligibility criteria and the same applicable haircuts as those laid down in those Articles;

(b) the assets referred to in Article 15 of Delegated Regulation (EU) 2015/61, up to an absolute amount of EUR 50 million or the equivalent amount in domestic currency, subject to the same conditions regarding eligibility criteria, with the exception of the EUR 500 million threshold amount referred to in Article 15(1) of that Regulation, and the same applicable haircuts as those laid down in in that Article;

(c) financial instruments not covered by points (a) and (b) of this subparagraph, traded on a trading venue for which there is a liquid market as defined in point (17) of Article 2(1) of Regulation (EU) No 600/2014 and in Articles 1 to 5 of Commission Delegated Regulation (EU) 2017/567 ([26]), subject to a haircut of 55 %;

(d) unencumbered short-term deposits at a credit institution.

2. Cash, short term deposits and financial instruments belonging to clients, even where held in the own name of the investment firm, shall not be treated as liquid assets for the purposes of paragraph 1.

3. For the purposes of paragraph 1 of this Article, investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of this Regulation and investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of this Regulation but which do not carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU may also include receivables from trade debtors as well as fees or commissions receivable within 30 days in their liquid assets, where those receivables comply with the following conditions:

(a) they account for up to a maximum of one third of the minimum liquidity requirements as referred to in paragraph 1 of this Article;

(b) they are not to be counted towards any additional liquidity requirements required by the competent authority for firm-specific risks in accordance with point (k) of Article 39(2) of Directive (EU) 2019/2034;

(c) they are subject to a haircut of 50 %.

4. For the purposes of the second subparagraph of paragraph 1, EBA, in consultation with ESMA, shall issue guidelines specifying further the criteria which the competent authorities may take into account when exempting investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) from the liquidity requirement.

Article 44

Temporary reduction of the liquidity requirement

1. Investment firms may, in exceptional circumstances, and after approval by the competent authority, reduce the amount of liquid assets held.

([26]) Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90).

2. Compliance with the liquidity requirement set out in Article 43(1) shall be restored within 30 days of the original reduction.

Article 45

Client guarantees

Investment firms shall increase their liquid assets by 1,6 % of the total amount of guarantees provided to clients.

PART SIX

DISCLOSURE BY INVESTMENT FIRMS

Article 46

Scope

1. Investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) shall publicly disclose the information specified in this Part on the same date as they publish their annual financial statements.

2. Investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) which issue Additional Tier 1 instruments shall publicly disclose the information set out in Articles 47, 49 and 50 on the same date as they publish their annual financial statements.

3. Where an investment firm no longer meets all the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1), it shall publicly disclose the information set out in this Part as of the financial year following the financial year in which it ceased to meet those conditions.

4. Investment firms may determine the appropriate medium and location to comply effectively with the disclosure requirements referred to in paragraphs 1 and 2. All disclosures shall be provided in one medium or location, where possible. If the same or similar information is disclosed in two or more media, a reference to the synonymous information in the other media shall be included within each medium.

Article 47

Risk management objectives and policies

Investment firms shall disclose their risk management objectives and policies for each separate category of risk set out in Parts Three, Four and Five in accordance with Article 46, including a summary of the strategies and processes to manage those risks and a concise risk statement approved by the investment firm's management body succinctly describing the investment firm's overall risk profile associated with the business strategy.

Article 48

Governance

Investment firms shall disclose the following information regarding internal governance arrangements, in accordance with Article 46:

(a) the number of directorships held by members of the management body;

(b) the policy on diversity with regard to the selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which those objectives and targets have been achieved;

(c) whether or not the investment firm has set up a separate risk committee and the number of times the risk committee has met annually.

Article 49

Own funds

1. Investment firms shall disclose the following information regarding their own funds, in accordance with Article 46:

(a) a full reconciliation of Common Equity Tier 1 items, Additional Tier 1 items, Tier 2 items and applicable filters and deductions applied to own funds of the investment firm and the balance sheet in the audited financial statements of the investment firm;

(b) a description of the main features of the Common Equity Tier 1 and Additional Tier 1 instruments and Tier 2 instruments issued by the investment firm;

(c) a description of all restrictions applied to the calculation of own funds in accordance with this Regulation and the instruments and deductions to which those restrictions apply.

2. EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify templates for disclosure under points (a), (b) and (c) of paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by 26 June 2021.

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 50

Own funds requirements

Investment firms shall disclose the following information regarding their compliance with the requirements laid down in Article 11(1) of this Regulation and in Article 24 of Directive (EU) 2019/2034, in accordance with Article 46 of this Regulation:

(a) a summary of the investment firm's approach to assessing the adequacy of its internal capital to support current and future activities;

(b) upon a request from the competent authority, the result of the investment firm's internal capital adequacy assessment process, including the composition of the additional own funds based on the supervisory review process as referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034;

(c) the K-factor requirements calculated, in accordance with Article 15 of this Regulation, in aggregate form for RtM, RtF, and RtC, based on the sum of the applicable K-factors; and

(d) the fixed overheads requirement determined in accordance with Article 13 of this Regulation.

Article 51

Remuneration policy and practices

Investment firms shall disclose the following information regarding their remuneration policy and practices, including aspects related to gender neutrality and the gender pay gap, for those categories of staff whose professional activities have a material impact on investment firm's risk profile, in accordance with Article 46;

(a) the most important design characteristics of the remuneration system, including the level of variable remuneration and criteria for awarding variable remuneration, payout in instruments policy, deferral policy and vesting criteria;

(b) the ratios between fixed and variable remuneration set in accordance with Article 30(2) of Directive (EU) 2019/2034;

(c) aggregated quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the investment firm, indicating the following:

  (i) the amounts of remuneration awarded in the financial year, split into fixed remuneration, including a description of the fixed components, and variable remuneration, and the number of beneficiaries;

  (ii) the amounts and forms of awarded variable remuneration, split into cash, shares, share-linked instruments and other types separately for the part paid upfront and for the deferred part;

(iii) the amounts of deferred remuneration awarded for previous performance periods, split into the amount due to vest in the financial year and the amount due to vest in subsequent years;

(iv) the amount of deferred remuneration due to vest in the financial year that is paid out during the financial year, and that is reduced through performance adjustments;

(v) the guaranteed variable remuneration awards during the financial year and the number of beneficiaries of those awards;

(vi) the severance payments awarded in previous periods, that have been paid out during the financial year;

(vii) the amounts of severance payments awarded during the financial year, split into paid upfront and deferred, the number of beneficiaries of those payments and the highest payment that has been awarded to a single person;

(d) information on whether the investment firm benefits from a derogation laid down in Article 32(4) of Directive (EU) 2019/2034.

For the purposes of point (d) of the first subparagraph, investment firms that benefit from such a derogation shall indicate whether that derogation was granted on the basis of point (a) or point (b) of Article 32(4) of Directive (EU) 2019/2034, or both. They shall also indicate for which of the remuneration principles they apply the derogation(s), the number of staff members who benefit from the derogation(s) and their total remuneration, split into fixed and variable remuneration.

This Article shall be without prejudice to the provisions set out in Regulation (EU) 2016/679 of the European Parliament and of the Council ([27]).

Article 52

Investment policy

1. Member States shall ensure that investment firms which do not meet the criteria referred to in point (a) of Article 32 (4) of Directive (EU) 2019/2034 disclose the following in accordance with Article 46 of this Regulation:

(a) the proportion of voting rights attached to the shares held directly or indirectly by the investment firm, broken down by Member State and sector;

(b) a complete description of voting behaviour in the general meetings of companies the shares of which are held in accordance with paragraph 2, an explanation of the votes, and the ratio of proposals put forward by the administrative or management body of the company which the investment firm has approved; and

(c) an explanation of the use of proxy advisor firms;

(d) the voting guidelines regarding the companies the shares of which are held in accordance with paragraph 2.

The disclosure requirement referred to in point (b) of the first subparagraph shall not apply if the contractual arrangements of all shareholders represented by the investment firm at the shareholders' meeting do not authorise the investment firm to vote on their behalf unless express voting orders are given by the shareholders after receiving the meeting's agenda.

2. The investment firm referred to in paragraph 1 shall comply with that paragraph only in respect of each company whose shares are admitted to trading on a regulated market and only in respect of those shares to which voting rights are attached, where the proportion of voting rights that the investment firm directly or indirectly holds exceeds the threshold of 5 % of all voting rights attached to the shares issued by the company. Voting rights shall be calculated on the basis of all shares to which voting rights are attached, even if the exercise of those voting rights is suspended.

3. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify templates for disclosure under paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

([27]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Article 53

Environmental, social and governance risks

From 26 December 2022, investment firms which do not meet the criteria referred to in Article 32(4) of Directive (EU) 2019/2034 shall disclose information on environmental, social and governance risks, including physical risks and transition risks, as defined in the report referred to in Article 35 of Directive (EU) 2019/2034.

The information referred to in the first paragraph shall be disclosed once in the first year and biannually thereafter.

PART SEVEN

REPORTING BY INVESTMENT FIRMS

Article 54

Reporting requirements

1. Investment firms shall report on a quarterly basis to the competent authorities all of the following information:

(a) level and composition of own funds;

(b) own funds requirements;

(c) own funds requirement calculations;

(d) the level of activity in respect of the conditions set out in Article 12(1), including the balance sheet and revenue breakdown by investment service and applicable K-factor;

(e) concentration risk;

(f) liquidity requirements.

By way of derogation from the first subparagraph, investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) shall submit such reports on an annual basis.

2. The information specified in point (e) of paragraph 1 shall include the following levels of risk and shall be reported to the competent authorities at least on an annual basis:

(a) the level of concentration risk associated with the default of counterparties and with trading book positions, both on an individual counterparty and aggregate basis;

(b) the level of concentration risk with respect to the credit institutions, investment firms and other entities where client money is held;

(c) the level of concentration risk with respect to the credit institutions, investment firms and other entities where client securities are deposited;

(d) the level of concentration risk with respect to the credit institutions where the investment firm's own cash is deposited;

(e) the level of concentration risk from earnings;

(f) the level of concentration risk as described in points (a) to (e) calculated taking into account assets and off-balance-sheet items not recorded in the trading book in addition to exposures arising from trading book positions.

For the purposes of this paragraph, the terms 'credit institution' and 'investment firm' include private or public undertakings, including the branches of such undertakings, provided that those undertakings, if they were established in the Union, would be credit institutions or investment firms as defined in this Regulation, and provided that those undertakings have been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

By way of derogation from paragraph 1 of this Article, an investment firm that meets the conditions for qualifying as a small and interconnected investment firm set out in Article 12(1) shall not be required to report the information specified in point (e) of paragraph 1 of this Article and, insofar as an exemption has been granted in accordance with the second subparagraph of Article 43(1), in point (f) of paragraph 1 of this Article.

3. For the purposes of the reporting requirements laid down in this Article, EBA, in consultation with ESMA, shall develop draft implementing technical standards to specify:

(a) the formats;

(b) reporting dates and definitions and associated instructions which shall describe how to use those formats.

The draft implementing technical standards referred to in the first subparagraph shall be concise and proportionate to the nature, scope and complexity of the activities of the investment firms, taking into account the differences in the level of detail of information submitted by an investment firm that meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1).

EBA shall develop the draft implementing technical standards referred to in the first subparagraph by 26 December 2020.

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

Article 55

Reporting requirements for certain investment firms, including for the purposes of the thresholds referred to in Article 1(2) of this Regulation and in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013

1. Investment firms which carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU shall verify the value of their total assets on a monthly basis and shall report quarterly that information to the competent authority if the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, calculated as an average of the previous 12 months. The competent authority shall inform EBA thereof.

2. Where an investment firm referred to in paragraph 1 is part of a group in which one or more other undertakings is an investment firm which carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, all such investment firms in the group shall verify the value of their total assets on a monthly basis if the total value of the consolidated assets of the group is equal to or exceeds EUR 5 billion, calculated as an average of the previous 12 months. Such investment firms shall inform each other of their total assets on a monthly basis and report their consolidated total assets to the relevant competent authorities on a quarterly basis. The competent authorities shall inform EBA thereof.

3. Where the average of monthly total assets of the investment firms referred to in paragraphs 1 and 2 reaches any of the thresholds set out in Article 1(2) of this Regulation or in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013, calculated as an average of the previous 12 months, EBA shall notify those investment firms and the competent authorities, including the authorities competent for granting authorisation in accordance with Article 8a of Directive 2013/36/EU thereof.

4. Where a review pursuant to Article 36 of Directive (EU) 2019/2034 shows that an investment firm referred to in paragraph 1 of this Article may pose a systemic risk as referred to in Article 23 of Regulation (EU) No 1093/2010, competent authorities shall inform EBA of the results of that review without delay.

5. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify further the obligation to provide information to the relevant competent authorities referred to in paragraphs 1 and 2 in order to allow effective monitoring of the thresholds set out in points (a) and (b) of Article 8a(1) of Directive 2013/36/EU.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

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

PART EIGHT

DELEGATED ACTS

Article 56

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 4(2) shall be conferred on the Commission for a period of five years from 25 December 2019.

3. The delegation of power referred to in Article 4(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 4(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

PART NINE

TRANSITIONAL PROVISIONS, REPORTS, REVIEWS AND AMENDMENTS

TITLE I

TRANSITIONAL PROVISIONS

Article 57

Transitional provisions

1. Articles 43 to 51 shall apply to commodity and emission allowance dealers from 26 June 2026.

2. Until 26 June 2026 or the date of application to credit institutions of the alternative standardised approach set out in Chapter 1a of Title IV of Part Three of the Regulation No (EU) No 575/2013 and the alternative internal model approach set out in Chapter 1b of Title IV of Part Three of the Regulation No EU) No 575/2013, whichever is the later, an investment firm shall apply the requirements set out in Title IV of Part Three of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/630 for the purpose of calculating K-NPR.

3. By way of derogation from points (a) and (c) of Article 11(1), investment firms may apply lower own funds requirements for a period of five years from 26 June 2021, equal to:

(a) twice the relevant own funds requirement pursuant to Chapter 1 of Title I of Part Three of Regulation (EU) No 575/2013, subject to Article 93(1) of that Regulation, with reference to levels of initial capital set by Title IV of Directive 2013/36/EU, as amended by Directive (EU) 2019/878, that would have applied if the investment firm had continued to be subject to the own funds requirements of that Regulation as amended by Regulation (EU) 2019/630; or

(b) twice the applicable fixed overhead requirement set out in Article 13 of this Regulation, where the investment firm was not in existence on or before 26 June 2021.

4. By way of derogation from point (b) of Article 11(1), investment firms may apply lower own funds requirements for a period of five years from 26 June 2021 as follows:

(a) investment firms that were subject only to an initial capital requirement before 26 June 2021 may limit their own funds requirements to twice the applicable initial capital requirement set out in Title IV of Directive 2013/36/EU, as amended by Directive (EU) 2019/878, with the exception of points (b) and (c) of Article 31(1), and Article 31(2) respectively, of that Directive;

(b) investment firms that were in existence before 26 June 2021 may limit their permanent minimum capital requirements to those provided for in Article 93(1) of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, with reference to levels of initial capital set by Title IV of Directive 2013/36/EU, as amended by Directive (EU) 2019/878, that would have applied if the investment firm had continued to be subject to that Regulation, subject to an annual increase in the amount of those requirements of at least EUR 5 000 during the five-year period;

(c) investment firms that were in existence before 26 June 2021, that are not authorised to provide the ancillary services referred to in point (1) of Section B of Annex I to Directive 2014/65/EU, that only provide one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, that are not permitted to hold client money or securities belonging to their clients and that therefore may not at any time place themselves in debt with those clients, may limit their permanent minimum capital requirement to at least EUR 50 000, subject to an annual increase of at least EUR 5 000 during the five-year period.

5. The derogations set out in paragraph 4 shall cease to apply where the investment firm has its authorisation extended on or after 26 June 2021 such that a higher amount of initial capital is required in accordance with Article 9 of Directive (EU) 2019/2034.

6. By way of derogation from Article 11, investment firms that were in existence before 25 December 2019 and that deal on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or deal for the accounts of other members of those markets and are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such investment firms is assumed by clearing members of the same markets, may limit their own funds requirements for a period of five years from 26 June 2021 to at least EUR 250 000, subject to an annual increase of at least EUR 100 000 during the five-year period.

Irrespective of whether an investment firm referred to in this paragraph makes use of the derogation referred to in the first subparagraph, point (a) of paragraph 4 shall not apply to such an investment firm.

Article 58

Derogation for undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013

Investment firms which on 25 December 2019 meet the conditions of point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and have not yet obtained authorisation as credit institutions in accordance with Article 8 of Directive 2013/36/EU shall continue to be subject to Regulation (EU) No 575/2013 and to Directive 2013/36/EU.

Article 59

Derogation for investment firms referred to in Article 1(2)

An investment firm which on 25 December 2019 meets the conditions set out in Article 1(2) of this Regulation shall continue to be subject to Regulation (EU) No 575/2013 and Directive 2013/36/EU.

TITLE II

REPORTS AND REVIEWS

Article 60

Review clause

1. By 26 June 2024, the Commission shall, after consulting with EBA and ESMA, carry out a review and submit a report to the European Parliament and the Council, accompanied, if appropriate, by a legislative proposal, regarding at least the following:

(a) the conditions for investment firms to qualify as small and non-interconnected investment firms in accordance with Article 12;

(b) the methods for measuring the K-factors in Title II of Part Three, including investment advice in the scope of AUM, and in Article 39;

(c) the coefficients referred to in Article 15(2);

(d) the method used to calculate K-CMG, the level of own funds requirements deriving from K-CMG as compared with K-NPR, and the calibration of the multiplying factor set out in Article 23;

(e) the provisions set out in Articles 43, 44 and 45 and in particular the eligibility for the liquidity requirement of liquid assets in points (a), (b) and (c) of Article 43(1);

(f) the provisions set out in Section 1 of Chapter 4 of Title II of Part Three;

(g) the application of Part Three to commodity and emission allowance dealers;

(h) the modification of the definition of credit institution in Regulation (EU) No 575/2013 as a result of point (a) of Article 62(3) of this Regulation and potential unintended negative consequences;

(i) the provisions set out in Articles 47 and 48 of Regulation (EU) No 600/2014 and their alignment with a consistent framework for equivalence in financial services;

(j) the thresholds set out in Article 12(1);

(k) the application of the standards of Chapters 1a and 1b of Title IV of Part Three of Regulation (EU) No 575/2013 to investment firms;

(l) the method of measuring the value of a derivative in point (b) of Article 20(2) and point (b) of Article 33(2), and the appropriateness of introducing an alternative metric and/or calibration;

(m) the provisions set out in Part Two, in particular concerning the permission for further instruments or funds to qualify as own funds pursuant to Article 9(4), and the possibility of granting such permission to investment firms that fulfil the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1);

(n) the conditions for investment firms to apply the requirements of Regulation (EU) No 575/2013 in accordance with Article 1(2) of this Regulation;

(o) the provision set out in Article 1(5);

(p) the relevance of the application of the disclosure requirements set out in Article 52 of this Regulation for other sectors, including investment firms referred to in Article 1(2) and (5) of this Regulation and credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013.

2. By 31 December 2021, the Commission shall submit to the European Parliament and to the Council a report on the resources needs arising from the assumption of new powers and duties by ESMA in accordance with Article 64 of this Regulation, including the possibility for ESMA to levy registration fees on third-country firms registered by ESMA in accordance with Article 46(2) of Regulation (EU) No 600/2014, accompanied, where appropriate, by a legislative proposal.

TITLE III

AMENDMENTS TO OTHER REGULATIONS

Article 61

Amendment to Regulation (EU) No 1093/2010

In point (2) of Article 4 of Regulation (EU) No 1093/2010, the following point is added:

'(viii) with regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council (*) and Directive (EU) 2019/2034of the European Parliament and of the Council (**), competent authorities as defined in point (5) of Article 3(1) of that Directive.

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(*) 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).

(**) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).'.

Article 62

Amendments to Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

(1) the title is replaced by the following:

'Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012';

(2) in Article 2, the following paragraph is added:

'5. When applying the provisions laid down in Article 1(2) and 1(5) of Regulation (EU) 2019/2033 of the European Parliament and of the Council (*) with regard to investment firms referred to in those paragraphs, the competent authorities as defined in point (5) of Article 3(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council (**) shall treat those investment firms as if they were "institutions" under this Regulation.

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(*) 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).

(**) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).';

(3) Article 4(1) is amended as follows:

(a) point (1) is replaced by the following:

'(1) "credit institution" means an undertaking the business of which consists of any of the following:

(a) to take deposits or other repayable funds from the public and to grant credits for its own account;

(b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council (*), where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking:

(i) the total value of the consolidated assets of the undertaking is equal to or exceeds EUR 30 billion;

(ii) the total value of the assets of the undertaking is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in that group that individually have total assets of less than EUR 30 billion and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion; or

(iii) the total value of the assets of the undertaking is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion, where the consolidating supervisor, in consultation with the supervisory college, so decides in order to address potential risks of circumvention and potential risks for the financial stability of the Union;

for the purposes of points (b)(ii) and (b)(iii), where the undertaking is part of a third-country group, the total assets of each branch of the third-country group authorised in the Union shall be included in the combined total value of the assets of all undertakings in the group;

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(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).';

(b) point (2) is replaced by the following:

'(2) "investment firm" means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU which is authorised under that Directive but excludes credit institutions;';

(c) point (3) is replaced by the following:

'(3) "institution" means a credit institution authorised under Article 8 of Directive 2013/36/EU or an undertaking as referred to in Article 8a(3) thereof;';

(d) point (4) is deleted;

(e) point (26) is replaced by the following:

'(26) "financial institution" means an undertaking other than an institution and other than a pure industrial holding company, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, including an investment firm, a financial holding company, a mixed financial holding company, an investment holding company, a payment institution within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council (*), and an asset management company, but excluding insurance holding companies and mixed-activity insurance holding companies as defined in points (f) and (g) of Article 212(1) of Directive 2009/138/EC;

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(*) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).';

(f) point (29a) is replaced by the following:

'(29a) "parent investment firm in a Member State" means a parent undertaking in a Member State that is an investment firm;';

(g) point (29b) is replaced by the following:

'(29b) "EU parent investment firm" means an EU parent undertaking that is an investment firm;';

(h) point (51) is replaced by the following:

'(51) "initial capital" means the amounts and types of own funds specified in Article 12 of Directive 2013/36/EU;';

(i) point (60) is replaced by the following:

'(60) "cash assimilated instrument" means a certificate of deposit, a bond, including a covered bond, or any other non-subordinated instrument, which has been issued by an institution or an investment firm, for which the institution or investment firm has already received full payment and which is to be unconditionally reimbursed by the institution or investment firm at its nominal value;';

(j) in point (72), point (a) is replaced by the following:

'(a) it is a regulated market or a third-country market that is considered to be equivalent to a regulated market in accordance with the procedure set out in point (a) of Article 25(4) of Directive 2014/65/EU;';

(k) the following point is added:

'(150) "commodity and emission allowance dealer" means an undertaking the main business of which consists exclusively of the provision of investment services or activities in relation to commodity derivatives or commodity derivative contracts referred to in points (5), (6), (7), (9) and (10), derivatives of emission allowances referred to in point (4), or emission allowances referred to in point (11) of Section C of Annex I to Directive 2014/65/EU;';

(4) Article 6 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. Institutions shall comply with the obligations laid down in Part Six and in point (d) of Article 430(1) of this Regulation on an individual basis.

The following institutions shall not be required to comply with Article 413(1) and the associated liquidity reporting requirements laid down in Part Seven A of this Regulation:

(a) institutions which are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012;

(b) institutions which are also authorised in accordance with Article 16 and point (a) of Article 54(2) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (*), provided that they do not perform any significant maturity transformations; and

(c) institutions which are designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, provided that:

(i) their activities are limited to offering banking-type services, as referred to in Section C of the Annex to that Regulation, to central securities depositories authorised in accordance with Article 16 of that Regulation; and

(ii) they do not perform any significant maturity transformations.

(*) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).';

(b) paragraph 5 is replaced by the following:

'5. Institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3) of this Regulation, and institutions which are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012, shall not be required to comply with the obligations laid down in Part Seven and the associated leverage ratio reporting requirements laid down in Part Seven A of this Regulation on an individual basis.';

(5) the following article is inserted in Section 1 of Chapter 2 of Title II of Part One:

'*Article 10a*

Application of prudential requirements on a consolidated basis where investment firms are parent undertakings

For the purposes of the application of this Chapter, investment firms shall be considered to be parent financial holding companies in a Member State or Union parent financial holding companies where such investment firms are parent undertakings of an institution or of an investment firm subject to this Regulation that is referred to in Article 1 (2) or (5) of Regulation (EU) 2019/2033.';

(6) in Article 11, paragraph 4 is replaced by the following:

'4. EU parent institutions shall comply with Part Six and point (d) of Article 430(1) of this Regulation on the basis of their consolidated situation where the group comprises one or more credit institutions or investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU.

Where a waiver has been granted under Article 8(1) to (5), the institutions and, where applicable, the financial holding companies or mixed financial holding companies that are part of a liquidity sub-group shall comply with Part Six and point (d) of Article 430(1) of this Regulation on a consolidated basis or on the sub-consolidated basis of the liquidity sub-group.';

(7) Articles 15, 16 and 17 are deleted;

(8) in Article 81(1), point (a) is replaced by the following:

'(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and of Directive 2013/36/EU;

(iii) an intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of this Regulation on a sub-consolidated basis, or an intermediate investment holding company that is subject to the requirements of Regulation (EU) 2019/2033 on a consolidated basis;

(iv) an investment firm;

(v) an intermediate financial holding company in a third country, provided that that intermediate financial holding company is subject to prudential requirements as stringent as those applied to credit institutions of that third country and provided that the Commission has adopted a decision in accordance with Article 107(4) determining that those prudential requirements are at least equivalent to those of this Regulation;';

(9) in Article 82, point (a) is replaced by the following:

'(a) the subsidiary is one of the following:

(i) an institution;

(ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and of Directive 2013/36/EU;

(iii) an intermediate financial holding company or intermediate mixed financial holding company that is subject to the requirements of this Regulation on a sub-consolidated basis, or an intermediate investment holding company that is subject to the requirements of Regulation (EU) 2019/2033 on a consolidated basis;

(iv) an investment firm;

(v) an intermediate financial holding company in a third country, provided that that intermediate financial holding company is subject to prudential requirements as stringent as those applied to credit institutions of that third country and provided that the Commission has adopted a decision in accordance with Article 107(4) determining that those prudential requirements are at least equivalent to those of this Regulation;';

(10) Article 84 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Institutions shall determine the amount of minority interests of a subsidiary that is included in consolidated Common Equity Tier 1 capital by subtracting from the minority interests of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b) as follows:

(a) the Common Equity Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the following:

— the sum of the requirement laid down in point (a) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, the requirements referred to in Article 500 of this Regulation, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital,

— where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034 and any additional local supervisory regulations in third countries, insofar as those requirements are to be met by Common Equity Tier 1 capital;

(ii) the amount of consolidated Common Equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (a) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, the requirements referred to in Article 500 of this Regulation, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital;

(b) the minority interests of the subsidiary expressed as a percentage of all Common Equity Tier 1 instruments of that undertaking plus the related share premium accounts, retained earnings and other reserves.';

(b) paragraph 3 is replaced by the following:

'3. Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 of this Regulation or, as applicable, as laid down in Article 6 of Regulation (EU) 2019/2033, minority interests within the subsidiaries to which the waiver is applied shall not be recognised in own funds at the sub-consolidated or at the consolidated level, as applicable.';

(11) Article 85 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated own funds by subtracting from the qualifying Tier 1 capital of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b) as follows:

(a) the Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Tier 1 capital of the subsidiary required to meet the following:

— the sum of the requirement laid down in point (b) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, the requirements referred to in Article 500 of this Regulation, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital,

— where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 capital;

(ii) the amount of consolidated Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (b) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, the requirements referred to in Article 500 of this Regulation, and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital;

(b) the qualifying Tier 1 capital of the subsidiary expressed as a percentage of all Tier 1 instruments of that undertaking plus the related share premium accounts, retained earnings and other reserves.';

(b) paragraph 3 is replaced by the following:

'3. Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 of this Regulation or, where applicable, as laid down in Article 6 of Regulation (EU) 2019/2033, Tier 1 instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.';

(12) Article 87 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b) as follows:

(a) the own funds of the subsidiary minus the lower of the following:

(i) the amount of own funds of the subsidiary required to meet the following:

— the sum of the requirement laid down in point (c) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, the requirements referred to in Article 500 of this Regulation and any additional local supervisory regulations in third countries,

— where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in point (a) of Article 39(2) of Directive (EU) 2019/2034, and any additional local supervisory regulations in third countries;

(ii) the amount of own funds that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (c) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of that Directive, the requirements referred to in Article 500 of this Regulation, and any additional local supervisory own funds requirement in third countries;

(b) the qualifying own funds of the undertaking, expressed as a percentage of all own funds instruments of the subsidiary that are included in Common Equity Tier 1, Additional Tier 1 and Tier 2 items and the related share premium accounts, the retained earnings and other reserves.';

(b) paragraph 3 is replaced by the following:

'3. Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7 of this Regulation or, as applicable, as laid down in Article 6 of Regulation (EU) 2019/2033, own funds instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.';

(13) Article 93 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraphs 4, 5 and 6 are replaced by the following:

'4. Where control of an institution falling within the category referred to in paragraph 2 is taken by a natural or legal person other than the person who controlled the institution previously, the amount of own funds of that institution shall attain the amount of initial capital required.

5. Where there is a merger of two or more institutions falling within the category referred to in paragraph 2, the amount of own funds of the institution resulting from the merger shall not fall below the total own funds of the merged institutions at the time of the merger, as long as the amount of initial capital required has not been attained.

6. Where competent authorities consider it necessary to ensure the solvency of an institution that the requirement laid down in paragraph 1 be met, the provisions laid down in paragraphs 2, 4 and 5 shall not apply.';

(14) in Chapter 1 of Title I of Part Three, Section 2 (Articles 95 to 98) is deleted with effect from 26 June 2026;

(15) in Article 119, paragraph 5 is replaced by the following:

'5. Exposures to financial institutions authorised and supervised by the competent authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness shall be treated as exposures to institutions.

For the purposes of this paragraph, the prudential requirements laid down in Regulation (EU) 2019/2033 shall be considered to be comparable to those applied to institutions in terms of robustness.';

(16) in the second subparagraph of Article 162(3), point (a) is replaced by the following:

'(a) exposures to institutions or investment firms arising from the settlement of foreign exchange obligations;';

(17) Article 197 is amended as follows:

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

'(c) debt securities issued by institutions or investment firms, which securities have a credit assessment by an ECAI which has been determined by EBA to be associated with credit quality step 3 or above under the rules for the risk weighting of exposures to institutions under Chapter 2;';

(b) in paragraph 4, the introductory wording is replaced by the following:

'4. An institution may use debt securities that are issued by other institutions or investment firms and that do not have a credit assessment by an ECAI as eligible collateral where those debt securities fulfil all the following criteria:';

(18) in Article 200, point (c) is replaced by the following:

'(c) instruments issued by a third-party institution or by an investment firm which are to be repurchased by that institution or by that investment firm on request.';

(19) in Article 202, the introductory wording is replaced by the following:

'An institution may use institutions, investment firms, insurance and reinsurance undertakings and export credit agencies as eligible providers of unfunded credit protection which qualify for the treatment set out in Article 153(3) where they meet all the following conditions:';

(20) in Article 224, paragraph 6 is replaced by the following:

'6. For unrated debt securities issued by institutions or investment firms and satisfying the eligibility criteria in Article 197(4), the volatility adjustments is the same as for securities issued by institutions or corporates with an external credit assessment associated with credit quality step 2 or 3.';

(21) in Article 227(3), the following point is inserted:

'(ba) investment firms;';

(22) in Article 243(1), the second subparagraph is replaced by the following:

'In the case of trade receivables, point (b) of the first subparagraph shall not apply where the credit risk of those trade receivables is fully covered by eligible credit protection in accordance with Chapter 4, provided that in that case the protection provider is an institution, an investment firm, an insurance undertaking or a reinsurance undertaking.';

(23) in Article 382(4), point (b) is replaced by the following:

'(b) intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, unless Member States adopt national law requiring the structural separation within a banking group, in which case competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;';

(24) Article 388 is deleted;

(25) in Article 395, paragraph 1 is replaced by the following:

'1. An institution shall not incur an exposure to a client or group of connected clients the value of which exceeds 25 % of its Tier 1 capital, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403. Where that client is an institution or an investment firm, or where a group of connected clients includes one or more institutions or investment firms, that value shall not exceed 25 % of the institution's Tier 1 capital or EUR 150 million, whichever is higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to all connected clients that are not institutions, does not exceed 25 % of the institution's Tier 1 capital.';

(26) Article 402(3) is amended as follows:

(a) point (a) is replaced by the following:

'(a) the counterparty is an institution or an investment firm;';

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

'(e) the institution reports to the competent authorities in accordance with Article 394 the total amount of exposures to each other institution or investment firm that are treated in accordance with this paragraph.';

(27) in Article 412, paragraph 4a is replaced by the following:

'4a. The delegated act referred to in Article 460(1) shall apply to institutions.';

(28) in point (a) of Article 422(8), point (i) is replaced by the following:

'(i) a parent or subsidiary institution of the institution, or a parent or subsidiary investment firm of the institution, or another subsidiary of the same parent institution or parent investment firm;';

(29) in Article 428a, point (d) is deleted;

(30) in Article 430b, paragraph 1 is replaced by the following:

'1. From the date of application of the delegated act referred to in Article 461a, credit institutions that do not meet the conditions set out in Article 94(1) nor the conditions set out in Article 325a(1) shall report, for all their trading book positions and all their non-trading book positions that are subject to foreign exchange or commodity risks, the results of the calculations based on using the alternative standardised approach set out in Chapter 1a of Title IV of Part Three on the same basis as such institutions report the obligations laid down in points (b)(i) and (c) of Article 92(3).';

(31) in Article 456(1), points (f) and (g) are deleted;

(32) Article 493 is amended as follows:

(a) paragraph 1 is replaced by the following:

'Until 26 June 2021, the provisions on large exposures as laid down in Articles 387 to 403 of this Regulation shall not apply to investment firms, the main business of which consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points (5), (6), (7), (9), (10) and (11) of Section C of Annex I to Directive 2014/65/EU and to which Directive 2004/39/EC of the European Parliament and of the Council (*) did not apply on 31 December 2006.

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(*) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).';

(b) paragraph 2 is deleted;

(33) in Article 498(1), the first subparagraph is replaced by the following:

'Until 26 June 2021, the provisions on own funds requirements as set out in this Regulation shall not apply to investment firms the main business of which consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points (5), (6), (7), (9), (10) and (11) of Section C of Annex I to Directive 2014/65/EU and to which Directive 2004/39/EC did not apply on 31 December 2006.';

(34) in Article 508, paragraphs 2 and 3 are deleted;

(35) in point (1) of Annex I, point (d) is replaced by the following:

'(d) endorsements on bills not bearing the name of another institution or investment firm;';

(36) Annex III is amended as follows:

(a) in point (3), point (b) is replaced by the following:

'(b) they are not an obligation of an institution or investment firm or any of its affiliated entities.';

(b) in point (5), point (b) is replaced by the following:

'(b) they are not an obligation of an institution or investment firm or any of its affiliated entities.';

(c) in point (6), point (a) is replaced by the following:

'(a) they do not represent a claim on an SSPE, an institution or investment firm or any of its affiliated entities;';

(d) point 7 is replaced by the following:

'7. Transferable securities other than those referred to in points 3 to 6 that qualify for a 50 % or better risk weight under Chapter 2 of Title II of Part Three or are internally rated as having an equivalent credit quality, and do not represent a claim on an SSPE, an institution or investment firm or any of its affiliated entities.';

(e) point 11 is replaced by the following:

'11. Exchange traded, centrally cleared common equity shares that are a constituent of a major stock index, denominated in the domestic currency of the Member State and not issued by an institution or investment firm or any of its affiliates.'.

Article 63

Amendments to Regulation (EU) No 600/2014

Regulation (EU) No 600/2014 is amended as follows:

(1) in Article 1, the following paragraph is inserted:

'4a. Chapter 1 of Title VII of this Regulation also applies to third-country firms providing investment services or performing investment activities within the Union.';

(2) in Title III, the title is replaced by the following:

'**TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC AND TICK SIZE REGIME FOR SYSTEMATIC INTERNALISERS**';

(3) the following article is inserted:

'Article 17a

Tick sizes

Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU.

Application of tick sizes shall not prevent systematic internalisers matching orders large in scale at mid-point within the current bid and offer prices.';

(4) Article 46 is amended as follows:

(a) in paragraph 2, the following point is added:

'(d) the firm has established the necessary arrangements and procedures to report the information set out in paragraph 6a.';

(b) in paragraph 4, the fifth subparagraph is replaced by the following:

'Member States may allow third-country firms to provide investment services to, or to perform investment activities together with ancillary services for, eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in their territories in accordance with national regimes where no Commission decision in accordance with Article 47(1) has been adopted or where such a decision has been adopted but either is no longer in effect or does not cover the services or activities concerned.';

(c) in paragraph 5, the third subparagraph is replaced by the following:

'Member States shall ensure that where an eligible counterparty or professional client within the meaning of Section I of Annex II to Directive 2014/65/EU established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person, including a relationship specifically related to the provision of that service or activity. Without prejudice to intragroup relationships, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, 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. An initiative by such clients shall not entitle the third-country firm to market new categories of investment products or investment services to that individual.';

(d) the following paragraphs are inserted:

'6a. Third-country firms providing services or performing activities in accordance with this Article shall, on an annual basis, inform ESMA of the following:

(a) the scale and scope of the services and activities carried out by the firms in the Union, including the geographical distribution across Member States;

(b) for firms performing the activity referred to in point (3) of Section A of Annex I to Directive 2014/65/EU, their monthly minimum, average and maximum exposure to EU counterparties;

(c) for firms providing services referred to in point (6) of Section A of Annex I to Directive 2014/65/EU, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the previous 12 months;

(d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(e) whether investor protection arrangements have been taken, and a detailed description thereof;

(f) the risk management policy and arrangements applied by the firm to the carrying out of the services and activities referred to in point (a);

(g) the governance arrangements, including key function holders for the activities of the firm in the Union;

(h) any other information necessary to enable ESMA or the competent authorities to carry out their tasks in accordance with this Regulation.

ESMA shall communicate the information received in accordance with this paragraph to the competent authorities of the Member States where a third-country firm provides investment services or performs investment activities in accordance with this Article.

Where necessary for the accomplishment of the tasks of ESMA or the competent authorities in accordance with this Regulation, ESMA may, including upon the request of the competent authority of the Member States where a third-country firm provides investment services or performs investment activities in accordance with this Article, ask third-country firms providing services or performing activities in accordance with this Article to provide any further information in respect of their operations.

6b. Where a third-country firm provides services or performs activities in accordance with this Article, it shall keep, at the disposal of ESMA, the data relating to all orders and all transactions in the Union in financial instruments which they have carried out, whether on own account or on behalf of a client, for a period of five years.

Upon the request of the competent authority of a Member State, where a third-country firm provides investment services or performs investment activities in accordance with this Article, ESMA shall access the relevant data kept at its disposal in accordance with the first subparagraph and shall make that data available to the requesting competent authority.

6c. Where a third-country firm does not cooperate in an investigation or an on-site inspection carried out in accordance with Article 47(2), or where it does not comply with a request from ESMA in accordance with paragraph 6a or 6b of this Article in due time and in a proper manner, ESMA may withdraw its registration or temporarily prohibit or restrict its activities in accordance with Article 49.';

(e) paragraph 7 is replaced by the following:

'7. ESMA, in consultation with EBA, shall develop draft regulatory technical standards to specify the information that the applicant third-country firm is to provide in the application for registration referred to in paragraph 4 and the information to be reported in accordance with paragraph 6a.

ESMA shall submit those draft regulatory technical standards to the Commission by 26 September 2021.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(f) the following paragraph is added:

'8. ESMA shall develop draft implementing technical standards to specify the format in which the application for registration referred to in paragraph 4 is to be submitted and the information referred to in paragraph 6a is to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by 26 September 2021.

Power is conferred on the Commission to supplement this Regulation by adopting the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(5) Article 47 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating that the legal and supervisory arrangements of that third country ensure all of the following:

(a) that firms authorised in that third country comply with legally binding prudential, organisational and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Regulation (EU) No 575/2013 and Regulation (EU) 2019/2033 of the European Parliament and of the Council (*), in Directive 2013/36/EU, Directive 2014/65/EU and Directive (EU) 2019/2034 of the European Parliament and of the Council (**), and in the implementing measures adopted under those legislative acts;

(b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential, organisational and business conduct requirements; and

(c) that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

Where the scale and scope of the services provided and the activities performed by third-country firms in the Union following the adoption of the decision referred to in the first subparagraph are likely to be of systemic importance for the Union, the legally binding prudential, organisational and business conduct requirements referred to in the first subparagraph may only be considered to have equivalent effect to the requirements set out in the acts referred to in that subparagraph after a detailed and granular assessment. To that end, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union.

1a. The Commission is empowered to adopt delegated acts in accordance with Article 50 to supplement this Regulation by further specifying the circumstances under which the scale and scope of the services provided and activities performed by third-country firms in the Union following the adoption of an equivalence decision referred to in the paragraph 1 are likely to be of systemic importance to the Union.

Where the scale and scope of the services provided and activities performed by third-country firms are likely to be of systemic importance for the Union, the Commission may attach specific operational conditions to equivalence decisions to ensure that ESMA and national competent authorities have the necessary tools to prevent regulatory arbitrage and monitor the activities of third-country investment firms registered in accordance with Article 46(2) in respect of services provided and activities performed in the Union by ensuring that those firms comply with:

(a) requirements which have an equivalent effect to the requirements referred to in Articles 20 and 21;

(b) reporting requirements which have an equivalent effect to the requirements referred to in Article 26, where such information cannot be obtained directly and on an ongoing basis through a Memorandum of Understanding with the third-country competent authority;

(c) requirements that have an equivalent effect to the trading obligation referred to in Articles 23 and 28, where applicable.

When adopting the decision referred to in paragraph 1 of this Article, the Commission shall take into account whether the third country is identified as a non-cooperative jurisdiction for tax purposes under the relevant Union policy or as a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849.

1b. The prudential, organisational and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all of the following conditions:

(a) firms providing investment services or performing investment activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services or performing investment activities in that third country are subject to sufficient capital requirements and, in particular, firms providing services or carrying out the activities referred to in point (3) or (6) of Section A of Annex I to Directive 2014/65/EU are subject to comparable capital requirements to those they would apply if they were established in the Union;

(c) firms providing investment services or performing investment activities in that third country are subject to appropriate requirements applicable to shareholders and members of their management body;

(d) firms providing investment services or performing investment activities are subject to adequate business conduct and organisational requirements;

(e) market transparency and integrity is ensured by preventing market abuse in the form of insider dealing and market manipulation.

For the purposes of paragraph 1a of this Article, when assessing the equivalence of third-country rules as regards the trading obligation set out in Articles 23 and 28, the Commission shall also assess whether the third country's legal framework provides for criteria for the designation of trading venues as eligible for compliance with the trading obligation which have a similar effect to those set out under this Regulation or under Directive 2014/65/EU.

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(*) 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 314, 5.12.2019, p. 1).

(**) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ 314, 5.12.2019, p. 64).';

(b) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

'(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the non-Union firms authorised in third countries that is requested by ESMA, and, where relevant, the arrangements for the onward sharing by ESMA of such information with competent authorities of the Member States;';

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

'(c) the procedures concerning the coordination of supervisory activities including investigations and on-site inspections which ESMA may carry out, in cooperation with the competent authorities of the Member States where the third-country firm provides investment services or performs investment activities in accordance with Article 46, where it is necessary for the accomplishment of the tasks of ESMA or the competent authorities in accordance with this Regulation, having duly informed the competent authority of the third country thereof.';

(iii) the following point is added:

'(d) the procedures concerning a request for information pursuant to Article 46(6a) and (6b) that ESMA may submit to a third-country firm registered in accordance with Article 46(2).';

(c) the following paragraphs are added:

'5. ESMA shall monitor the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to paragraph 1 in order to verify that the conditions on the basis of which those decisions have been taken are still fulfilled. ESMA shall submit a confidential report on its findings to the Commission on an annual basis. Where considered appropriate by ESMA, ESMA may consult EBA with regard to the report.

The report shall also reflect the trends observed on the basis of the data collected under Article 46(6a), in particular as regards firms providing services or performing the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU.

6. The Commission shall, on the basis of the report referred to in paragraph 5, submit a report to the European Parliament and to the Council at least on an annual basis. The report shall include a list of the equivalence decisions taken or withdrawn by the Commission in the reporting year, as well as any measures taken by ESMA pursuant to Article 49, and provide the rationale for those decisions and measures.

The Commission report shall include information on the monitoring of the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted. It shall also take stock of how the cross-border provision of investment services by third-country firms has evolved in general and in particular as regards the services and activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU. In due course, the report shall also include information concerning ongoing equivalence assessments that the Commission is undertaking in relation to a third country.';

(6) Article 49 is replaced by the following:

'*Article 49*

Measures to be taken by ESMA

1. ESMA may temporarily prohibit or restrict a third-country firm from providing investment services or performing investment activities with or without any ancillary services in accordance with Article 46(1) where the third-country firm has failed to comply with any prohibition or restriction imposed by ESMA or EBA in accordance with Articles 40 and 41 or by a competent authority in accordance with Article 42, has failed to comply with a request from ESMA in accordance with Article 46(6a) and (6b) in due time and a proper manner, or where the third-country firm does not cooperate with an investigation or an on-site inspection carried out in accordance with Article 47(2).

2. Without prejudice to paragraph 1, ESMA shall withdraw the registration of a third-country firm in the register established in accordance with Article 48 where ESMA has referred the matter to the competent authority of the third country, and that competent authority has not taken the appropriate measures needed to protect investors or the proper functioning of the markets in the Union, or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country or with the conditions under which a decision in accordance with Article 47(1) has been adopted, and one of the following applies:

(a) ESMA has well-founded reasons, based on documented evidence, including but not limited to the annual information provided in accordance with Article 46(6a), to believe that, in the provision of investment services and activities in the Union, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets;

(b) ESMA has well-founded reasons, based on documented evidence, including but not limited to the annual information provided in accordance with Article 46(6a), to believe that, in the provision of investment services and activities in the Union, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the Decision in accordance with Article 47(1).

3. ESMA shall inform the third-country competent authority of its intention to take action in accordance with paragraph 1 or 2 in due course.

In deciding the appropriate action to take under this Article, ESMA shall take into account the nature and seriousness of the risk posed to investors and the proper functioning of the markets in the Union, having regard to the following criteria:

(a) the duration and frequency of the risk arising;

(b) whether the risk has revealed serious or systemic weaknesses in the third-country firm's procedures;

(c) whether financial crime has been occasioned, facilitated or otherwise attributable to the risk;

(d) whether the risk has arisen intentionally or negligently.

ESMA shall inform the Commission and the third-country firm concerned of any measure adopted in accordance with paragraph 1 or 2 without delay and shall publish its decision on its website.

The Commission shall assess whether the conditions under which a decision in accordance with Article 47(1) was adopted continue to persist in relation to the third country concerned.';

(7) in Article 52, the following paragraph is added:

'13. By 31 December 2020, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with Article 64 of Regulation (EU) 2019/2033 and submit a report on that assessment to the European Parliament, to the Council and to the Commission.';

(8) in Article 54, paragraph 1 is replaced by the following:

'1. Third-country firms may continue to provide services and activities in Member States, in accordance with national regimes, until three years after the adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 47. Services and activities not covered by such a decision may continue to be provided in accordance with national regime.'.

Article 64

Amendment to Regulation (EU) No 806/2014

In Article 12a of Regulation (EU) No 806/2014 of the European Parliament and of the Council ([28]), the following paragraph is added:

'3. In accordance with Article 65 of Regulation (EU) 2019/2033 of the European Parliament and of the Council (*), references to Article 92 of Regulation (EU) No 575/2013 in this Regulation as regards the own funds requirements on an individual basis of investment firms referred to in point (c) of Article 2 of this Regulation and which are not investment firms referred to in Article 1(2) or 1(5) of Regulation (EU) 2019/2033 shall be construed as follows:

(a) references to point (c) of Article 92(1) of Regulation (EU) No 575/2013 as regards the total capital ratio requirement in this Regulation shall refer to Article 11(1) of Regulation (EU) 2019/2033;

(b) references to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this Regulation shall refer to the applicable requirement in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12,5.

In accordance with Article 65 of Directive (EU) 2019/2034 of the European Parliament and of the Council (**), references to Article 104a of Directive 2013/36/EU in this Regulation as regards additional own funds requirements of investment firms referred to in point (c) of Article 2 of this Regulation and which are not investment firms referred to in Article 1(2) or 1(5) of Regulation (EU) 2019/2033 shall be construed as referring to Article 40 of Directive (EU) 2019/2034.

(*) 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).

(**) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).'.

PART TEN

FINAL PROVISIONS

Article 65

References to Regulation (EU) No 575/2013 in other Union legal acts

For the purposes of prudential requirements of investment firms, references to Regulation (EU) No 575/2013 in other Union acts shall be construed as references to this Regulation.

([28]) 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).

Article 66

Entry into force and date of application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 26 June 2021.

3. Notwithstanding paragraph 2:

(a) points (2) and (3) of Article 63 shall apply from 26 March 2020;

(b) point (30) of Article 62 shall apply from 25 December 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 27 November 2019.

For the European Parliament	*For the Council*
The President	*The President*
D. M. SASSOLI	T. TUPPURAINEN

DIRECTIVES

DIRECTIVE (EU) 2019/2034 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 November 2019

on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/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 ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Robust prudential supervision is an integral part of the regulatory conditions under which financial institutions provide services within the Union. Investment firms are, together with credit institutions, subject to Regulation (EU) No 575/2013 of the European Parliament and of the Council ([4]) and to Directive 2013/36/EU of the European Parliament and of the Council ([5]) as regards their prudential treatment and supervision, while their authorisation and other organisational and conduct requirements are set out in Directive 2014/65/EU of the European Parliament and of the Council ([6]).

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of a large number of investment firms. The specific vulnerabilities and risks inherent to those investment firms should therefore be further addressed by means of effective, appropriate and proportionate prudential arrangements at Union level which help to provide a level playing field across the Union, which guarantee effective prudential supervision while keeping compliance costs in check, and which ensure sufficient capital for the risks of investment firms.

(3) Sound prudential supervision should ensure that investment firms are managed in an orderly way and in the best interests of their clients. It should take into account the potential for investment firms and their clients to engage in excessive risk-taking and the different degrees of risk assumed and posed by investment firms. Equally, such prudential supervision should aim to avoid imposing a disproportionate administrative burden on investment firms. At the same time, such prudential supervision should make it possible to strike a balance between ensuring the safety and soundness of investment firms and avoiding excessive costs that might undermine the viability of their business activities.

([1]) OJ C 378, 19.10.2018, p. 5.
([2]) OJ C 262, 25.7.2018, p. 35.
([3]) Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 8 November 2019.
([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 176, 27.6.2013, p. 1).
([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]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(4) Many of the requirements that stem from the framework of Regulation (EU) No 575/2013 and Directive 2013/36/EU are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address all of the different risk profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have detrimental impacts on overall financial stability is lower than in the case of credit institutions, but investment firms nevertheless pose a risk which is necessary to address by means of a robust framework. The risks faced and posed by most investment firms are thus substantially different to the risks faced and posed by credit institutions and such differences should be clearly reflected in the prudential framework of the Union.

(5) Differences in the application of the existing prudential framework in different Member States threaten the level playing field for investment firms within the Union, hampering the access of investors to new opportunities and better ways of managing their risks. Those differences stem from the overall complexity of the application of the framework to different investment firms based on the services that they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add-ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure harmonised prudential supervision of investment firms across the Union.

(6) A specific prudential regime is therefore required for investment firms which are not systemic by virtue of their size and their interconnectedness with other financial and economic actors. Systemic investment firms should, however, remain subject to the existing prudential framework under Regulation (EU) No 575/2013 and Directive 2013/36/EU. Those investment firms are a subset of investment firms to which the framework laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU currently applies and which do not benefit from dedicated exemptions from any of their principle requirements. The largest and most interconnected investment firms have business models and risk profiles that are similar to those of significant credit institutions. They provide "bank-like" services and underwrite risks at significant scale. Furthermore, systemic investment firms are large enough to, and have business models and risk profiles which, represent a threat for the stable and orderly functioning of financial markets on a par with large credit institutions. Therefore it is appropriate that those investment firms remain subject to the provisions set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU.

(7) It is possible that investment firms which deal on own account, which underwrite financial instruments or place financial instruments on a firm commitment basis on a significant scale, or which are clearing members in central counterparties, have business models and risk profiles that are similar to those of credit institutions. Given their size and activities, it is possible that such investment firms present comparable risks to financial stability as credit institutions. Competent authorities should have the option of requiring them to remain subject to the same prudential treatment as credit institutions that fall within the scope of Regulation (EU) No 575/2013 and to compliance with prudential supervision under Directive 2013/36/EU.

(8) There may be Member States in which the authorities competent for the prudential supervision of investment firms are different from the authorities that are competent for the supervision of market conduct. It is therefore necessary to create a mechanism of cooperation and exchange of information between those authorities in order to ensure harmonised prudential supervision of investment firms across the Union which functions promptly and efficiently.

(9) An investment firm may trade via a clearing member in another Member State. Where it does so, a mechanism for sharing information between the relevant competent authorities in the different Member States should be put in place. Such a mechanism should allow the sharing of information between the competent authority for the prudential supervision of the investment firm and either the authority supervising the clearing member or the authority supervising the central counterparty on the model and parameters used for the calculation of the margin requirements of the investment firm where such method of calculation is used as the basis for the investment firm's own funds requirements.

(10) To foster the harmonisation of supervisory standards and practices within the Union, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ([7]) (EBA) should, in close cooperation with the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([8]) (ESMA), retain primary competence for the coordination and convergence of supervisory practices in the area of prudential supervision over investment firms within the European System for Financial Supervision (ESFS).

(11) The required level of initial capital of an investment firm should be based on the services and activities which that investment firm is authorised to provide and perform, respectively, according to Directive 2014/65/EU. The possibility for Member States to lower the required level of initial capital in specific situations, as provided for in Directive 2013/36/EU on the one hand, and the situation of uneven implementation of that Directive on the other hand, have led to a situation where the required level of initial capital diverges across the Union. To end that fragmentation, the required level of initial capital should be harmonised for all investment firms in the Union. With a view to reducing barriers to market entry that currently exist for the multilateral trading facilities (MTFs) and organised trading facilities (OTFs), the initial capital of investment firms that operate an MTF or an OTF should be set at the level referred to in this Directive. Where an investment firm authorised to operate an OTF has been permitted to also engage in dealing on own account under the conditions provided for in Article 20 of Directive 2014/65/EU its initial capital should be set at the level referred to in this Directive.

(12) Although investment firms should no longer fall within the scope of Regulation (EU) No 575/2013 or Directive 2013/36/EU, certain concepts used in the context of those legislative acts should retain their well-established meaning. To enable and facilitate the consistent reading of such concepts in Union legal acts when used, references in such acts to the initial capital of investment firms, to the supervisory powers of competent authorities for investment firms, to the internal capital adequacy assessment process of investment firms, to the supervisory review and evaluation process of competent authorities for investment firms, and to governance and remuneration provisions applicable to investment firms should be construed as referring to the corresponding provisions in this Directive.

(13) The proper functioning of the internal market requires that the responsibility for prudential supervision of an investment firm, in particular in relation to its solvency and its financial soundness, lies with the competent authority of its home Member State. In order also to achieve effective supervision of investment firms in other Member States, where they provide services or have a branch, close cooperation and exchange of information with the competent authorities of those Member States should be ensured.

(14) For information and supervisory purposes, and in particular to ensure the stability of the financial system, competent authorities of host Member States should be able, on a case-by-case basis, to carry out on-the-spot checks and inspect the activities of branches of investment firms on their territory, and to require information about the activities of those branches. Supervisory measures for those branches should, however, remain the responsibility of the home Member State.

(15) To protect commercially sensitive information, competent authorities should be bound by rules of professional secrecy when conducting their supervisory tasks and when exchanging confidential information.

(16) To strengthen the prudential supervision of investment firms and the protection of clients of investment firms, auditors should carry out their verification impartially and report promptly to the competent authorities those facts which can have a serious effect on the financial situation of an investment firm or on its administrative and accounting organisation.

([7]) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

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

(17) For the purposes of this Directive, personal data should be processed in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ([9]), and with Regulation (EU) 2018/1725 of the European Parliament and of the Council ([10]). In particular, where this Directive allows for exchanges of personal data with third countries, the relevant provisions of Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725 should apply.

(18) To safeguard compliance with the obligations laid down in this Directive and Regulation (EU) 2019/2033 of the European Parliament and of the Council ([11]), Member States should provide for administrative sanctions and other administrative measures which are effective, proportionate and dissuasive. In order to ensure that administrative sanctions have a dissuasive effect they should be published except in certain well-defined circumstances. To enable clients and investors to make an informed decision about their investment options, those clients and investors should have access to information on administrative sanctions and other administrative measures imposed on investment firms.

(19) To detect breaches of national provisions transposing this Directive and breaches of Regulation (EU) 2019/2033, Member States should have the necessary investigatory powers and should establish effective and rapid mechanisms to report potential or actual breaches.

(20) Investment firms which are not considered to be small and non-interconnected should have available internal capital which is adequate in quantity, quality and distribution to cover the specific risks to which they are or may be exposed. Competent authorities should ensure that investment firms have adequate strategies and processes in place to assess and maintain the adequacy of their internal capital. Competent authorities should also be able to request small and non-interconnected investment firms to apply similar requirements where appropriate.

(21) Supervisory review and evaluation powers should continue to remain an important regulatory tool that allows competent authorities to assess qualitative elements, including internal governance and controls, risk management processes and procedures and, where needed, to set additional requirements, including in particular in relation to own funds and liquidity requirements, in particular for investment firms which are not considered to be small and non-interconnected, and where the competent authority deems it to be justified and appropriate also for small and non-interconnected investment firms.

(22) The principle of equal pay for male and female workers for equal work or work of equal value is laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU). That principle should be applied in a consistent manner by investment firms. To align remuneration with the risk profile of investment firms and to guarantee a level playing field, investment firms should be subject to clear principles with regard to corporate governance arrangements and remuneration rules, which are gender neutral and which take into account the differences between credit institutions and investment firms. Small and non-interconnected investment firms should, however, be exempt from those rules because the provisions on remuneration and corporate governance laid down in Directive 2014/65/EU are sufficiently comprehensive for those types of investment firms.

(23) Similarly, the Commission report of 28 July 2016 on the assessment of the remuneration rules under Directive 2013/36/EU and Regulation (EU) No 575/2013 demonstrated that the requirements on deferral and pay-out in instruments laid down in Directive 2013/36/EU are not appropriate for small and non-complex investment firms or for staff with low levels of variable remuneration. Clear, consistent and harmonised criteria for identifying investment firms and individuals that are exempt from those requirements are necessary to ensure supervisory convergence and a level playing field. Given the important role that high earners play in directing the business and long-term performance of investment firms, effective oversight of the remuneration practices and trends relating to high earners should be ensured. Therefore, competent authorities should be able to monitor the remuneration of high earners.

([9]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([10]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

([11]) 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 (see page 1 of this Official Journal).

(24) It is also appropriate to offer some flexibility to investment firms in the way investment firms use non-cash instruments to pay variable remuneration, provided that such instruments are effective in achieving the objective of aligning the interests of staff with the interests of various stakeholders, such as shareholders and creditors, and contribute to the alignment of variable remuneration with the risk profile of the investment firm.

(25) The revenues of investment firms in the form of fees, commissions and other revenues in relation to the provision of different investment services are highly volatile. Limiting the variable component of remuneration to a portion of the fixed component of remuneration would affect the investment firm's ability to reduce remuneration at times of reduced revenues and could lead to an increase of the investment firm's fixed cost base, leading in turn to risks to the investment firm's ability to withstand times of economic downturn or reduced revenues. To avoid those risks, a single maximum ratio between the variable and the fixed components of remuneration should not be imposed on non-systemic investment firms. Instead, those investment firms should set appropriate ratios themselves. However, this Directive should not preclude Member States from implementing measures in national law designed to subject investment firms to stricter requirements with regard to the maximum ratio between the variable and the fixed components of the remuneration. Moreover, this Directive should not prevent Member States from imposing such a maximum ratio on all or on specific types of investment firms.

(26) This Directive should not prevent Member States from adopting a stricter approach with regard to the remuneration when investment firms receive extraordinary public financial support.

(27) Different governance structures are used across Member States. In most cases a unitary or a dual-board structure is used. The definitions laid down in this Directive are intended to embrace all existing structures without expressing a preference for any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competences in accordance with national company law.

(28) Management bodies should be understood to have executive and supervisory functions. The competence and structure of management bodies differ across Member States. In Member States where management bodies have a one-tier structure, a single board usually performs management and supervisory tasks. In Member States with a two-tier system, the supervisory function is performed by a separate supervisory board which has no executive functions and the executive function is performed by a separate management board which is responsible and accountable for the day-to-day management of the undertaking. Accordingly, separate tasks are assigned to the different entities within the management body.

(29) In response to the growing public demand for tax transparency, and to promote investment firms' corporate responsibility, it is appropriate to require that, unless they qualify as small and non-interconnected, investment firms disclose, on an annual basis, certain information, including information on profits made, taxes paid and any public subsidies received.

(30) To address risks at investment firm only group level, the prudential consolidation method required by Regulation (EU) 2019/2033 should in the case of investment firm only groups be accompanied by a group capital test for simpler group structures. The determination of the group supervisor, however, should in both cases be based on the same principles that apply in the case of supervision on a consolidated basis under Directive 2013/36/EU. To ensure proper cooperation, core elements of coordination measures, and in particular information requirements in emergency situations or cooperation and coordination arrangements should be similar to the core elements of coordination applicable in the context of the single rulebook for credit institutions.

(31) The Commission should be able to submit recommendations to the Council for the negotiation of agreements between the Union and third countries for the practical exercise of supervision of compliance with the group capital test for investment firms, the parent undertakings of which are established in third countries, and for investment firms operating in third countries the parent undertakings of which are established in the Union. Moreover, Member States and EBA should also be able to set-up cooperation arrangements with third countries to perform their supervisory tasks.

(32) In order to ensure legal certainty and avoid overlaps between the current prudential framework applicable to both credit institutions and investment firms and this Directive, Regulation (EU) No 575/2013 and Directive 2013/36/EU should be amended in order to remove investment firms from their scope. However, investment firms which are part of a banking group should remain subject to those provisions in Regulation (EU) No 575/2013 and Directive 2013/36/EU which are relevant to the banking group, such as the rules on prudential consolidation set out in Articles 11 to 24 of Regulation (EU) No 575/2013 and the provisions on the intermediate EU parent undertaking referred to in Article 21b of Directive 2013/36/EU.

(33) It is necessary to specify the steps that undertakings need to take to verify whether they fall under the definition of a credit institution as set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and therefore need to obtain authorisation as a credit institution. Because certain investment firms already carry out the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, it is also necessary to ensure clarity regarding the continuity of any authorisation granted for those activities. In particular, it is essential that competent authorities ensure that the transition from the current framework to the new one offers sufficient regulatory certainty for investment firms.

(34) To ensure effective supervision, it is important that undertakings that meet the conditions set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 apply for an authorisation as a credit institution. Competent authorities should therefore have the possibility to apply sanctions to undertakings that do not apply for that authorisation.

(35) The amendment to the definition of 'credit institution' in Regulation (EU) No 575/2013 by Regulation (EU) 2019/2033 may cover, from the entry into force of the latter, investment firms that are already operating on the basis of an authorisation issued in accordance with Directive 2014/65/EU. Those undertakings should be allowed to continue operating under their authorisation as investment firms until the authorisation of a credit institution is granted. Those investment firms should submit an application for authorisation as a credit institution at the latest when the average of their monthly total assets is equal to or exceeds any of the thresholds set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 over a period of 12 consecutive months. Where investment firms meet any of the thresholds set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 as from the date of entry into force of this Directive, the average of their monthly total assets should be calculated taking into account the 12 consecutive months preceding that date. Those investment firms should apply for authorisation as a credit institution within one year and one day after the entry into force of this Directive.

(36) The amendment to the definition of 'credit institution' in Regulation (EU) No 575/2013 by Regulation (EU) 2019/2033 may also affect undertakings which have already applied for authorisation as investment firms under Directive 2014/65/EU and for which the application is still pending. Such applications should be transferred to the competent authorities under Directive 2013/36/EU and be treated in accordance with the authorisation provisions set out in that Directive if the envisaged total assets of the undertaking are equal to or exceed any of the thresholds set out in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013.

(37) Undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 should also be subject to all the requirements for access to the activity of credit institutions laid down in Title III of Directive 2013/36/EU, including the provisions on the withdrawal of authorisation in accordance with Article 18 of that Directive. Article 18 of that Directive should, however, be amended to ensure that competent authorities are able to withdraw the authorisation granted to a credit institution where that credit institution uses its authorisation exclusively to engage in the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and has, for a period of five consecutive years, average total assets below the thresholds set out in that point.

(38) Pursuant to Article 39 of Directive 2014/65/EU, third-country firms providing financial services in the Union are subject to national regimes which may require the establishment of a branch in a Member State. To facilitate the regular monitoring and assessment of activities carried out by third-country firms through branches in the Union, competent authorities should be informed about the scale and scope of the services and activities carried out through branches in their territory.

(39) Specific cross-references in Directives 2009/65/EC ([12]), 2011/61/EU ([13]) and 2014/59/EU ([14]) of the European Parliament and of the Council to the provisions of Regulation (EU) No 575/2013 and Directive 2013/36/EU, which no longer apply to investment firms from the date of application of this Directive and of Regulation (EU) 2019/2033, should be construed as references to the corresponding provisions in this Directive and in Regulation (EU) 2019/2033.

(40) EBA, in cooperation with ESMA, has issued a report based on thorough background analysis, data collection and consultation for a bespoke prudential regime for all non-systemic investment firms, which serves as the basis for the revised prudential framework for investment firms.

(41) To ensure the harmonised application of this Directive, EBA should develop draft regulatory technical standards to further specify the criteria to subject certain investment firms to Regulation (EU) No 575/2013, to specify the information which the competent authorities of home Member States and of host Member States should exchange in the context of supervision, to set out how investment firms should assess the size of their activities for the purposes of internal governance requirements and, in particular, to assess whether they constitute small and non-interconnected investment firms. Regulatory technical standards should also specify the categories of staff whose professional activities have a material impact on the risk profile of firms for the purposes of remuneration provisions, and specify the Additional Tier 1 and Tier 2 instruments which qualify as variable remuneration. Finally, regulatory technical standards should specify the elements for the assessment of specific liquidity risks, the application of additional own funds requirements by competent authorities, and the functioning of the colleges of supervisors. The Commission should supplement this Directive by adopting the regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The Commission and EBA should ensure that those regulatory technical standards can be applied by all investment firms concerned in a manner that is proportionate to the nature, scale and complexity of those investment firms and their activities.

(42) The Commission should also be empowered to adopt implementing technical standards developed by EBA regarding information sharing between competent authorities and publication requirements of competent authorities and implementing technical standards developed by ESMA by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1095/2010.

(43) In order to ensure the uniform application of this Directive and to take account of developments in financial markets, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Directive by clarifying the definitions in this Directive, the internal capital and risk assessments of investment firms, and the supervisory review and evaluation powers of competent authorities. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([15]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

([12]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([13]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

([14]) 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).

([15]) OJ L 123, 12.5.2016, p. 1.

(44) Since the objective of this Directive, namely to set up an effective and proportionate prudential framework to ensure that investment firms authorised to operate within the Union operate on a sound financial basis and are managed in an orderly way, including in the best interests of their clients, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(45) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([16]), Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down rules concerning:

(a) the initial capital of investment firms;

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

(c) the prudential supervision of investment firms by competent authorities in a manner that is consistent with the rules set out in Regulation (EU) 2019/2033;

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

Article 2

Scope

1. This Directive applies to investment firms authorised and supervised under Directive 2014/65/EU.

2. By way of derogation from paragraph 1, Titles IV and V of this Directive do not apply to investment firms referred to in Article 1(2) and (5) of Regulation (EU) 2019/2033, which shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU in accordance with the second subparagraph of Article 1 (2) of Regulation (EU) 2019/2033.

Article 3

Definitions

1. For the purposes of this Directive, the following definitions apply:

(1) 'ancillary services undertaking' means an undertaking, the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms;

([16]) OJ C 369, 17.12.2011, p. 14.

(2) 'authorisation' means authorisation of an investment firm in accordance with Article 5 of Directive 2014/65/EU;

(3) 'branch' means a branch as defined in point (30) of Article 4(1) of Directive 2014/65/EU;

(4) 'close links' means close links as defined in point (35) of Article 4(1) of Directive 2014/65/EU;

(5) 'competent authority' means a public authority or body of a Member State that is officially recognised and empowered by national law to supervise investment firms in accordance with this Directive, as part of the supervisory system in operation in that Member State;

(6) 'commodity and emission allowance dealer' means a commodity and emission allowance dealer as defined in point (150) of Article 4(1) of Regulation (EU) No 575/2013;

(7) 'control' means the relationship between a parent undertaking and a subsidiary, as described in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council ([17]), or in the accounting standards to which an investment firm is subject under Regulation (EC) No 1606/2002 of the European Parliament and of the Council ([18]), or a similar relationship between any natural or legal person and an undertaking;

(8) 'compliance with the group capital test' means compliance by a parent undertaking in an investment firm group with the requirements of Article 8 of Regulation (EU) 2019/2033;

(9) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(10) 'derivatives' means derivatives as defined in point (29) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([19]);

(11) 'financial institution' means a financial institution as defined in point (14) of Article 4(1) of Regulation (EU) 2019/2033;

(12) 'gender neutral remuneration policy' means gender neutral remuneration policy as defined in point (65) of Article 3 (1) of Directive 2013/36/EU, as amended by Directive (EU) 2019/878 of the European Parliament and of the Council ([20]);

(13) 'group' means a group as defined in point (11) of Article 2 of Directive 2013/34/EU;

(14) 'consolidated situation' means a consolidated situation as defined in point (11) of Article 4(1) of Regulation (EU) 2019/2033;

(15) 'group supervisor' means a competent authority responsible for the supervision of compliance with the group capital test of Union parent investment firms and investment firms controlled by Union parent investment holding companies or Union parent mixed financial holding companies;

(16) 'home Member State' means a home Member State as defined in point (55)(a) of Article 4(1) of Directive 2014/65/EU;

(17) 'host Member State' means a host Member State as defined in point (56) of Article 4(1) of Directive 2014/65/EU;

(18) 'initial capital' means the capital which is required for the purposes of authorisation as an investment firm, the amount and type of which are specified in Articles 9 and 11;

(19) 'investment firm' means an investment firm as defined in point (1) Article 4(1) of Directive 2014/65/EU;

(20) 'investment firm group' means an investment firm group as defined in point (25) of Article 4(1) of Regulation (EU) 2019/2033;

(21) 'investment holding company' means an investment holding company as defined in point (23) of Article 4(1) of Regulation (EU) 2019/2033;

([17]) 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 and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

([18]) 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).

([19]) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

([20]) 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 (OJ L 150, 7.6.2019 p. 253).

(22) 'investment services and activities' means investment services and activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU;

(23) 'management body' means a management body as defined in point (36) of Article 4(1) of Directive 2014/65/EU;

(24) 'management body in its supervisory function' means the management body acting in its role of overseeing and monitoring management decision-making;

(25) 'mixed financial holding company' means a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC of the European Parliament and of the Council ([21]);

(26) 'mixed-activity holding company' means a parent undertaking other than a financial holding company, an investment holding company, a credit institution, an investment firm, or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm;

(27) 'senior management' means senior management as defined in point (37) of Article 4(1) Directive 2014/65/EU;

(28) 'parent undertaking' means a parent undertaking as defined in point (32) of Article 4(1) of Directive 2014/65/EU;

(29) 'subsidiary' means a subsidiary as defined in point (33) of Article 4(1) of Directive 2014/65/EU;

(30) 'systemic risk' means systemic risk as defined in point (10) of Article 3(1) of Directive 2013/36/EU;

(31) 'Union parent investment firm' means a Union parent investment firm as defined in point (56) of Article 4(1) of Regulation (EU) 2019/2033;

(32) 'Union parent investment holding company' means a Union parent investment holding company as defined in point (57) of Article 4(1) of Regulation (EU) 2019/2033;

(33) 'Union parent mixed financial holding company' means a Union parent mixed financial holding company as defined in point (58) of Article 4(1) of Regulation (EU) 2019/2033.

2. The Commission is empowered to adopt delegated acts in accordance with Article 58 to supplement this Directive by clarifying the definitions set out in paragraph 1 in order to:

(a) ensure the uniform application of this Directive;

(b) take account, in the application of this Directive, of developments on financial markets.

TITLE II

COMPETENT AUTHORITIES

Article 4

Designation and powers of the competent authorities

1. Member States shall designate one or more competent authorities to carry out the functions and duties provided for in this Directive and in Regulation (EU) 2019/2033. The Member States shall inform the Commission, EBA and ESMA of that designation, and, where there is more than one competent authority, of the functions and duties of each competent authority.

2. Member States shall ensure that the competent authorities supervise the activities of investment firms, and, where applicable, of investment holding companies and mixed financial holding companies, to assess compliance with the requirements of this Directive and of Regulation (EU) 2019/2033.

([21]) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

3. Member States shall ensure that the competent authorities have all necessary powers, including the power to conduct on-the-spot checks in accordance with Article 14, to obtain the information needed to assess the compliance of investment firms and, where applicable, of investment holding companies and mixed financial holding companies, with the requirements of this Directive and of Regulation (EU) 2019/2033, and to investigate possible breaches of those requirements.

4. Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to the prudential supervision, investigations and sanctions set out in this Directive.

5. Member States shall require investment firms to provide their competent authorities with all the information necessary for the assessment of the compliance of investment firms with the national provisions transposing this Directive and compliance with Regulation (EU) 2019/2033. Internal control mechanisms and administrative and accounting procedures of the investment firms shall enable the competent authorities to check their compliance with those provisions at all times.

6. Member States shall ensure that investment firms record all their transactions and document the systems and processes which are subject to this Directive and to Regulation (EU) 2019/2033 in such a manner that the competent authorities are able to assess compliance with the national provisions transposing this Directive and compliance with Regulation (EU) 2019/2033 at all times.

Article 5

Discretion of competent authorities to subject certain investment firms to the requirements of Regulation (EU) No 575/2013

1. Competent authorities may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to point (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, where the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, calculated as an average of the previous 12 months, and one or more of the following criteria apply:

(a) the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;

(b) the investment firm is a clearing member as defined in point (3) of Article 4(1) of Regulation (EU) 2019/2033;

(c) the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:

   (i) the importance of the investment firm for the economy of the Union or of the relevant Member State;

   (ii) the significance of the investment firm's cross-border activities;

   (iii) the interconnectedness of the investment firm with the financial system.

2. Paragraph 1 shall not apply to commodity and emission allowance dealers, collective investment undertakings or insurance undertakings.

3. Where a competent authority decides to apply the requirements of Regulation (EU) No 575/2013 to an investment firm in accordance with paragraph 1, that investment firm shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU.

4. Where a competent authority decides to revoke a decision taken in accordance with paragraph 1, it shall inform the investment firm without delay.

Any decision taken by a competent authority under paragraph 1 shall cease to apply where an investment firm no longer meets the threshold referred to in that paragraph, calculated over a period of 12 consecutive months.

5. Competent authorities shall inform EBA without delay of any decision taken pursuant to paragraphs 1, 3 and 4.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to further specify the criteria set out in points (a) and (b) of paragraph 1, and shall ensure their consistent application.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 6

Cooperation within a Member State

1. Competent authorities shall cooperate closely with the public authorities or bodies responsible in their Member State for the supervision of credit institutions and financial institutions. Member States shall require that those competent authorities and those public authorities or bodies exchange, without delay, any information which is essential or relevant to the exercise of their functions and duties.

2. Competent authorities that are different from those designated in accordance with Article 67 of Directive 2014/65/EU shall establish a mechanism for cooperation with those authorities and for the exchange of all information that is relevant for the exercise of their respective functions and duties.

Article 7

Cooperation within the European System of Financial Supervision

1. In the exercise of their duties, competent authorities shall take into account the convergence of supervisory tools and supervisory practices in the application of the legal provisions adopted pursuant to this Directive and to Regulation (EU) 2019/2033.

2. Member States shall ensure that:

(a) competent authorities, as parties to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the exchange of appropriate, reliable and exhaustive information between them and other parties to the ESFS;

(b) competent authorities participate in the activities of EBA, and, as appropriate, in the colleges of supervisors referred to in Article 48 of this Directive and in Article 116 of Directive 2013/36/EU;

(c) competent authorities make every effort to ensure compliance with the guidelines and recommendations issued by EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the European Systemic Risk Board (ESRB) pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council ([22]);

(d) competent authorities cooperate closely with the ESRB;

(e) tasks and powers conferred on the competent authorities do not inhibit the performance of the duties of those competent authorities as members of EBA or of the ESRB, or under this Directive and under Regulation (EU) 2019/2033.

Article 8

Union dimension of supervision

Competent authorities in each Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in other Member States concerned as well as in the Union as a whole and, in particular, in emergency situations, based on the information available at the relevant time.

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

TITLE III

INITIAL CAPITAL

Article 9

Initial capital

1. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for the authorisation to provide any of the investment services or perform any of the investment activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU shall be EUR 750 000.

2. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for the authorisation to provide any of the investment services or perform any of the investment activities listed in points (1), (2), (4), (5) and (7) of Section A of Annex I to Directive 2014/65/EU and which is not permitted to hold client money or securities belonging to its clients shall be EUR 75 000.

3. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for investment firms other than those referred to in paragraphs 1, 2 and 4 of this Article shall be EUR 150 000.

4. The initial capital of an investment firm authorised to provide the investment services or perform the investment activity listed in point (9) of Section A of Annex I to Directive 2014/65/EU, where that investment firm engages in dealing on own account or is permitted to do so, shall be EUR 750 000.

Article 10

References to initial capital in Directive 2013/36/EU

References to the levels of initial capital set by Article 9 of this Directive shall, from 26 June 2021, be construed as replacing references in other Union legal acts to the levels of initial capital set by Directive 2013/36/EU, as follows:

(a) references to initial capital of investment firms in Article 28 of Directive 2013/36/EU shall be construed as references to Article 9(1) of this Directive;

(b) references to initial capital of investment firms in Articles 29 and 31 of Directive 2013/36/EU shall be construed as references to Article 9(2), (3) or (4) of this Directive, depending on the types of investment services and activities of the investment firm;

(c) references to initial capital in Article 30 of Directive 2013/36/EU shall be construed as references to Article 9(1) of this Directive.

Article 11

Composition of initial capital

The initial capital of an investment firm shall be constituted in accordance with Article 9 of Regulation (EU) 2019/2033.

TITLE IV

PRUDENTIAL SUPERVISION

CHAPTER 1

Principles of prudential supervision

Section 1

Competences and duties of home and host Member States

Article 12

Competence of the competent authorities of the home and host Member State

The prudential supervision of investment firms shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which confer responsibility on the competent authorities of the host Member State.

Article 13

Cooperation between competent authorities of different Member States

1. Competent authorities of different Member States shall cooperate closely for the purposes of their duties pursuant to this Directive and to Regulation (EU) 2019/2033, in particular by exchanging information about investment firms without delay, including the following:

(a) information about the management and ownership structure of the investment firm;

(b) information about compliance with own funds requirements by the investment firm;

(c) information about compliance with the concentration risk requirements and liquidity requirements of the investment firm;

(d) information about the administrative and accounting procedures and internal control mechanisms of the investment firm;

(e) any other relevant factors that may influence the risk posed by the investment firm.

2. The competent authorities of the home Member State shall immediately provide the competent authorities of the host Member State with any information and findings about any potential problems and risks posed by an investment firm to the protection of clients or the stability of the financial system in the host Member State which they have identified when supervising the activities of an investment firm.

3. The competent authorities of the home Member State shall act upon information provided by the competent authorities of the host Member State by taking all measures necessary to avert or remedy potential problems and risks as referred to in paragraph 2. Upon request, the competent authorities of the home Member State shall explain in detail to the competent authorities of the host Member State how they have taken into account the information and findings provided by the competent authorities of the host Member State.

4. Where, following the communication of the information and findings referred to in paragraph 2, the competent authorities of the host Member State consider that the competent authorities of the home Member State have not taken the necessary measures referred to in paragraph 3, the competent authorities of the host Member State may, after having informed the competent authorities of the home Member State, EBA and ESMA, take appropriate measures to protect clients to whom services are provided or to protect the stability of the financial system.

The competent authorities may refer to EBA cases in which a request for collaboration, in particular a request to exchange information, has been rejected or has not been acted upon within a reasonable time. With regard to such cases, EBA may, without prejudice to Article 258 TFEU, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010. EBA may also assist the competent authorities in reaching an agreement on the exchange of information under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

5. Competent authorities of the home Member State that disagree with the measures of the competent authorities of the host Member State may refer the matter to EBA, which shall act in accordance with the procedure laid down in Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall adopt its decision within one month.

6. For the purpose of assessing the condition in point (c) of the first subparagraph of Article 23(1) of Regulation (EU) 2019/2033, the competent authority of an investment firm's home Member State may request the competent authority of a clearing member's home Member State to provide information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firm.

7. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify requirements for the type and nature of the information referred to in paragraphs 1 and 2 of this Article.

Power is delegated to the Commission to supplement this Directive by adopting 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, in consultation with ESMA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements for the purpose of facilitating the supervision of investment firms.

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 submit the draft technical standards referred to in paragraphs 7 and 8 to the Commission by 26 June 2021.

Article 14

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

1. Host Member States shall provide that, where an investment firm authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out, themselves or through intermediaries that they appoint for that purpose, on-the-spot checks of the information referred to in Article 13(1) and inspect such branches.

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

Before carrying out such checks and inspections, the competent authorities of the host Member State shall, without delay, consult the competent authorities of the home Member State.

As soon as possible following the completion of those checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the investment firm concerned.

Section 2

Professional secrecy and duty to report

Article 15

Professional secrecy and exchange of confidential information

1. Member States shall ensure that competent authorities and all persons who work or who have worked for those competent authorities, including the persons referred to in Article 76(1) of Directive 2014/65/EU, are bound by the obligation of professional secrecy for the purposes of this Directive and of Regulation (EU) 2019/2033.

Confidential information which such competent authorities and persons receive in the course of their duties may be disclosed only in summary or aggregate form, provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law.

Where the investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be disclosed in civil or commercial proceedings, where such disclosure is necessary for carrying out those proceedings.

2. Competent authorities shall use the confidential information collected, exchanged or transmitted pursuant to this Directive and to Regulation (EU) 2019/2033 only for the purpose of carrying out their duties, and in particular for the following purposes:

(a) to monitor the prudential rules set out in this Directive and in Regulation (EU) 2019/2033;

(b) to impose sanctions;

(c) in administrative appeals against decisions of the competent authorities;

(d) in court proceedings initiated under Article 23.

3. Natural and legal persons and other bodies, other than competent authorities, that receive confidential information pursuant to this Directive and to Regulation (EU) 2019/2033 shall use that information only for the purposes for which the competent authority expressly provides or in accordance with national law.

4. Competent authorities may exchange confidential information for the purposes of paragraph 2, may expressly state how that information is to be treated and may expressly restrict any further transmission of that information.

5. The obligation referred to in paragraph 1 shall not prevent competent authorities from transmitting confidential information to the Commission when that information is necessary for the exercise of the powers of the Commission.

6. Competent authorities may provide EBA, ESMA, the ESRB, central banks of the Member States, the European System of Central Banks (ESCB) and the European Central Bank in their capacity as monetary authorities, and, where appropriate, public authorities responsible for overseeing payment and settlement systems, with confidential information where that information is necessary for the performance of their tasks.

Article 16

Cooperation arrangements with third countries for the exchange of information

For the purpose of performing their supervisory tasks pursuant to this Directive or to Regulation (EU) 2019/2033, and for the purpose of exchanging information, competent authorities, EBA and ESMA in accordance with Article 33 of Regulation (EU) No 1093/2010 or Article 33 of Regulation (EU) No 1095/2010, as applicable, may conclude cooperation arrangements with third-country supervisory authorities as well as with third-country authorities or bodies responsible for the following tasks, provided that the information disclosed is subject to guarantees of professional secrecy that are at least equivalent to those laid down in Article 15 of this Directive:

(a) the supervision of financial institutions and financial markets, including the supervision of financial entities licensed to operate as central counterparties, where central counterparties have been recognised under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([23]);

(b) the liquidation and bankruptcy of investment firms and similar procedures;

(c) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and similar procedures;

(d) the carrying out of statutory audits of financial institutions or institutions which administer compensation schemes;

(e) oversight of persons charged with carrying out statutory audits of the accounts of financial institutions;

([23]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(f) oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;

(g) oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

Article 17

Duties of persons responsible for the control of annual and consolidated accounts

Member States shall provide that any person who is authorised in accordance with Directive 2006/43/EC of the European Parliament and of the Council ([24]) and who performs in an investment firm the tasks described in Article 73 of Directive 2009/65/EC or in Article 34 of Directive 2013/34/EU, or any other statutory task, has a duty to report promptly to the competent authorities any fact or decision concerning that investment firm, or concerning an undertaking that has close links with that investment firm which:

(a) constitutes a material breach of the laws, regulations or administrative provisions laid down pursuant to this Directive;

(b) may affect the continuous functioning of the investment firm; or

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

Section 3

Sanctions, investigatory powers and right of appeal

Article 18

Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory powers referred to in Section 4 of Chapter 2 of Title IV of this Directive, including investigatory powers and powers of competent authorities to impose remedies, and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures and ensure that their competent authorities have the power to impose such sanctions and measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) 2019/2033, including where an investment firm:

(a) fails to have in place internal governance arrangements as set out in Article 26;

(b) fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 11 of Regulation (EU) 2019/2033 to the competent authorities, in breach of point (b) of Article 54(1) of that Regulation;

(c) fails to report to the competent authorities, in breach of point (e) of Article 54(1) of Regulation (EU) 2019/2033, information about concentration risk or provides incomplete or inaccurate information;

(d) incurs a concentration risk in excess of the limits set out in Article 37 of Regulation (EU) 2019/2033, without prejudice to Articles 38 and 39 of that Regulation;

(e) repeatedly or persistently fails to hold liquid assets in breach of Article 43 of Regulation (EU) 2019/2033, without prejudice to Article 44 of that Regulation;

(f) fails to disclose information, or provides incomplete or inaccurate information, in breach of the provisions set out in Part Six of Regulation (EU) 2019/2033;

(g) makes payments to holders of instruments included in the own funds of the investment firm where Article 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;

(h) is found liable for a serious breach of national provisions adopted pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council ([25]);

([24]) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

([25]) 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).

(i) allows one or more persons that do not comply with Article 91 of Directive 2013/36/EU to become or remain a member of the management body.

Member States that do not lay down rules on administrative sanctions for breaches which are subject to national criminal law shall communicate to the Commission the relevant criminal law provisions.

The administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

2. The administrative sanctions and other administrative measures referred to in the first subparagraph of paragraph 1 shall include the following:

(a) a public statement which identifies the natural or legal person, investment firm, investment holding company or mixed financial holding company responsible and the nature of the breach;

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

(c) a temporary ban for members of the investment firm's management body or any other natural persons who are held responsible on exercising functions in investment firms;

(d) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual net turnover, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding business year;

(e) in the case of a legal person, administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided due to the breach where those profits or losses can be determined;

(f) in the case of a natural person, administrative pecuniary sanctions 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 25 December 2019.

Where an undertaking referred to in point (d) of the first subparagraph is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Member States shall ensure that where an investment firm is in breach of national provisions transposing this Directive or in breach of the provisions of Regulation (EU) 2019/2033, administrative sanctions may be applied by the competent authority to the members of the management body and to other natural persons who under national law are responsible for the breach.

3. Member States shall ensure that, when determining the type of administrative sanctions or other administrative measures referred to in paragraph 1 and the level of administrative pecuniary sanctions, 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 persons responsible for the breach;

(c) the financial strength of the natural or legal persons responsible for the breach, including the total turnover of legal persons or the annual income of natural persons;

(d) the importance of profits gained or losses avoided by the legal persons responsible for the breach;

(e) any losses incurred by third parties as a result of the breach;

(f) the level of cooperation with the relevant competent authorities;

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

(h) any potential systemic consequences of the breach.

Article 19

Investigatory powers

Member States shall ensure that competent authorities have all information-gathering and investigatory powers that are necessary for the exercise of their functions, including:

(a) the power to require information from the following natural or legal persons:

(i) investment firms established in the Member State concerned;

(ii) investment 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) third 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 point (a) that is established or located in the Member State concerned, including the right:

(i) to require the submission of documents by the persons referred to in point (a);

(ii) to examine the books and records of the persons referred to in point (a) and to make copies or extracts from those books and records;

(iii) to obtain written or oral explanations from the persons referred to in point (a) or from their representatives or staff;

(iv) to interview any other relevant person for the purpose of collecting information on the subject matter of an investigation;

(c) the power to conduct all necessary inspections at the business premises of the legal persons referred to in point (a) and any other undertakings included in the supervision of compliance with the group capital test, where the competent authority is the group supervisor, subject to the prior notification of other competent authorities concerned.

Article 20

Publication of administrative sanctions and other administrative measures

1. Member States shall ensure that competent authorities publish on their official website without undue delay any administrative sanctions and other administrative measures imposed in accordance with Article 18 and which have not been appealed or can no longer be appealed. That publication shall include information on the type and nature of the breach and the identity of the natural or legal person on whom the sanction is imposed or against whom the measure is taken. The information shall only be published after that person has been informed of those sanctions or measures and to the extent that the publication is necessary and proportionate.

2. Where Member States permit the publication of administrative sanctions or other administrative measures imposed in accordance with Article 18 against which there has been an appeal, competent authorities shall also publish on their official website information on the appeal status and on the outcome of the appeal.

3. Competent authorities shall publish the administrative sanctions or other administrative measures imposed in accordance with Article 18 on an anonymous basis in any of the following circumstances:

(a) the sanction or measure has been imposed on a natural person and publication of that person's personal data is found to be disproportionate;

(b) the publication would jeopardise an ongoing criminal investigation or the stability of financial markets;

(c) the publication would cause disproportionate damage to the investment firms or natural persons involved.

4. Competent authorities shall ensure that information published pursuant to this Article remains on their official website for at least five years. Personal data may only be retained on the official website of the competent authority where permitted by the applicable data protection rules.

Article 21

Reporting sanctions to EBA

Competent authorities shall inform EBA of administrative sanctions and other administrative measures imposed pursuant to Article 18, of any appeal against those sanctions and other administrative measures and of the outcome thereof. EBA shall maintain a central database of administrative sanctions and other administrative measures communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible only to competent authorities and ESMA and it shall be updated regularly, and at least annually.

EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and other administrative measures imposed in accordance with Article 18 and shall state the period for which each Member State publishes administrative sanctions and other administrative measures.

Article 22

Reporting of breaches

1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to enable prompt reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) 2019/2033 to competent authorities.

Those mechanisms shall include the following:

(a) specific procedures for the reception, treatment and following up of such reports, including the establishment of secure communication channels;

(b) appropriate protection against retaliation, discrimination or other types of unfair treatment by the investment firm for employees of investment firms who report breaches committed within the investment firm;

(c) protection of personal data concerning both the person who reports the breach and the natural person who is allegedly responsible for that breach, in accordance with Regulation (EU) 2016/679;

(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the investment firm, unless disclosure is required by national law in the context of further investigations or subsequent administrative or judicial proceedings.

2. Member States shall require investment firms to have in place appropriate procedures for their employees to report breaches internally through a specific independent channel. Those procedures may be provided for by the social partners provided that those procedures offer the same protection as the protection referred to in points (b), (c) and (d) of paragraph 1.

Article 23

Right of appeal

Member States shall ensure that decisions and measures taken pursuant to Regulation (EU) 2019/2033 or pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to a right of appeal.

CHAPTER 2

Review process

Section 1

Internal capital adequacy assessment process and internal risk-assessment process

Article 24

Internal capital and liquid assets

1. Investment firms which do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that they consider adequate to cover the nature and level of risks which they may pose to others and to which the investment firms themselves are or might be exposed.

2. The arrangements, strategies and processes referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned. They shall be subject to regular internal review.

Competent authorities may request investment firms which meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 to apply the requirements provided for in this Article to the extent that the competent authorities deem it to be appropriate.

Section 2

Internal governance, transparency, treatment of risks and remuneration

Article 25

Scope of application of this Section

1. This Section shall not apply where, on the basis of Article 12(1) of Regulation (EU) 2019/2033, an investment firm determines that it meets all of the conditions for qualifying as a small and non-interconnected investment firm set out therein.

2. Where an investment firm which has not met all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 subsequently meets those conditions, this Section shall cease to apply after a period of six months from the date on which those conditions are met. This section shall cease to apply to an investment firm after that period only where the investment firm continued to meet the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 without interruption during that period and where it notified the competent authority accordingly.

3. Where an investment firm determines that it no longer meets all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033, it shall notify the competent authority and comply with this Section within 12 months of the date on which that assessment took place.

4. Member States shall require investment firms to apply the provisions laid down in Article 32 to remuneration awarded for services provided or performance in the financial year following the financial year in which the assessment referred to in paragraph 3 took place.

Where this Section applies and Article 8 of Regulation (EU) 2019/2033 is applied, Member States shall ensure that this Section is applied to investment firms on an individual basis.

Where this Section applies and prudential consolidation as referred to in Article 7 of Regulation (EU) 2019/2033 is applied, Member States shall ensure that this Section is applied to investment firms on an individual and consolidated basis.

By way of derogation from the third subparagraph, this Section shall not apply to subsidiary undertakings included in a consolidated situation that are established in third countries, where the parent undertaking in the Union can demonstrate to the competent authorities that the application of this Section is unlawful under the laws of the third country where those subsidiary undertakings are established.

Article 26

Internal governance

1. Member States shall ensure that investment firms have robust governance arrangements, including all of the following:

(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 that investment firms are or might be exposed to, or the risks that they pose or might pose to others;

(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 point (d) of the first subparagraph shall be gender neutral.

2. When establishing the arrangements referred to in paragraph 1, the criteria set out in Articles 28 to 33 shall be taken into account.

3. The arrangements referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

4. EBA, in consultation with ESMA, shall issue guidelines on the application of the governance arrangements referred to in paragraph 1.

EBA, in consultation with ESMA, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on gender neutral remuneration policies for investment firms.

Within two years of the date of publication of those guidelines, EBA shall issue a report on the application of gender neutral remuneration policies by investment firms based on the information collected by the competent authorities.

Article 27

Country-by-country reporting

1. Member States shall require investment firms that have a branch or subsidiary that is a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013 in a Member State or in a third country other than that in which the authorisation of the investment firm was granted to disclose the following information by Member State and third country on an annual basis:

(a) the name, nature of activities and location of any subsidiaries and branches;

(b) turnover;

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

(d) profit or loss before tax;

(e) tax on profit or loss;

(f) the public subsidies received.

2. The information referred to in paragraph 1 of this Article shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of that investment firm.

Article 28

Role of the management body in risk management

1. Member States shall ensure that the management body of the investment firm approves and periodically reviews the strategies and policies on the risk appetite of the investment firm, and on managing, monitoring and mitigating the risks the investment firm is or may be exposed to, taking into account the macroeconomic environment and the business cycle of the investment firm.

2. Member States shall ensure that the management body devotes sufficient time to ensure proper consideration of the matters referred to in paragraph 1 and that it allocates adequate resources to the management of all material risks to which the investment firm is exposed.

3. Member States shall ensure that investment firms establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.

4. Member States shall require all investment firms that do not meet the criteria set out in point (a) of Article 32(4) to establish a risk committee composed of members of the management body who do not perform any executive function in the investment firm concerned.

Members of the risk committee referred to in the first subparagraph shall have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the investment firm. They shall ensure that the risk committee advises the management body on the investment firm's overall current and future risk appetite and strategy and assists the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for the investment firm's risk strategies and policies.

5. Member States shall ensure that the management body in its supervisory function and the risk committee of that management body, where a risk committee has been established, have access to information on the risks to which the investment firm is or may be exposed.

Article 29

Treatment of risks

1. Competent authorities shall ensure that investment firms have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of the following:

(a) material sources and effects of risk to clients and any material impact on own funds;

(b) material sources and effects of risk to market and any material impact on own funds;

(c) material sources and effects of risk to the investment firm, in particular those which can deplete the level of own funds available;

(d) liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that the investment firm maintains adequate levels of liquid resources, including in respect of addressing material sources of risks under points (a), (b) and (c).

The strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, and scope of operation of the investment firm and risk tolerance set by the management body, and shall reflect the investment firm's importance in each Member State in which it carries out business.

For the purposes of point (a) of the first subparagraph and of the second subparagraph, competent authorities shall consider national law governing segregation applicable to client money.

For the purposes of point (a) of the first subparagraph, investment firms shall consider holding professional indemnity insurance as an effective tool in their management of risks.

For the purposes of point (c) of the first subparagraph, material sources of risk to the investment firm itself shall include, if relevant, material changes in the book value of assets, including any claims on tied agents, the failure of clients or counterparties, positions in financial instruments, foreign currencies and commodities, and obligations to defined benefit pension schemes.

Investment firms shall give due consideration to any material impact on own funds where such risks are not appropriately captured by the own funds requirements calculated under Article 11 of Regulation (EU) 2019/2033.

2. Where investment firms need to wind down or cease their activities, competent authorities shall require that investment firms, by taking into account the viability and sustainability of their business models and strategies, give due consideration to requirements and necessary resources which are realistic, in terms of timescale and maintenance of own funds and liquid resources, throughout the process of exiting the market.

3. By way of derogation from Article 25, points (a), (c) and (d) of paragraph 1 of this Article shall apply to investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033.

4. The Commission is empowered to adopt delegated acts in accordance with Article 58 to supplement this Directive to ensure that the strategies, policies, processes and systems of investment firms are robust. The Commission shall thereby take into account developments in financial markets, and in particular the emergence of new financial products, developments in accounting standards and developments that facilitate the convergence of supervisory practices.

Article 30

Remuneration policies

1. Member States shall ensure that investment firms, when establishing and applying their remuneration policies for categories of staff, including senior management, risk takers, staff engaged in control functions and any employees receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages, comply with the following principles:

(a) the remuneration policy is clearly documented and proportionate to the size, internal organisation and nature, as well as to the scope and complexity of the activities of the investment firm;

(b) the remuneration policy is a gender-neutral remuneration policy;

(c) the remuneration policy is consistent with and promotes sound and effective risk management;

(d) the remuneration policy is in line with the business strategy and objectives of the investment firm, and also takes into account long term effects of the investment decisions taken;

(e) the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;

(f) the investment firm's management body in its supervisory function adopts and periodically reviews the remuneration policy and has overall responsibility for overseeing its implementation;

(g) the implementation of the remuneration policy is subject to a central and independent internal review by control functions at least annually;

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

(i) the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 33 or, where such a committee has not been established, by the management body in its supervisory function;

(j) the remuneration policy, taking into account national rules on wage setting, makes a clear distinction between the criteria applied to determine the following:

  (i) basic fixed remuneration, which primarily reflects relevant professional experience and organisational responsibility as set out in an employee's job description as part of his or her terms of employment;

  (ii) variable remuneration, which reflects a sustainable and risk adjusted performance of the employee, as well as performance in excess of the employee's job description;

(k) the fixed component represents a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component.

2. For the purposes of point (k) of paragraph 1, Member States shall ensure that investment firms set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the investment firm and associated risks, as well as the impact that different categories of staff referred to in paragraph 1 have on the risk profile of the investment firm.

3. Member States shall ensure that investment firms establish and apply the principles referred to in paragraph 1 in a manner that is appropriate to their size and internal organisation and to the nature, scope and complexity of their activities.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify appropriate criteria to identify the categories of staff whose professional activities have a material impact on the risk profile of the investment firm as referred to in paragraph 1 of this Article. EBA and ESMA shall take due account of Commission Recommendation 2009/384/EC ([26]) as well as existing remuneration guidelines pursuant to Directives 2009/65/EC, 2011/61/EU and 2014/65/EU, and shall aim to minimise divergence from existing provisions.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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

Article 31

Investment firms that benefit from extraordinary public financial support

Member States shall ensure that where an investment firm benefits from extraordinary public financial support as defined in point (28) of Article 2(1) of Directive 2014/59/EU:

(a) that investment firm does not pay any variable remuneration to members of the management body;

(b) where variable remuneration paid to staff other than members of the management body would be inconsistent with the maintenance of a sound capital base of an investment firm and its timely exit from extraordinary public financial support, variable remuneration shall be limited to a portion of net revenue.

Article 32

Variable remuneration

1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm to categories of staff referred to in Article 30(1) complies with all of the following requirements under the same conditions as those set out in Article 30(3):

(a) where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;

(b) when assessing the performance of the individual, both financial and non-financial criteria are taken into account;

(c) the assessment of the performance referred to in point (a) is based on a multi-year period, taking into account the business cycle of the investment firm and its business risks;

(d) the variable remuneration does not affect the investment firm's ability to ensure a sound capital base;

(e) there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and where the investment firm has a strong capital base;

(f) payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct;

(g) remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the investment firm;

([26]) Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

(h) the measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) 2019/2033;

(i) the allocation of the variable remuneration components within the investment firm takes into account all types of current and future risks;

(j) at least 50 % of the variable remuneration consists of any of the following instruments:

(i) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned;

(ii) share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the investment firm concerned;

(iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;

(iv) non-cash instruments which reflect the instruments of the portfolios managed;

(k) by way of derogation from point (j), where an investment firm does not issue any of the instruments referred to in that point, competent authorities may approve the use of alternative arrangements fulfilling the same objectives;

(l) at least 40 % of the variable remuneration is deferred over a three- to five-year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60 %;

(m) up to 100 % of the variable remuneration is contracted where the financial performance of the investment firm is subdued or negative, including through *malus* or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question:

(i) participated in or was responsible for conduct which resulted in significant losses for the investment firm;

(ii) is no longer considered fit and proper;

(n) discretionary pension benefits are in line with the business strategy, objectives, values and long-term interests of the investment firm.

2. For the purposes of paragraph 1, Member States shall ensure the following:

(a) individuals referred to in Article 30(1) do not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles referred to in paragraph 1;

(b) variable remuneration is not paid through financial vehicles or methods that facilitate non-compliance with this Directive or with Regulation (EU) 2019/2033.

3. For the purposes of point (j) of paragraph 1, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.

For the purposes of point (l) of paragraph 1, the deferral of the variable remuneration shall vest no faster than on a pro-rata basis.

For the purposes of point (n) of paragraph 1, where an employee leaves the investment firm before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in point (j). Where an employee reaches retirement age and retires, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j), subject to a five-year retention period.

4. Points (j) and (l) of paragraph 1 and the third subparagraph of paragraph 3 shall not apply to:

(a) an investment firm, where the value of its on and off-balance sheet assets is on average equal to or less than EUR 100 million over the four-year period immediately preceding the given financial year;

(b) an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual's total annual remuneration.

5. By way of derogation from point (a) of paragraph 4, a Member State may increase the threshold referred to in that point, provided that the investment firm meets the following criteria:

(a) the investment firm is not, in the Member State in which it is established, one of the three largest investment firms in terms of total value of assets;

(b) the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;

(c) the size of the investment firm's on and off-balance sheet trading-book business is equal to or less than EUR 150 million;

(d) the size of the investment firm's on and off-balance sheet derivative business is equal to or less than EUR 100 million;

(e) the threshold does not exceed EUR 300 million; and

(f) it is appropriate to increase the threshold, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

6. By way of derogation from point (a) of paragraph 4, a Member State may lower the threshold referred to in that point, provided that it is appropriate to do so, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

7. By way of derogation from point (b) of paragraph 4, a Member State may decide that staff members who are entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.

8. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in point (j)(iii) of paragraph 1 and to specify possible alternative arrangements set out in point (k) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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

9. EBA, in consultation with ESMA, shall adopt guidelines facilitating the implementation of paragraphs 4, 5 and 6 and ensuring their consistent application.

Article 33

Remuneration committee

1. Member States shall ensure that investment firms which do not meet the criteria set out in point (a) of Article 32(4) establish a remuneration committee. That remuneration committee shall be gender balanced and shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee may be established at group level.

2. Member States shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the investment firm concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm concerned. Where employee representation in the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.

3. When preparing the decisions referred to in paragraph 2, the remuneration committee shall take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the investment firm.

Article 34

Oversight of remuneration policies

1. Member States shall ensure that competent authorities collect the information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033 as well as the information provided by investment firms on the gender pay gap and use that information to benchmark remuneration trends and practices.

Competent authorities shall provide that information to EBA.

2. EBA shall use information received from the competent authorities in accordance with paragraphs 1 and 4 to benchmark remuneration trends and practices at Union level.

3. EBA, in consultation with ESMA, shall issue guidelines on the application of sound remuneration policies. Those guidelines shall take into account at least the requirements referred to in Articles 30 to 33 and principles on sound remuneration policies set out in Recommendation 2009/384/EC.

4. Member States shall ensure that investment firms provide competent authorities with information on the number of natural persons per investment firm that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including information on their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution.

Member States shall ensure that investment firms provide competent authorities, upon demand, the total remuneration figures for each member of the management body or senior management.

Competent authorities shall forward the information referred to in the first and second subparagraphs to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA, in consultation with ESMA, may issue guidelines to facilitate the implementation of this paragraph and to ensure the consistency of the information collected.

Article 35

EBA report on environmental, social, and governance risks

EBA shall prepare a report on the introduction of technical criteria related to exposures to activities associated substantially with environmental, social, and governance (ESG) objectives for the supervisory review and evaluation process, with a view to assessing the possible sources and effects of risks on investment firms, taking into account applicable Union legal acts in the field of ESG taxonomy.

The EBA report referred to in the first paragraph shall comprise at least the following:

(a) a definition of ESG risks, including physical risks and transition risks related to the transition to a more sustainable economy, and, with regard to transition risks, including risks related to the depreciation of assets due to regulatory change, qualitative and quantitative criteria and metrics relevant for assessing such risks, as well as a methodology for assessing the possibility of such risks arising in the short, medium, or long term and the possibility of such risks having a material financial impact on an investment firm;

(b) an assessment of the possibility of significant concentrations of specific assets increasing ESG risks, including physical risks and transition risks for an investment firm;

(c) a description of the processes by means of which an investment firm can identify, assess, and manage ESG risks, including physical risks and transition risks;

(d) the criteria, parameters and metrics by means of which supervisors and investment firms can assess the impact of short-, medium- and long-term ESG risks for the purposes of the supervisory review and evaluation process.

EBA shall submit the report on its findings to the European Parliament, to the Council, and to the Commission, by 26 December 2021.

On the basis of that report, EBA may, if appropriate, adopt guidelines to introduce criteria related to ESG risks for the supervisory review and evaluation process that take into account the findings of the EBA report referred to in this Article.

Section 3

Supervisory review and evaluation process

Article 36

Supervisory review and evaluation

1. Competent authorities shall review, to the extent relevant and necessary, taking into account the investment firm's size, risk profile and business model, the arrangements, strategies, processes and mechanisms implemented by investment firms to comply with this Directive and with Regulation (EU) 2019/2033 and evaluate the following as appropriate and relevant, so as to ensure a sound management and coverage of their risks:

(a) the risks referred to in Article 29;

(b) the geographical location of an investment firm's exposures;

(c) the business model of the investment firm;

(d) the assessment of systemic risk, taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 or recommendations of the ESRB;

(e) the risks posed to the security of investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes, data and assets;

(f) the exposure of investment firms to the interest rate risk arising from non-trading book activities;

(g) governance arrangements of investment firms and the ability of members of the management body to perform their duties.

For the purposes of this paragraph, competent authorities shall duly take into account whether investment firms hold a professional indemnity insurance.

2. Member States shall ensure that competent authorities establish the frequency and intensity of the review and evaluation referred to in paragraph 1, having regard to the size, nature, scale and complexity of the activities of the investment firms concerned and, where relevant, their systemic importance, and taking into account the principle of proportionality.

Competent authorities shall decide on a case-by-case basis whether and in which form the review and evaluation is to be carried out with regard to investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033, only where they deem it to be necessary due to the size, nature, scale and complexity of the activities of those investment firms.

For the purposes of the first subparagraph, national law governing segregation applicable to client money held shall be considered.

3. When conducting the review and evaluation referred to in point (g) of paragraph 1, competent authorities shall have access to agendas, minutes and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of the performance of the management body.

4. The Commission is empowered to adopt delegated acts in accordance with Article 58 to supplement this Directive to ensure that the arrangements, strategies, processes and mechanisms of investment firms ensure a sound management and coverage of their risks. The Commission shall thereby take into account developments in financial markets, and in particular the emergence of new financial products, developments in accounting standards and developments that facilitate the convergence of supervisory practices.

Article 37

Ongoing review of the permission to use internal models

1. Member States shall ensure that competent authorities review on a regular basis, and at least every three years, investment firms' compliance with the requirements for the permission to use internal models as referred to in Article 22 of Regulation (EU) 2019/2033. Competent authorities shall in particular have regard to changes in an investment firm's business and to the implementation of those internal models to new products, and review and assess whether the investment firm uses well-developed and up-to-date techniques and practices for those internal models. Competent

authorities shall ensure that material deficiencies identified in the coverage of risk by an investment firm's internal models are rectified, or take steps to mitigate their consequences, including by imposing capital add-ons or higher multiplication factors.

2. Where, for internal risk-to-market models, numerous overshootings as referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the internal models are not or are no longer accurate, competent authorities shall revoke the permission to use the internal models or impose appropriate measures to ensure that the internal models are improved promptly within a set timeframe.

3. Where an investment firm that has been granted permission to use internal models no longer meets the requirements for applying those internal models, competent authorities shall require the investment firm either to demonstrate that the effect of non-compliance is immaterial or to present a plan and a deadline to comply with those requirements. Competent authorities shall require improvements to the presented plan where that plan is unlikely to result in full compliance or where the deadline is inappropriate.

Where it is unlikely that the investment firm will comply by the prescribed deadline or has not satisfactorily demonstrated that the effect of non-compliance is immaterial, Member States shall ensure that competent authorities revoke the permission to use internal models or limit it to compliant areas or to those areas where compliance can be achieved by an appropriate deadline.

4. EBA shall analyse internal models across investment firms and shall analyse how investment firms using internal models treat similar risks or exposures. It shall inform ESMA thereof.

In order to promote consistent, efficient and effective supervisory practices, EBA shall, on the basis of that analysis and in accordance with Article 16 of Regulation (EU) No 1093/2010, develop guidelines with benchmarks on how investment firms are to use internal models and how those internal models are to be applied to similar risks or exposures.

Member States shall encourage competent authorities to take into account that analysis and those guidelines for the review referred to in paragraph 1.

Section 4

Supervisory measures and powers

Article 38

Supervisory measures

Competent authorities shall require investment firms to take, at an early stage, the measures necessary to address the following problems:

(a) an investment firm does not meet the requirements of this Directive or of Regulation (EU) 2019/2033;

(b) competent authorities have evidence that an investment firm is likely to breach the national provisions transposing this Directive or the provisions of Regulation (EU) 2019/2033 within the next 12 months.

Article 39

Supervisory powers

1. Member States shall ensure that competent authorities have the necessary supervisory powers to intervene in the exercise of their functions into the activity of investment firms in an effective and proportionate way.

2. For the purposes of Article 36, Article 37(3) and Article 38 and of the application of Regulation (EU) 2019/2033, competent authorities shall have the following powers:

(a) to require investment firms to have own funds in excess of the requirements set out in Article 11 of Regulation (EU) 2019/2033, under the conditions laid down in Article 40 of this Directive, or to adjust the own funds and liquid assets required in case of material changes in the business of those investment firms;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 24 and 26;

(c) to require investment firms to present, within one year, a plan to restore compliance with supervisory requirements pursuant to this Directive and to Regulation (EU) 2019/2033, to set a deadline for the implementation of that plan and require improvements to that plan regarding scope and deadline;

(d) to require investment firms to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) to restrict or limit the business, operations or network of investment firms or to request the divestment of activities that pose excessive risks to the financial soundness of an investment firm;

(f) to require the reduction of the risk inherent in the activities, products and systems of investment firms, including outsourced activities;

(g) to require investment firms to limit variable remuneration as a percentage of net revenues where that remuneration is inconsistent with the maintenance of a sound capital base;

(h) to require investment firms to use net profits to strengthen own funds;

(i) to restrict or prohibit distributions or interest payments by an investment firm to shareholders, members or holders of Additional Tier 1 instruments where that restriction or prohibition does not constitute an event of default of the investment firm;

(j) to impose additional or more frequent reporting requirements to those set out in this Directive and Regulation (EU) 2019/2033, including reporting on capital and liquidity positions;

(k) to impose specific liquidity requirements in accordance with Article 42;

(l) to require additional disclosures;

(m) to require investment firms to reduce the risks posed to the security of investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes, data and assets;

3. For the purposes of point (j) of paragraph 2, competent authorities may only impose additional or more frequent reporting requirements on investment firms where the information to be reported is not duplicative and one of the following conditions is met:

(a) one of the cases referred to in points (a) and (b) of Article 38 applies;

(b) the competent authority considers it to be necessary to gather the evidence referred to in point (b) of Article 38;

(c) the additional information is required for the purpose of the supervisory review and evaluation process referred to in Article 36.

Information shall be deemed to be duplicative where the competent authority already has the same or substantially the same information, where that information is capable of being produced by the competent authority or of being obtained by the same competent authority through other means than a requirement on the investment firm to report it. A competent authority shall not require additional information where the information is available to the competent authority in a different format or level of granularity than the additional information to be reported and that different format or granularity does not prevent it from producing substantially similar information.

Article 40

Additional own funds requirement

1. Competent authorities shall impose the additional own funds requirement referred to in point (a) of Article 39(2) only where, on the basis of the reviews carried out in accordance with Articles 36 and 37, they ascertain any of the following situations for an investment firm:

(a) the investment firm is exposed to risks or elements of risks, or poses risks to others that are material and are not covered or not sufficiently covered by the own funds requirement, and especially K-factor requirements, set out in Part Three or Four of Regulation (EU) 2019/2033;

(b) the investment firm does not meet the requirements set out in Articles 24 and 26 and other supervisory measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;

(c) the adjustments in relation to the prudent valuation of the trading book are insufficient to enable the investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

(d) the review carried out in accordance with Article 37 shows that non-compliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital;

(e) the investment firm repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Article 41.

2. For the purposes of point (a) of paragraph 1 of this Article, risks or elements of risks shall be considered not to be covered or to be insufficiently covered by the own funds requirements set out in Parts Three and Four of Regulation (EU) 2019/2033 only where the amounts, types and distribution of capital considered adequate by the competent authority following the supervisory review of the assessment carried out by investment firms in accordance with Article 24(1) of this Directive are higher than the investment firm's own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

For the purposes of the first subparagraph, the capital considered to be adequate may include risks or elements of risks that are explicitly excluded from the own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

3. Competent authorities shall determine the level of the additional own funds required pursuant to point (a) of Article 39(2) as the difference between the capital considered adequate pursuant to paragraph 2 of this Article and the own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

4. Competent authorities shall require investment firms to meet the additional own funds requirement referred to in point (a) of Article 39(2) with own funds subject to the following conditions:

(a) at least three quarters of the additional own funds requirement is met with Tier 1 capital;

(b) at least three quarters of the Tier 1 capital is composed of Common Equity Tier 1 capital;

(c) those own funds are not used to meet any of the own funds requirements set out in points (a), (b) and (c) of Article 11 (1) of Regulation (EU) 2019/2033.

5. Competent authorities shall substantiate in writing their decision to impose an additional own funds requirement as referred to in point (a) of Article 39(2) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 4 of this Article. That includes, in the case set out in point (d) of paragraph 1 of this Article, a specific statement of why the level of capital established in accordance with Article 41(1) is no longer considered sufficient.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify how the risks and elements of risks referred to in paragraph 2 are to be measured, including risks or elements of risks that are explicitly excluded from the own funds requirements set out in Part Three or Four of Regulation (EU) 2019/2033.

EBA shall ensure that the draft regulatory technical standards include indicative qualitative metrics for the amounts of additional own funds referred to in point (a) of Article 39(2), taking into account the range of different business models and legal forms that investment firms may take, and are proportionate in light of:

(a) the implementation burden on investment firms and competent authorities;

(b) the possibility that the higher level of own funds requirements that apply where investment firms do not use internal models justifies the imposition of lower own funds requirements when assessing risks and elements of risks in accordance with paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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

7. Competent authorities may impose an additional own funds requirement in accordance with paragraphs 1 to 6 on investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 on the basis of a case-by-case assessment and where the competent authority deems it to be justified.

Article 41

Guidance on additional own funds

1. Taking into account the principle of proportionality and commensurate with the size, systemic importance, nature, scale and complexity of activities of investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033, competent authorities may require such investment firms to have levels of own funds which, based on Article 24, are sufficiently above the requirements set out in Part Three of Regulation (EU) 2019/2033 and in this Directive, including the additional own funds requirements referred to in point (a) of Article 39(2), to ensure that cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the investment firm to wind down and cease activities in an orderly manner;

2. Competent authorities shall, where appropriate, review the level of own funds that has been set by each investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, in accordance with paragraph 1 of this Article and, where relevant, shall communicate the conclusions of that review to the investment firm concerned, including any expectation for adjustments to the level of own funds established in accordance with paragraph 1 of this Article. Such a communication shall include the date by which the competent authority requires the adjustment to be completed.

Article 42

Specific liquidity requirements

1. Competent authorities shall impose the specific liquidity requirements referred to in point (k) of Article 39(2) of this Directive only where, on the basis of the reviews carried out in accordance with Articles 36 and 37 of this Directive, they conclude that an investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033 or that meets the conditions set out in Article 12 (1) of Regulation (EU) 2019/2033 but has not been exempted from liquidity requirement in accordance with Article 43(1) of Regulation (EU) 2019/2033 is in one of the following situations:

(a) the investment firm is exposed to liquidity risk or elements of liquidity risk that are material and are not covered or not sufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033;

(b) the investment firm does not meet the requirements set out in Articles 24 and 26 of this Directive and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe.

2. For the purposes of point (a) of paragraph 1 of this Article, liquidity risk or elements of liquidity risk shall be considered not to be covered or to be insufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033 only where the amounts and types of liquidity considered adequate by the competent authority following the supervisory review of the assessment carried out by investment firms in accordance with Article 24(1) of this Directive are higher than the investment firm's liquidity requirement set out in Part Five of Regulation (EU) 2019/2033.

3. Competent authorities shall determine the level of the specific liquidity required pursuant to point (k) of Article 39(2) of this Directive as the difference between the liquidity considered adequate pursuant to paragraph 2 of this Article and the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033.

4. Competent authorities shall require investment firms to meet the specific liquidity requirements referred to in point (k) of Article 39(2) of this Directive with liquid assets as set out in Article 43 of Regulation (EU) 2019/2033.

5. Competent authorities shall substantiate in writing their decision to impose a specific liquidity requirement as referred to in point (k) of Article 39(2) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 3 of this Article.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify in a manner that is appropriate to the size, the structure and the internal organisation of investment firms and the nature, scope and complexity of their activities how the liquidity risk and elements of liquidity risk referred to in paragraph 2 are to be measured.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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

Article 43

Cooperation with resolution authorities

Competent authorities shall notify the relevant resolution authorities of any additional own funds requirement imposed pursuant to point (a) of Article 39(2) of this Directive for an investment firm that falls under the scope of Directive 2014/59/EU and about any expectation for adjustments as referred to in Article 41(2) of this Directive in respect to such investment firm.

Article 44

Publication requirements

Member States shall ensure that the competent authorities have the power to:

(a) require investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 and investment firms referred to in Article 46(2) of Regulation (EU) 2019/2033 to publish the information referred to in Article 46 of that Regulation more than once a year and to set deadlines for that publication;

(b) require investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 and investment firms referred to in Article 46(2) of Regulation (EU) 2019/2033 to use specific media and locations, in particular the investment firms' websites, for publications other than the financial statements;

(c) require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the investment firm group in accordance with Article 26(1) of this Directive and with Article 10 of Directive 2014/65/EU.

Article 45

Obligation to inform EBA

1. Competent authorities shall inform EBA of:

(a) their review and evaluation process referred to in Article 36;

(b) the methodology used for decisions referred to in Articles 39, 40 and 41;

(c) the level of administrative sanctions laid down by Member States, referred to in Article 18.

EBA shall transmit the information referred to in this paragraph to ESMA.

2. EBA, in consultation with ESMA, shall assess the information provided by competent authorities to develop consistency in the supervisory review and evaluation process. To complete its assessment, EBA, after consulting ESMA, may request additional information from competent authorities on a proportional basis and in accordance with Article 35 of Regulation (EU) No 1093/2010.

EBA shall publish on its website the aggregated information referred to in point (c) of the first subparagraph of paragraph 1.

EBA shall report to the European Parliament and to the Council on the degree of convergence of the application of this Chapter among Member States. EBA shall conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1093/2010 where necessary. It shall inform ESMA of such peer reviews.

EBA and ESMA shall issue guidelines for the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 16 of Regulation (EU) No 1095/2010, as applicable, to further specify, in a manner that is appropriate to the size, the structure and the internal organisation of investment firms and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraph 1 and the assessment of the treatment of the risks referred to in Article 29 of this Directive.

CHAPTER 3

Supervision of investment firm groups

Section 1

Supervision of investment firm groups on a consolidated basis and supervision of compliance with the group capital test

Article 46

Determination of the group supervisor

1. Member States shall ensure that, where an investment firm group is headed by a Union parent investment firm, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of that Union parent investment firm.

2. Member States shall ensure that, where the parent undertaking of an investment firm is a Union parent investment holding company or a Union parent mixed financial holding company, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of that investment firm.

3. Member States shall ensure that, where two or more investment firms authorised in two or more Member States have the same Union parent investment holding company or the same Union parent mixed financial holding company, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of the investment firm authorised in the Member State in which the investment holding company or mixed financial holding company is established.

4. Member States shall ensure that, where the parent undertakings of two or more investment firms authorised in two or more Member States comprise more than one investment holding company or mixed financial holding company with head offices in different Member States and where there is an investment firm in each of those Member States, supervision on a consolidated basis or supervision of compliance with the group capital test shall be exercised by the competent authority of the investment firm with the largest balance sheet total.

5. Member States shall ensure that, where two or more investment firms authorised in the Union have as their parent the same Union investment holding company or Union mixed financial holding company and none of those investment firms has been authorised in the Member State in which the investment holding company or mixed financial holding company was set up, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of the investment firm with the largest balance sheet total.

6. Competent authorities may, by common agreement, waive the criteria referred to in paragraphs 3, 4 and 5 where their application would not be appropriate for the effective supervision on a consolidated basis or supervision of compliance with the group capital test, taking into account the investment firms concerned and the importance of their activities in the relevant Member States, and designate a different competent authority to exercise supervision on a consolidated basis or supervision of compliance with the group capital test. In those cases, competent authorities shall, before adopting any such decision, give the Union parent investment holding company or Union parent mixed financial holding company or investment firm with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that intended decision. Competent authorities shall notify the Commission and EBA of any such decision.

Article 47

Information requirements in emergency situations

Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of an investment firm group have been authorised, the group supervisor determined pursuant to Article 46 of this Directive shall, subject to Section 2 of Chapter 1 of this Title, alert, as soon as practicable, EBA, ESRB and any relevant competent authorities and shall communicate all information essential for the performance of their tasks.

Article 48

Colleges of supervisors

1. Member States shall ensure that the group supervisor determined pursuant to Article 46 of this Directive may, if appropriate, establish colleges of supervisors to facilitate the exercise of the tasks referred to in this Article and to ensure coordination and cooperation with relevant third-country supervisory authorities in particular where this is needed for the purpose of applying point (c) of the first subparagraph of Article 23(1) and Article 23(2) of Regulation (EU) 2019/2033 to exchange and update relevant information on the margin model with the supervisory authorities of the qualifying central counterparties (QCCPs).

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

(a) the tasks referred to in Article 47;

(b) the coordination of information requests where this is necessary for facilitating supervision on a consolidated basis, in accordance with Article 7 of Regulation (EU) 2019/2033;

(c) the coordination of information requests, in cases where several competent authorities of investment firms that are part of the same group need to request either from the competent authority of a clearing member's home Member State or from the competent authority of the QCCP information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firms;

(d) the exchange of information between all competent authorities and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010 and with ESMA in accordance with Article 21 of Regulation (EU) No 1095/2010;

(e) reaching an agreement on the voluntary delegation between competent authorities of tasks and responsibilities, where appropriate;

(f) increasing the efficiency of supervision by seeking to avoid the unnecessary duplication of supervisory requirements.

3. Where appropriate, colleges of supervisors may also be established where subsidiaries of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company are located in a third country.

4. EBA shall, in accordance with Article 21 of Regulation (EU) No 1093/2010, participate in the meetings of the colleges of supervisors.

5. The following authorities shall be members in the college of supervisors:

(a) the competent authorities responsible for the supervision of subsidiaries of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company;

(b) where appropriate, third-country supervisory authorities, subject to confidentiality requirements that are equivalent in the opinion of all competent authorities to the requirements laid down in Section 2 of Chapter I of this Title.

6. The group supervisor determined pursuant to Article 46 shall chair the meetings of the college of supervisors and adopt decisions. That group supervisor shall keep all members of the college of supervisors fully informed in advance of the organisation of those meetings, of the main issues to be discussed and of the activities to be considered. The group supervisor shall also keep all the members of the college of supervisors fully informed, in a timely manner, of the decisions adopted in those meetings or the measures carried out.

The group supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated by the authorities referred to in paragraph 5 when adopting decisions.

The establishment and functioning of the colleges of supervisors shall be formalised by means of written arrangements.

7. In the event of disagreement with a decision adopted by the group supervisor on the functioning of colleges of supervisors, any of the competent authorities concerned may refer the matter to EBA and request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the functioning of colleges of supervisors under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010.

8. EBA shall, in consultation with ESMA, develop draft regulatory technical standards to further specify the conditions under which the colleges of supervisors exercise their tasks referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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

Article 49

Cooperation requirements

1. Member States shall ensure that the group supervisor and the competent authorities referred to in Article 48(5) shall provide each other with all relevant information as required, including the following:

(a) identification of the investment firm group's legal and governance structure, including its organisational structure, covering all regulated and non-regulated entities, non-regulated subsidiaries and the parent undertakings, and of the competent authorities of the regulated entities in the investment firm group;

(b) procedures for the collection of information from the investment firms in an investment firm group, and the procedures for the verification of that information;

(c) any adverse developments in investment firms or in other entities of an investment firm group, which could seriously affect those investment firms;

(d) any significant sanctions and exceptional measures taken by competent authorities in accordance with national provisions transposing this Directive;

(e) the imposition of a specific own funds requirement under Article 39 of this Directive.

2. Competent authorities and the group supervisor may refer to EBA, in accordance with Article 19(1) of Regulation (EU) No 1093/2010, where relevant information has not been communicated pursuant to paragraph 1 without undue delay or where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable period of time.

EBA may, in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010 and on its own initiative assist competent authorities in developing consistent cooperation practices.

3. Member States shall ensure that competent authorities, before adopting a decision that may be important for other competent authorities' supervisory tasks, consult each other on the following:

(a) changes in the shareholder, organisational or management structure of investment firms in the investment firm group, which require the approval or authorisation of competent authorities;

(b) significant sanctions imposed on investment firms by competent authorities or any other exceptional measures taken by those authorities; and

(c) specific own funds requirements imposed in accordance with Article 39.

4. The group supervisor shall be consulted where significant sanctions are to be imposed or any other exceptional measures are to be taken by competent authorities as referred to in point (b) of paragraph 3.

5. By way of derogation from paragraph 3, a competent authority is not obliged to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision, in which case the competent authority shall inform the other competent authorities concerned of that decision not to consult without delay.

Article 50

Verification of information concerning entities located in other Member States

1. Member States shall ensure that where a competent authority in one Member State needs to verify information about investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings, mixed-activity holding companies or subsidiaries that are located in another Member State, including subsidiaries which are insurance companies, and makes a request to that effect, the relevant competent authorities of that other Member State carry out that verification in accordance with paragraph 2.

2. Competent authorities that have received a request pursuant to paragraph 1 shall do any of the following:

(a) carry out the verification themselves within the framework of their competence;

(b) allow the competent authorities who made that request to carry out the verification;

(c) request an auditor or expert to carry out the verification impartially and to report the results promptly.

For the purposes of points (a) and (c), the competent authorities that made the request shall be allowed to participate in the verification.

Section 2

Investment holding companies, mixed financial holding companies and mixed-activity holding companies

Article 51

Inclusion of holding companies in supervision of compliance with the group capital test

Member States shall ensure that investment holding companies and mixed financial holding companies are included in the supervision of compliance with the group capital test.

Article 52

Qualifications of directors

Member States shall require that the members of the management body of an investment holding company or mixed financial holding company are of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company.

Article 53

Mixed-activity holding companies

1. Member States shall provide that, where the parent undertaking of an investment firm is a mixed-activity holding company, the competent authorities responsible for the supervision of the investment firm may:

(a) require that the mixed-activity holding company supply them with any information that may be relevant for the supervision of that investment firm;

(b) supervise transactions between the investment firm and the mixed-activity holding company and the subsidiaries of the latter, and require the investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify the information received from mixed-activity holding companies and their subsidiaries.

Article 54

Sanctions

In accordance with Section 3 of Chapter 2 of this Title, Member States shall ensure that administrative sanctions or other administrative measures aiming to end or mitigate breaches of the laws, regulations or administrative provisions transposing this Chapter or to address the causes of such breaches may be imposed on investment holding companies, mixed financial holding companies and mixed-activity holding companies, or their effective managers.

Article 55

Assessment of third-country supervision and other supervisory techniques

1. Member States shall ensure that, where two or more investment firms that are subsidiaries of the same parent undertaking, the head office of which is in a third country, are not subject to effective supervision at group level, the competent authority assesses whether the investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in this Directive and in Part One of Regulation (EU) 2019/2033.

2. Where the assessment referred to in paragraph 1 of this Article concludes that no such equivalent supervision applies, Member States shall allow for appropriate supervisory techniques which achieve the objectives of supervision in accordance with Article 7 or 8 of Regulation (EU) 2019/2033. Those supervisory techniques shall be decided by the competent authority which would be the group supervisor had the parent undertaking been established in the Union, after consulting the other competent authorities involved. Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to EBA and to the Commission.

3. The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company.

Article 56

Cooperation with third-country supervisory authorities

The Commission may submit recommendations to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of supervising compliance with the group capital test by the following investment firms:

(a) investment firms the parent undertaking of which has its head office in a third country;

(b) investment firms located in third countries, the parent undertaking of which has its head office in the Union.

TITLE V

PUBLICATION BY COMPETENT AUTHORITIES

Article 57

Publication requirements

1. Competent authorities shall make public all of the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State pursuant to this Directive;

(b) the manner of exercise of the options and discretions available pursuant to this Directive and to Regulation (EU) 2019/2033;

(c) the general criteria and methodologies they use in the supervisory review and evaluation referred to in Article 36 of this Directive;

(d) aggregate statistical data on key aspects of the implementation of this Directive and of Regulation (EU) 2019/2033 in their Member State, including the number and nature of supervisory measures taken in accordance with point (a) of Article 39(2) of this Directive and of administrative sanctions imposed in accordance with Article 18 of this Directive.

2. The information published in accordance with paragraph 1 shall be sufficiently comprehensive and accurate to enable a meaningful comparison of the application of points (b), (c) and (d) of paragraph 1 by the competent authorities of the different Member States.

3. The publication of information shall follow a common format and shall be updated regularly. It shall be accessible at a single electronic location.

4. EBA, in consultation with ESMA, shall develop draft implementing technical standards to determine the format, structure, content lists and annual publication date of the information listed in paragraph 1.

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.

5. EBA shall submit the draft implementing technical standards referred to in paragraph 4 to the Commission by 26 June 2021.

TITLE VI

DELEGATED ACTS

Article 58

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3(2), Article 29(4) and Article 36(4) shall be conferred on the Commission for a period of five years from 25 December 2019.

3. The delegation of power referred to in Article 3(2), Article 29(4) and Article 36(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3(2), Article 29(4) and Article 36(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

TITLE VII

AMENDMENTS TO OTHER DIRECTIVES

Article 59

Amendment to Directive 2002/87/EC

In Article 2 of Directive 2002/87/EC, point 7 is replaced by the following:

'(7) "sectoral rules" means Union legal acts relating to the prudential supervision of regulated entities, in particular Regulations (EU) No 575/2013 (*) and (EU) 2019/2033 (**) of the European Parliament and of the Council and Directives 2009/138/EC, 2013/36/EU (***), 2014/65/EU (****) and (EU) 2019/2034 (*****) of the European Parliament and of the Council.

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

(**) 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).

(***) 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).

(****) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(*****) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).'.

Article 60

Amendment to Directive 2009/65/EC

In point (a) of Article 7(1) of Directive 2009/65/EC, point (iii) is replaced by the following:

'(iii) irrespective of the amount of those requirements, the own funds of the management company must at no time be less than the amount prescribed in Article 13 of Regulation (EU) 2019/2033 of the European Parliament and of the Council (*).

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(*) 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).'.

Article 61

Amendment to Directive 2011/61/EU

In Article 9 of Directive 2011/61/EU, paragraph 5 is replaced by the following:

'5. Irrespective of paragraph 3, the own funds of the AIFM shall never be less than the amount required under Article 13 of Regulation (EU) 2019/2033 of the European Parliament and of the Council (*).

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(*) 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).'.

Article 62

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) the title is replaced by the following:

'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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC';

(2) Article 1 is replaced by the following:

'*Article 1*

Subject matter

This Directive lays down rules concerning:

(a) access to the activity of credit institutions;

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

(c) the prudential supervision of credit institutions by competent authorities in a manner that is consistent with the rules set out in Regulation (EU) No 575/2013;

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

(3) Article 2 is amended as follows:

(a) paragraphs 2 and 3 are deleted;

(b) in paragraph 5, point (1) is deleted;

(c) paragraph 6 is replaced by the following:

'6. The entities referred to in points (3) to (24) of paragraph 5 of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3.';

(4) in Article 3(1), point (4) is deleted;

(5) Article 5 is replaced by the following:

'*Article 5*

Coordination within Member States

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

(6) the following article is inserted:

'*Article 8a*

Specific requirements for authorisation of credit institutions referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013

1. Member States shall require the undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU to submit an application for authorisation in accordance with Article 8, at the latest on the day when either of the following events takes place:

(a) the average of monthly total assets, calculated over a period of 12 consecutive months, is equal to or exceeds EUR 30 billion; or

(b) the average of monthly total assets calculated over a period of 12 consecutive months is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than EUR 30 billion and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion, both calculated as an average over a period of 12 consecutive months.

2. The undertakings referred to in paragraph 1 of this Article may continue carrying out the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 until they obtain the authorisation referred to in paragraph 1 of this Article.

3. By way of derogation from paragraph 1 of this Article, the undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 that on 24 December 2019 carry out activities as investment firms authorised under Directive 2014/65/EU shall apply for authorisation in accordance with Article 8 of this Directive by 27 December 2020.

4. Where the competent authority, after receiving the information in accordance with Article 95a of Directive 2014/65/EU, determines that an undertaking is to be authorised as a credit institution in accordance with Article 8 of this Directive, it shall notify the undertaking and the competent authority as defined in point (26) of Article 4(1) of Directive 2014/65/EU and shall take over the authorisation procedure from the date of that notification.

5. In cases of reauthorisation, the authorising competent authority shall ensure that the process is as streamlined as possible and that information from existing authorisations is taken into account.

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

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

(b) the methodology for calculating the thresholds referred to in paragraph 1.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in points (a) and (b) of the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.';

(7) in Article 18, the following point is inserted:

'(aa) uses its authorisation exclusively to engage in the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and has, for a period of five consecutive years, average total assets below the thresholds set out in that Article;';

(8) Article 20 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. EBA shall publish on its website, and shall update at least annually, a list of the names of all credit institutions that have been granted authorisation.';

(b) the following paragraph is inserted:

'3a. The list referred to in paragraph 2 of this Article shall include the names of undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and shall identify those credit institutions as such. That list shall also outline any changes in comparison with the previous version of the list.';

(9) in Article 21b, paragraph 5 is replaced by the following:

'5. For the purposes of this Article:

(a) the total value of assets in the Union of the third-country group shall be the sum of the following:

(i) the total value of assets of each institution in the Union of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheets, where an institution's balance sheet is not consolidated; and

(ii) the total value of assets of each branch of the third-country group authorised in the Union in accordance with this Directive, Regulation (EU) No 600/2014 of the European Parliament and of the Council (*) or Directive 2014/65/EU;

(b) the term "institution" shall also include investment firms.

(*) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)';

(10) Title IV is deleted;

(11) in Article 51(1), the first subparagraph is replaced by the following:

'1. The competent authorities of a host Member State may request the consolidating supervisor, where Article 112 (1) applies, or the competent authorities of the home Member State, that a branch of a credit institution shall be considered to be significant.';

(12) in Article 53, paragraph 2 is replaced by the following:

'2. Paragraph 1 shall not prevent the competent authorities from exchanging information with each other or transmitting information to the ESRB, EBA, or the European Supervisory Authority (European Securities and Markets Authority) ("ESMA") established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*) in accordance with this Directive, with Regulation (EU) No 575/2013, with Regulation (EU) 2019/2033 of the European Parliament and of the Council (**), with Article 15 of Regulation (EU) No 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010, with Directive (EU) 2019/2034 of the European Parliament and of the Council (***) and with other directives applicable to credit institutions. That information shall be subject to paragraph 1.

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

(**) 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).

(***) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).';

(13) in Article 66(1), the following point is inserted:

'(aa) carrying out at least one of the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and meeting the threshold indicated in that Article without being authorised as a credit institution;';

(14) in Article 76(5), the sixth subparagraph is deleted;

(15) in Article 86, paragraph 11 is replaced by the following:

'11. Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 8, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. Those operational steps shall include holding collateral immediately available for central bank funding. This includes holding collateral in the currency of another Member State where necessary, or the currency of a third country to which the institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.';

(16) in Article 110, paragraph 2 is deleted;

(17) Article 111 is replaced by the following:

'Article 111

Determination of the consolidating supervisor

1. Where a parent undertaking is a parent credit institution in a Member State or an EU parent credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent credit institution in the Member State or that EU parent credit institution on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm and none of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent investment firm in the Member State or that EU parent investment firm on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm, and at least one of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution, or where there are several credit institutions, the credit institution with the largest balance sheet total.

2. Where the parent of a credit institution or investment firm is 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, supervision on a consolidated basis shall be exercised by the competent authority that supervises the credit institution or investment firm on an individual basis.

3. Where two or more credit institutions or investment firms authorised in the Union have the same parent financial holding company in a Member State, parent mixed financial holding company in a Member State, EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by:

(a) the competent authority of the credit institution where there is only one credit institution within the group;

(b) the competent authority of the credit institution with the largest balance sheet total, where there are several credit institutions within the group; or

(c) the competent authority of the investment firm with the largest balance sheet total, where the group does not include any credit institution.

4. Where consolidation is required pursuant to Article 18(3) or (6) of Regulation (EU) No 575/2013, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total or, where the group does not include any credit institution, by the competent authority of the investment firm with the largest balance sheet total.

5. By way of derogation from the third subparagraph of paragraph 1, from point (b) of paragraph 3 and from paragraph 4, where a competent authority supervises on an individual basis more than one credit institution within a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more credit institutions within the group where the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institutions supervised on an individual basis by any other competent authority.

By way of derogation from point (c) of paragraph 3, where a competent authority supervises on an individual basis more than one investment firm within a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more investment firms within the group with the highest balance sheet total in aggregate.

6. In particular cases, the competent authorities may waive by common agreement the criteria referred to in paragraphs 1, 3 and 4 and appoint a different competent authority to exercise supervision on a consolidated basis where the application of the criteria referred to therein would be inappropriate, taking into account the credit institutions or investment firms concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision on a consolidated basis by the same competent authority. In such cases, the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the credit institution or investment firm with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.

7. The competent authorities shall notify the Commission and EBA without delay of any agreement falling within paragraph 6.';

(18) in Article 114(1), the first subparagraph is replaced by the following:

'1. Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches as referred to in Article 51 are established, the consolidating supervisor shall, subject to Section 2 of Chapter 1 of Title VII of this Directive and where applicable Section 2 of Chapter 1 of Title IV of Directive (EU) 2019/2034, alert as soon as is practicable, EBA and the authorities referred to in Article 58(4) and Article 59 and shall communicate all information essential for the performance of their tasks. Those obligations shall apply to all competent authorities.';

(19) Article 116 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Title VII, Chapter 1, Section II of this Directive, and, where applicable, Section 2 of Chapter 1 of Title IV of Directive (EU) 2019/2034 shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive and under Regulation (EU) No 575/2013.';

(b) in paragraph 6, the first subparagraph is replaced by the following:

'6. The competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company and the competent authorities of a host Member State where significant branches as referred to in Article 51 are established, ESCB central banks as appropriate, and third-country supervisory authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Title VII, Chapter 1, Section II of this Directive and, where applicable, under Section 2 of Chapter 1 of Title IV of Directive (EU) 2019/2034 may participate in colleges of supervisors.';

(c) in paragraph 9, the first subparagraph is replaced by the following:

'9. The consolidating supervisor, subject to the confidentiality requirements under Title VII, Chapter 1, Section II, of this Directive, and where applicable, under Section 2 of Chapter 1 of Title IV of Directive (EU) 2019/2034, shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.';

(20) in Article 125, paragraph 2 is replaced by the following:

'2. Information received within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive for credit institutions or under Article 15 of Directive (EU) 2019/2034.';

(21) in Article 128, the fifth paragraph is deleted;

(22) in Article 129, paragraphs 2, 3 and 4 are deleted;

(23) in Article 130, paragraphs 2, 3 and 4 are deleted;

(24) in Article 143(1), point (d) is replaced by the following:

'(d) without prejudice to the provisions set out in Title VII, Chapter 1, Section II of this Directive and where applicable, the provisions set out in Title IV, Chapter 1, Section 2 of Directive (EU) 2019/2034, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with point (a) of Article 102(1) of this Directive and of administrative penalties imposed in accordance with Article 65 of this Directive.'.

Article 63

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) in Article 2(1), point (3) is replaced by the following:

'(3) "investment firm" means an investment firm as defined in point (22) of Article 4(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council (*) which is subject to the initial capital requirement laid down in Article 9(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council (**).

(*) 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).

(**) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).';

(2) in Article 45, the following paragraph is added:

'3. In accordance with Article 65(4) of Regulation (EU) 2019/2033, references to Article 92 of Regulation (EU) No 575/2013 in this Directive as regards the own funds requirements on an individual basis of investment firms referred to in point 3 of Article 2(1) of this Directive and which are not investment firms referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033 shall be construed in the following way:

(a) references to point (c) of Article 92(1) of Regulation (EU) No 575/2013 as regards the total capital ratio requirement in this Directive shall refer to Article 11(1) of Regulation (EU) 2019/2033;

(b) references to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this Directive shall refer to the applicable requirement in Article 11(1) of Regulation (EU) 2019/2033 multiplied by 12,5.

In accordance with Article 65 of Directive (EU) 2019/2034, references in this Directive to Article 104a of Directive 2013/36/EU as regards additional own funds requirements of investment firms referred to in point 3 of Article 2(1) of this Directive and which are not investment firms referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033 shall be construed as referring to Article 40 of Directive (EU) 2019/2034.'.

Article 64

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 8, point (c) is replaced by the following:

'(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council (*);

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(*) 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).';

(2) Article 15 is replaced by the following:

'*Article 15*

Initial capital endowment

Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Article 9 of Directive (EU) 2019/2034 of the European Parliament and of the Council (*), having regard to the nature of the investment service or activity in question.

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(*) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).';

(3) Article 41 is replaced by the following:

'*Article 41*

Granting of the authorisation

1. The competent authority of the Member State where the third-country firm has established or intends to establish its branch shall only grant authorisation where the competent authority is satisfied that:

(a) the conditions under Article 39 are fulfilled; and

(b) the branch of the third-country firm will be able to comply with the provisions referred to in paragraphs 2 and 3.

The competent authority shall inform the third-country firm, within six months of submission of a complete application, whether or not the authorisation has been granted.

2. The branch of the third-country firm authorised in accordance with paragraph 1 shall comply with the obligations laid down in Articles 16 to 20, 23, 24, 25 and 27, Article 28(1), and Articles 30, 31 and 32 of this Directive and in Articles 3 to 26 of Regulation (EU) No 600/2014 and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.

Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive and shall not treat any branch of third-country firms more favourably than Union firms.

Member States shall ensure that competent authorities notify ESMA on an annual basis of the list of branches of third-country firms active on their territory.

ESMA shall publish on annual basis a list of third-country branches active in the Union, including the name of the third-country firm to which the branch belongs.

3. The branch of the third-country firm that is authorised in accordance with paragraph 1 shall report to the competent authority referred to in paragraph 2 the following information on an annual basis:

(a) the scale and scope of the services and activities carried out by the branch in that Member State;

(b) for third-country firms performing the activity listed in point (3) of Section A of Annex I, their monthly minimum, average and maximum exposure to EU counterparties;

(c) for third-country firms providing one or both of the services listed in point (6) of Section A of Annex I, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the previous 12 months;

(d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(e) a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in point (f) of Article 39(2);

(f) their risk management policy and arrangements applied by the branch for the services and activities referred to in point (a);

(g) the governance arrangements, including key function holders for the activities of the branch;

(h) any other information considered by the competent authority to be necessary to enable comprehensive monitoring of the activities of the branch.

4. Upon request, the competent authorities shall communicate the following information to ESMA:

(a) all the authorisations for branches authorised in accordance with paragraph 1 and any subsequent changes to such authorisations;

(b) the scale and scope of the services and activities carried out by an authorised branch in the Member State;

(c) the turnover and the total assets corresponding to the services and activities referred to in point (b);

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

5. The competent authorities referred to in paragraph 2 of this Article, the competent authorities of entities that are part of the same group to which branches of third-country firms authorised in accordance with paragraph 1 belong, and ESMA and EBA shall cooperate closely to ensure that all activities of that group in the Union are subject to comprehensive, consistent and effective supervision in accordance with this Directive, Regulation (EU) No 575/2013, Regulation (EU) No 600/2014, Regulation (EU) 2019/2033, Directive 2013/36/EU, and Directive (EU) 2019/2034.

6. ESMA shall develop draft implementing technical standards to specify the format in which the information referred to in paragraphs 3 and 4 is to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by 26 September 2020.

Power is conferred on the Commission to supplement this Directive by adopting the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(4) Article 42 is replaced by the following:

'Article 42

Provision of services at the exclusive initiative of the client

1. Member States shall ensure that where a retail client or professional client within the meaning of Section II of Annex II established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, the requirement for authorisation under Article 39 shall not apply to the provision of that service or activity by the third-country firm to that person, including a relationship specifically relating to the provision of that service or activity.

Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, 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.

2. An initiative by a client as referred to in paragraph 1 shall not entitle the third-country firm to market new categories of investment products or investment services to that client otherwise than through the branch, where one is required in accordance with national law.';

(5) in Article 49, paragraph 1 is replaced by the following:

'1. Member States shall require regulated markets to adopt tick-size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with paragraph 4. The application of tick sizes shall not prevent regulated markets from matching orders large in scale at mid-point within the current bid and offer prices.';

(6) in Article 81(3), point (a) is replaced by the following:

'(a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;';

(7) the following article is inserted:

'Article 95a

Transitional provision on the authorisation of credit institution referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013

Competent authorities shall inform the competent authority referred to in Article 8 of Directive 2013/36/EU where the envisaged total assets of an undertaking which has applied for authorisation pursuant to Title II of this Directive before 25 December 2019 in order to carry out the activities referred to in points (3) and (6) of Section A of Annex I are equal to or exceed EUR 30 billion, and notify the applicant thereof.'.

TITLE VIII

FINAL PROVISIONS

Article 65

References to Directive 2013/36/EU in other Union legal acts

For the purposes of prudential supervision and resolution of investment firms, references to Directive 2013/36/EU in other Union acts shall be construed as references to this Directive.

Article 66

Review

By 26 June 2024, the Commission, in close cooperation with EBA and ESMA, shall submit a report, together with a legislative proposal if appropriate, to the European Parliament and to the Council, on the following:

(a) the provisions on remuneration in this Directive and in Regulation (EU) 2019/2033 as well as in Directives 2009/65/EC and 2011/61/EU with the aim of achieving a level playing field for all investment firms active in the Union, including the application of those provisions;

(b) the appropriateness of the reporting and disclosure requirements in this Directive and in Regulation (EU) 2019/2033, taking into account the principle of proportionality;

(c) an assessment, which shall take into account the EBA report referred to in Article 35 and the taxonomy on sustainable finance, on whether any:

  (i) ESG risks are to be considered for an investment firm's internal governance;

  (ii) ESG risks are to be considered for an investment firm's remuneration policy;

  (iii) ESG risks are to be considered for the treatment of risks;

  (iv) ESG risks are to be included in the supervisory review and evaluation process;

(d) the effectiveness of information-sharing arrangements under this Directive;

(e) the cooperation of the Union and Member States with third countries in the application of this Directive and of Regulation (EU) 2019/2033;

(f) the implementation of this Directive and of Regulation (EU) 2019/2033 to investment firms on the basis of their legal structure or ownership model;

(g) the potential for investment firms to pose a risk of disruption in the financial system with serious negative consequences to the financial system and the real economy and appropriate macroprudential tools to address such a risk and replace the requirements of point (d) of Article 36(1) of this Directive;

(h) the conditions under which the competent authorities may apply to investment firms, in accordance with Article 5 of this Directive, the requirements of Regulation (EU) No 575/2013.

Article 67

Transposition

1. By 26 June 2021, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 26 June 2021. However, Member States shall apply the measures necessary to comply with point (5) of Article 64 from 26 March 2020.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. As soon as this Directive has entered into force, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments, of any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

3. Member States shall communicate to the Commission and to EBA the text of the provisions of national law which they adopt in the field covered by this Directive.

Where the documents accompanying notification of transposition measures provided by Member States are not sufficient to fully assess the compliance of the transposing provisions with certain provisions of this Directive, the Commission may, upon EBA's request and with a view to carrying out its tasks under Regulation (EU) No 1093/2010, or on its own initiative, require Member States to provide more detailed information regarding the transposition and implementation of those provisions and this Directive.

Article 68

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 69

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 27 November 2019.

For the European Parliament	*For the Council*
The President	*The President*
D. M. SASSOLI	T. TUPPURAINEN

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2019/2035

of 28 June 2019

supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ([1]), and in particular Articles 3(5), 87(3), 94(3), 97(2), 101(3), 106(1), 118(1) and (2), 119(1) and 122(2), Articles 271(2) and 279(2) thereof,

Whereas:

(1) Regulation (EU) 2016/429 lays down rules for the prevention and control of diseases which are transmissible to animals or humans, including, inter alia, rules for establishments keeping terrestrial animals and hatcheries, and for the traceability of certain kept terrestrial animals and hatching eggs within the Union. Regulation (EU) 2016/429 also empowers the Commission to adopt rules to supplement certain non-essential elements of that Regulation by means of delegated acts. It is therefore appropriate to adopt such supplementing rules in order to ensure the smooth functioning of the system in the new legal framework established by Regulation (EU) 2016/429.

(2) More particularly, this Regulation should lay down rules supplementing those laid down in Chapter 1 and 2 of Title I of Part IV of Regulation (EU) 2016/429 as regards the registration obligation of transporters engaged in the transport of certain kept terrestrial animals other than ungulates, the approval of establishments keeping terrestrial animals posing a significant animal health risk and hatcheries, the registers of transporters and establishments of kept terrestrial animals and hatching eggs to be kept by competent authorities, the record keeping obligations of operators, and the traceability requirements for kept terrestrial animals and hatching eggs. In addition, Regulation (EU) 2016/429 empowers the Commission to lay down rules to ensure that Part IV thereof, is correctly applied to movements of pet animals, other than non-commercial movements. Therefore, this Regulation should also lay down rules regarding such movements.

(3) 'Hatching eggs' fall within the definition of 'germinal products' set out in point 28 of Article 4 of Regulation (EU) 2016/429, and accordingly are subject to the rules laid down in that Regulation for germinal products. At the same time, the animal health requirements laid down in this Regulation for poultry and captive birds should also apply to hatching eggs of those birds and therefore hatching eggs and the establishments supplying them should be included in the scope of this Regulation.

([1]) OJ L 84, 31.3.2016, p. 1.

(4) While the supplementing rules laid down in this Regulation should be applied to all kept terrestrial animals, there are certain horse populations kept under wild or semi-wild conditions in defined areas in the Union that do not entirely depend on human control for their survival and reproduction, and therefore the traceability requirements laid down in this Regulation cannot be fully applied to those animals. This Regulation should therefore clarify that while the animal health rules laid down in the framework of Regulation (EU) 2016/429 generally apply to these animals of domestic equine species, certain specific derogations are required as it is not possible for the identification requirements of kept terrestrial animals to be applied to horses that are living outside of human control.

(5) In addition, the rules laid down in this Regulation should supplement the rules laid down in Part IX of Regulation (EU) 2016/429, as regards the transitional measures to protect the acquired rights and legitimate expectations of stakeholders resulting from pre-existing Union acts.

(6) The rules laid down in this Regulation are substantively linked and apply to operators transporting or keeping terrestrial animals or hatching eggs. Therefore, in the interest of coherency, simplicity and for their effective application, and to avoid a duplication of rules, they should be laid down in a single act rather than dispersed in a number of separate acts containing many cross-references. This approach is also consistent with the one of principle objectives of Regulation (EU) 2016/429, which was to streamline Union animal health rules and thus make them more transparent and easier to apply.

(7) Article 87(3) of Regulation (EU) 2016/429 empowers the Commission to specify the types of transporters other than those engaged in the transportation of kept ungulates between Member States or between a Member State and a third country, whose transport activity poses specific and significant risks for certain species of animals, and to lay down the information requirements that those transporters must comply with in order to be registered in accordance with Article 93 of Regulation (EU) 2016/429. Therefore, in order to allow the competent authority to efficiently carry out surveillance and prevent, control and eradicate transmissible animal diseases, it is appropriate to establish in this Regulation a list of the other types of transporters and to lay down rules for the information to be provided by them for registration purposes with the competent authority.

(8) Article 94(1)(a) of Regulation (EU) 2016/429 provides that kept ungulates may only be moved to another Member State if those animals were assembled on establishments approved by the competent authority in accordance with that Regulation. Article 94(3)(a) of Regulation (EU) 2016/429 empowers the Commission to adopt delegated acts providing for derogations from the requirement to apply to the competent authority for approval for certain types of establishments, where those establishments pose an insignificant risk.

(9) Given the specific situation of equine animals which are not always primarily kept for food producing purposes, but often for recreational and sporting purposes, and in most cases those animals are simply gathered on an establishment, in order to be moved to another Member State, for purposes such as participation in exhibitions, sporting, cultural or similar events, it is appropriate to provide for a derogation in this Regulation from the requirements for operators of those establishments to apply to the competent authority for approval as those establishments pose an insignificant animal health risk and no residency period is applicable in case of the listed diseases for equine animals.

(10) Article 94(1)(c) of Regulation (EU) 2016/429 provides that hatching eggs may only be moved to another Member State if those eggs come from an establishment approved by the competent authority in accordance with that Regulation. Hatching eggs of poultry or other captive birds fall within the definition of hatching eggs laid down in Article 4 of Regulation (EU) 2016/429, and accordingly operators of establishments producing those eggs which are to be moved to another Member State are required to apply to the competent authority for approval of their establishment.

(11) However, hatcheries of captive birds do not pose the same health risk for the spread of listed diseases as hatcheries of poultry. The importance and volume of production of hatchlings and hatching eggs of captive birds is much smaller than that of poultry for agricultural production. In addition, the commercial trade circuits of poultry production and captive birds, and in particular those of hatching eggs, are distinct from one another and have limited contact. Therefore, the risk for the spread of listed diseases to poultry via the movements of hatchlings and hatching eggs of captive birds is limited. Accordingly, this Regulation should provide for a derogation from the requirements to apply to the competent authority for approval for operators of hatcheries of captive birds.

(12) Article 94(1) of Regulation (EU) 2016/429 provides that kept ungulates, poultry and hatching eggs may only be moved to another Member State if those animals or hatching eggs were assembled on or originating from establishments approved by the competent authority in accordance with that Regulation. In addition, Article 95 of Regulation (EU) 2016/429 provides that terrestrial animals kept on an establishment with a confined status may only be moved to or from their establishment if it has obtained an approval of that status from the competent authority in accordance with that Regulation. The competent authority may only approve those establishments if they comply with certain requirements, in relation to quarantine, isolation and other biosecurity measures, surveillance, facilities and equipment, personnel and veterinarians, as well as supervision by the competent authority. Article 97(2) of that Regulation provides for the Commission to adopt delegated acts laying down supplementing rules for the approval of establishments taking into account those requirements.

(13) The requirements laid down in this Regulation for the approval of those establishments should take into account the experience gained in the application of the rules laid down in Council Directives 64/432/EEC ([2]), 92/65/EEC ([3]) and 2009/158/EC ([4]). Those Directives are repealed by Regulation (EU) 2016/429 as from 21 April 2021.

(14) Article 94(3)(b) of Regulation (EU) 2016/429 provides for the Commission to adopt delegated acts establishing which other types of establishments for kept terrestrial animals are also required to be approved by the competent authority in accordance with Article 94(1) of that Regulation. An increasing number of dogs, cats and ferrets originating from different establishments or former stray, feral, lost, abandoned or confiscated dogs, cats and ferrets are assembled on establishments for the purpose of grouping them into a consignment before they are moved to another Member State. Directive 92/65/EEC already lays down animal health requirements applicable to the movement of those animals to another Member State. However, in order to carry out adequate surveillance and to apply preventive health measures based on compliance with certain requirements with respect to the animal health status of the Member State, this Regulation should provide for those establishments to apply to the competent authority for approval and also lay down requirements for granting such approval.

(15) Council Regulation (EC) No 1255/97 ([5]) lays down animal health requirements to be complied with by operators of control posts applying to the competent authority for approval. Those requirements should be maintained, but updated in this Regulation as they have proven to be effective in preventing the spread of animal diseases within the Union.

(16) In most cases, bumble bees are bred in environmentally isolated establishments subject to high-level biosecurity measures and subject to regular controls by the competent authority and checked for the presence of diseases. When those establishments are recognised by and supervised by the competent authority, they are unlikely to be affected by the presence of small hive beetle, in contrast with open air colonies. This Regulation should therefore provide for such establishments to be approved and supervised by the competent authority and lay down requirements for granting such approval.

(17) Commission Implementing Regulation (EU) No 139/2013 ([6]) lays down the animal health conditions for imports of certain birds into the Union and the quarantine conditions for such imports. In particular it lays down conditions for the approval by the competent authority of the quarantine facilities and centres for such birds. In order to avoid a multiplication of rules for quarantine establishments for different species of terrestrial animals, this Regulation should maintain the main substance of those requirements, but adapt them so that they can be applied to multiple species of terrestrial animals.

([2]) Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ 121, 29.7.1964, p. 1977/64).

([3]) Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54).

([4]) Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs (OJ L 343, 22.12.2009, p. 74).

([5]) Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for control posts and amending the route plan referred to in the Annex to Directive 91/628/EEC (OJ L 174, 2.7.1997, p. 1).

([6]) Commission Implementing Regulation (EU) No 139/2013 of 7 January 2013 laying down animal health conditions for imports of certain birds into the Union and the quarantine conditions thereof (OJ L 47, 20.2.2013, p. 1).

(18) Regulation (EC) No 1069/2009 of the European Parliament and of the Council ([7]) lays down public health and animal health rules for animal by-products and derived products, in order to prevent and minimise risks to public and animal health arising from those products, and in particular to protect the safety of the food and feed chain. In particular, it lays down the rules on the collection, transport, storage, handling, processing and use or disposal of animal by-products, including animals killed to eradicate epizootic diseases, to prevent them from presenting a risk to animal and public health. Regulation (EC) No 1069/2009 together with a number of implementing measures adopted pursuant to that Regulation, provide a general framework for the disposal of dead animals. When approving establishments in accordance with Articles 97 and 99 of Regulation (EU) 2016/429, the competent authority should ensure that applicants comply with rules laid down within the framework of Regulation (EC) No 1069/2009.

(19) Article 101(1) of Regulation (EU) 2016/429 provides that the competent authorities are to establish and keep up-to-date registers of establishments and operators registered and approved by them, and that those registers are to be made available to the Commission and to the competent authorities of other Member States. In the interests of transparency, those registers should also be made publically available.

(20) In addition, Article 101(3) of Regulation (EU) 2016/429 provides for the Commission to adopt delegated acts laying down the detailed information to be included in the registers kept by the competent authority and the public availability of the registers of the approved establishments. Therefore, this Regulation should set out the information obligations of the competent authority as regards those registers.

(21) Articles 102 to 105 of Regulation (EU) 2016/429 lay down requirements concerning the minimum information to be recorded by operators of establishments and transporters registered or approved by the competent authority, and Article 106 thereof provides for the Commission to lay down rules supplementing those record-keeping obligations. Operators of establishments and transporters have first-hand knowledge of kept terrestrial animals under their care, and when animals are to be moved, they are obliged to provide certain information to the competent authority for the purposes of animal health certification or of their traceability, and consequently that information is easily accessible to the competent authority. Therefore, this Regulation should lay down rules on the information to be recorded by certain operators of establishments and transporters in addition to that already required under Regulation (EU) 2016/429.

(22) Articles 112 to 115 of Regulation (EU) 2016/429 require operators keeping bovine, ovine, caprine, porcine and equine animals to identify each animal by a physical means of identification, and to ensure that those animals are accompanied by an identification or movement document when they are moved and to transmit information, as required into a computer database kept by the competent authority. In addition, Article 117 of Regulation (EU) 2016/429 requires operators keeping terrestrial animals other than bovine, ovine, caprine, porcine and equine animals to identify each animal by a physical means of identification and to ensure that those animals are accompanied by an identification or movement document when such rules have been adopted by the Commission pursuant to Article 118 thereof.

(23) Article 118(1) of Regulation (EU) 2016/429 empowers the Commission to lay down detailed requirements for the means of identification of kept terrestrial animals and the rules for the identification and movement documents for those animals, as well as detailed rules for the computer databases provided for in that Regulation for kept bovine, ovine, caprine, porcine and equine animals, and rules on exchange of electronic data between computer databases of Member States for kept bovine animals. In addition, Article 118(2) of Regulation (EU) 2016/429 empowers the Commission to lay down requirements for alternative means of identification for kept terrestrial animals, as well as exemptions and special provisions for certain categories of those animals, and specific provisions for the identification and movement document for those animals, as well as rules on the identification and registration of kept terrestrial animals after their entry into the Union.

(24) In addition, Article 119(1) of Regulation (EU) 2016/429 empowers the Commission to lay down rules concerning specific derogations for operators from certain identification and registration requirements laid down in that act. Article 122(2) of Regulation (EU) 2016/429 empowers the Commission to lay down traceability requirements for germinal products of kept terrestrial animals of species other that of the bovine, ovine, caprine, porcine and equine species.

([7]) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

Prior to the adoption of Regulation (EU) 2016/429, Union rules on the identification and registration of bovine, ovine, caprine, porcine and equine animals were laid down in Regulation (EC) No 1760/2000 of the European Parliament and of the Council ([8]), Council Regulation (EC) No 21/2004 ([9]), and Council Directives 2008/71/EC ([10]) and 2009/156/EC ([11]). Regulation (EU) 2016/429 repeals and replaces those four acts as from 21 April 2021. Those four acts laid down the rules on the means of identification, identification or movement documents and computer databases. They also provided the time periods for the application of the means of identification to those kept animals by operators. In addition, they also provided for a number of derogations and exemptions as regards the means of identification and movement documents without compromising the traceability of kept animals. The rules laid down in those acts have proven to be effective in ensuring the traceability of kept bovine, ovine, caprine, porcine and equine animals. Accordingly, the main substance of those rules should be maintained, but updated to take account of the practical experience gained in their application and current technical progress. The new time periods for the application of the means of identification to kept terrestrial animals by operators should be laid down by the Commission in an implementing act adopted in accordance with Article 120(2) of Regulation (EU) 2016/429.

(25) To ensure that equine animals entering the Union are only identified in accordance with Union rules after their entry into the Union and where they remain in the Union, it is necessary to refer in this Regulation to the custom procedures laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council ([12]).

(26) Prior to the adoption of Regulation (EU) 2016/429, Union rules on the traceability of kept dogs, cats and ferrets, and captive birds were laid down in Directive 92/65/EEC. The rules laid down in that Directive have proven to be effective in ensuring the traceability of those animals. Accordingly, the main substance of those rules should be maintained, but updated to take account of the practical experience gained in their application and current technical progress.

(27) In addition, Directive 92/65/EEC lays down that in order to be the subject of trade, dogs, cats and ferrets should be accompanied by the same identification document as for non-commercial movement of pet animals provided for in Article 6(d) of Regulation (EU) No 576/2013 of the European Parliament and of the Council ([13]). Accordingly, this rule should be maintained in this Regulation.

(28) Prior to the adoption of Regulation (EU) 2016/429, Union rules on the traceability of hatching eggs were laid down in Directive 2009/158/EC. The current system in relation to the marking of hatching eggs is well established. Accordingly, the main substance of those rules should be maintained in this Regulation but adapted to suit the framework of Regulation (EU) 2016/429.

(29) Prior to the adoption of Regulation (EU) 2016/429, Union rules on the traceability of terrestrial animals kept in travelling circuses and animal acts were laid down in Commission Regulation (EC) No 1739/2005 ([14]). The rules laid down in that Regulation have also proven to be effective in ensuring the traceability of terrestrial animals kept in travelling circuses and animal acts. Accordingly, the main substance of those rules should be maintained, but updated to take account of the practical experience gained in their application.

(30) Regulation (EU) 2016/429 provides that disease-specific rules for the prevention and control of diseases apply to the listed diseases referred to in Annex II to that Regulation, which include infection with *Brucella abortus*, *B. melitensis* and *B. suis* and infection with *Mycobacterium tuberculosis complex* (*M. bovis*, *M. caprae* and *M. tuberculosis*). Article 9 of Regulation (EU) 2016/429 provides for disease prevention and control rules to be applied to different categories of listed diseases. Commission Implementing Regulation (EU) 2018/1882 ([15]) provides that the disease prevention and control rules for listed diseases referred to in Article 9(1) of Regulation (EU) 2016/429 are to apply to the categories of listed diseases for the listed species and groups of listed species referred to in the Annex to that Implementing Regulation. Kept camelids and cervid animals are listed in the Annex to Implementing Regulation (EU) 2018/1882 as susceptible species for those infections. Therefore, this Regulation should establish harmonised rules on traceability for those animals.

([8]) Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

([9]) Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

([10]) Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs (OJ L 213, 8.8.2008, p. 31).

([11]) Council Directive 2009/156/EC of 30 November 2009 on animal health conditions governing the movement and importation from third countries of equidae (OJ L 192, 23.7.2010, p. 1).

([12]) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

([13]) Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (OJ L 178, 28.6.2013, p. 1).

([14]) Commission Regulation (EC) No 1739/2005 of 21 October 2005 laying down animal health requirements for the movement of circus animals between Member States (OJ L 279, 22.10.2005, p. 47).

([15]) Commission Implementing Regulation (EU) 2018/1882 of 3 December 2018 on the application of certain disease prevention and control rules to categories of listed diseases and establishing a list of species and groups of species posing a considerable risk for the spread of those listed diseases (OJ L 308, 4.12.2018, p. 21).

(31) Given the unique situation of reindeer husbandry which is strongly connected to the cultural heritage of Sami people in Northern Europe, Member States should be able to maintain specific regimes for the means of identification established for reindeers kept in their territory. Accordingly, this Regulation should provide for a specific regime for the identification of those animals.

(32) As regards equine animals, Article 114 of Regulation (EU) 2016/429 provides that operators are to ensure that equine animals are individually identified by a correctly completed single lifetime identification document. In addition, Article 120(2) of that Regulation provides for the Commission to adopt implementing acts regarding certain requirements for that document. While the rules relating to the single lifetime identification document are now laid down as part of the animal health rules of the legal framework of Regulation (EU) 2016/429, it is necessary to take account of the identification requirements for those animals laid down elsewhere in Union law. In particular, account should be taken of Directive 2001/82/EC of the European Parliament and of the Council ([16]), Commission Implementing Regulation (EU) 2015/262 ([17]), Regulation (EU) 2016/1012 of the European Parliament and of the Council ([18]), Commission Delegated Regulation (EU) 2017/1940 ([19]) and Regulation (EU) 2019/6 of the European Parliament and of the Council ([20]) in order to avoid a proliferation of rules and identification documents, which would unnecessarily increase administrative and financial burdens. This need to rationalise Union rules is particularly important for equine animals, as they are used for a wide range of purposes, including sporting events, as breeding animals and also food. In addition, their use can vary depending on their life stage, so it is important that the single lifetime identification document remains valid for a number of uses. In addition, the transitional provisions laid down in this Regulation need to take account of the periods of application of those five acts in order to ensure coordination of applicable Union rules.

(33) With a view to the uniform application of Union legislation on traceability of kept terrestrial animals and to ensure that it is clear and transparent, Commission Regulation (EC) No 509/1999 ([21]), Commission Regulation (EC) No 2680/1999 ([22]), Commission Decision 2000/678/EC ([23]), Commission Decision 2001/672/EC ([24]), Commission Regulation (EC) No 911/2004 ([25]), Commission Decision 2004/764/EC ([26]), Commission Regulation (EC) No 644/2005 ([27]), Regulation (EC) No 1739/2005, Commission Decision 2006/28/EC ([28]), Commission Decision 2006/968/EC ([29]), Commission Decision 2009/712/EC ([30]) and Implementing Regulation (EU) 2015/262 should be

([16]) Directive 2001/82/EC of the European Parliament and of Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1).

([17]) Commission Implementing Regulation (EU) 2015/262 of 17 February 2015 laying down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae (Equine Passport Regulation) (OJ L 59, 3.3.2015, p. 1).

([18]) Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation') (OJ L 171, 29.6.2016, p. 66).

([19]) Commission Delegated Regulation (EU) 2017/1940 of 13 July 2017 supplementing Regulation (EU) 2016/1012 of the European Parliament and of the Council as regards the content and format of zootechnical certificates issued for purebred breeding animals of the equine species contained in a single lifetime identification document for equidae (OJ L 275, 25.10.2017, p. 1).

([20]) Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC (OJ L 4, 7.1.2019, p. 43).

([21]) Commission Regulation (EC) No 509/1999 of 8 March 1999 concerning an extension of the maximum period laid down for the application of ear-tags to bison (*Bison bison* spp.) (OJ L 60, 9.3.1999, p. 53).

([22]) Commission Regulation (EC) No 2680/1999 of 17 December 1999 approving a system of identification for bulls intended for cultural and sporting events (OJ L 326, 18.12.1999, p. 16).

([23]) Commission Decision 2000/678/EC of 23 October 2000 laying down detailed rules for registration of holdings in national databases for porcine animals as foreseen by Council Directive 64/432/EEC (OJ L 281, 7.11.2000, p. 16).

([24]) Commission Decision 2001/672/EC of 20 August 2001 laying down special rules applicable to movements of bovine animals when put out to summer grazing in mountain areas (OJ L 235, 4.9.2001, p. 23).

([25]) Commission Regulation (EC) No 911/2004 of 29 April 2004 implementing Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards eartags, passports and holding registers (OJ L 163, 30.4.2004, p. 65).

([26]) Commission Decision 2004/764/EC of 22 October 2004 concerning an extension of the maximum period laid down for the application of eartags to certain bovine animals kept in nature reserves in the Netherlands (OJ L 339, 16.11.2004, p. 9).

([27]) Commission Regulation (EC) No 644/2005 of 27 April 2005 authorising a special identification system for bovine animals kept for cultural and historical purposes on approved premises as provided for in Regulation (EC) No 1760/2000 of the European Parliament and of the Council (OJ L 107, 28.4.2005, p. 18).

([28]) Commission Decision 2006/28/EC of 18 January 2006 on extension of the maximum period for applying eartags to certain bovine animals (OJ L 19, 24.1.2006, p. 32).

([29]) Commission Decision 2006/968/EC of 15 December 2006 implementing Council Regulation (EC) No 21/2004 as regards guidelines and procedures for the electronic identification of ovine and caprine animals (OJ L 401, 30.12.2006, p. 41).

([30]) Commission Decision 2009/712/EC of 18 September 2009 implementing Council Directive 2008/73/EC as regards internet-based information pages containing lists of establishments and laboratories approved by Member States in accordance with Community veterinary and zootechnical legislation (OJ L 247, 19.9.2009, p. 13).

repealed by this Regulation. However, in order to ensure a smooth transition to the new legal framework for operators of travelling circuses and animal acts, the movement and identification documents in a format in accordance with Regulation (EC) No 1739/2005 should remain applicable until a date to be determined by the Commission in an implementing act adopted pursuant to Article 120(2) of Regulation (EU) 2016/429 with regard to the format of movement and identification documents for kept terrestrial animals in travelling circuses and animal acts.

(34) Directive 2001/82/EC lays down specific rules for equine animals relating to the treatment of food-producing equine animals with regard to veterinary medical products, provided that those equine animals are identified in accordance with Union legislation and specifically marked in their identification document as not intended for slaughter for human consumption. Those rules are now laid down in substance in Regulation (EU) 2019/6, which repeals and replaces Directive 2001/82/EC. Regulation (EU) 2019/6 applies from 28 January 2022 and therefore after the date of application of Regulation (EU) 2016/429. But those two acts are inter-related, as Article 109(1) of Regulation (EU) 2019/6 provides for the Commission to adopt delegated acts in order to supplement that Regulation as regards information to be contained in the single lifetime identification document provided for Regulation (EU) 2016/429, for the purposes of the record-keeping obligations laid down in Regulation (EU) 2019/6. In addition, Implementing Regulation (EU) 2015/262 lays down rules on the identification of equidae, including rules on the identification documents for those animals, and it provides that the Union system for the identification of equidae comprises of, inter alia, a single lifetime document. Finally, Regulation (EU) 2016/1012 also lays down rules on the identification of equidae. It provides that the Commission is to adopt implementing acts laying down model forms for the single lifetime identification document.

(35) In order to avoid unnecessary administrative and financial burdens for operators of kept equine animals and competent authorities, the lifetime identification document of kept equine animals currently laid down in Implementing Regulation (EU) 2015/262 should remain applicable until a date to be determined by the Commission in an implementing act adopted pursuant to Article 120(2) of Regulation (EU) 2016/429 and Article 109(2) of Regulation (EU) 2019/6 with regard to the format of single lifetime identification document of kept equine animals.

(36) Article 271 of Regulation (EU) 2016/429 provides the transitional period for the new legal framework, laid down in that act, for operators as regards the identification of kept bovine, ovine, caprine and porcine animals and empowers the Commission to shorten that transitional period.

(37) In order to ensure a smooth transition to the new legal framework established by Regulation (EU) 2016/429 for operators keeping terrestrial animals as regards the identification and registration of those animals and to the new legal framework as regards the animal health rules for movement of those animals, the rules laid down in this Regulation should apply from the same date as those laid down in Regulation (EU) 2016/429.

(38) In order to ensure a smooth transition to the new legal framework for operators of establishments keeping terrestrial animals registered or approved in accordance with Directives 64/432/EEC and 92/65/EEC, Regulations (EC) No 1760/2000, (EC) No 21/2004, Directives 2008/71/EC, 2009/156/EC and 2009/158/EC, they should be deemed to be registered or approved in accordance with this Regulation. Member States should ensure that those operators comply with all the rules provided for in this Regulation.

(39) In order to ensure a smooth transition to the new legal framework, bovine, ovine, caprine, porcine, equine, camelid and cervid animals, and psittacidae identified and registered before the date of application of this Regulation, should be considered to have been identified and registered in accordance with this Regulation and eligible for movement within the Union.

(40) This Regulation should be applicable from 21 April 2021 in accordance with the date of application of Regulation (EU) 2016/429,

HAS ADOPTED THIS REGULATION:

PART I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation supplements the rules laid down in Regulation (EU) 2016/429 as regards:

(a) registered and approved establishments for kept terrestrial animals and hatching eggs;

(b) traceability requirements for the following kept terrestrial animals:

(i) bovine, ovine, caprine, porcine, equine, camelid and cervid animals (ungulates);

(ii) dogs, cats and ferrets;

(iii) captive birds;

(iv) hatching eggs;

(v) terrestrial animals kept in travelling circuses and animal acts.

2. Chapter 1 of Title I of Part II lays down the requirements for the registration of transporters of kept dogs, cats and ferrets, and poultry engaged in the transportation of those animals between Member States or between a Member State and a third country.

3. Chapter 2 of Title I of Part II provides for derogations for operators of establishments for assembly operations of certain equine animals and of hatcheries of captive birds, from the requirement to apply to the competent authority for approval.

That Chapter also lays down the requirements for the approval of the following types of establishments:

(a) establishments for assembly operations of ungulates and poultry from which those animals are to be moved to another Member State or which receive those animals from another Member State;

(b) hatcheries from which hatching eggs or day-old chicks are to be moved to another Member State;

(c) establishments keeping poultry from which poultry intended for purposes other than slaughter or hatching eggs are to be moved to another Member State.

Those requirements concern isolation and other biosecurity measures, surveillance measures, facilities and equipment, personnel and supervision by the competent authority.

4. Chapter 3 of Title I of Part II lays down the requirements for the approval of the following types of establishments:

(a) assembly centres of dogs, cats and ferrets from which those animals are to be moved to another Member State;

(b) animal shelters for dogs, cats and ferrets from which those animals are to be moved to another Member State;

(c) control posts;

(d) environmentally isolated production establishments for bumble bees from which those animals are to be moved to another Member State;

(e) quarantine establishments for kept terrestrial animals other than primates from which those animals are to be moved within the same Member State or to another Member State.

Those requirements concern quarantine, isolation and other biosecurity measures, surveillance and control measures, facilities and equipment, and supervision by the veterinarian.

5. Chapter 4 of Title I of Part II lays down the requirements for the approval of confined establishments from which kept terrestrial animals are to be moved within the same Member State or to another Member State in relation to quarantine, isolation and other biosecurity measures, surveillance and control measures, facilities and equipment and supervision by the veterinarian.

6. Chapter 1 of Title II of Part II lays down the information obligations of the competent authority as regards its registers of:

(a) establishments of kept terrestrial animals;

(b) hatcheries;

(c) transporters of kept ungulates, dogs, cats and ferrets, and poultry engaged in the transportation of those animals between Member States or between a Member State and a third country;

(d) operators conducting assembly operations for kept ungulates and poultry independently of an establishment.

7. Chapter 2 of Title II of Part II lays down the information obligation of the competent authority as regards registers of approved establishments referred to in Chapters 2, 3 and 4 of Title I of Part II.

8. Chapter 1 of Title III of Part II lays down the record-keeping obligations of operators, in addition to those provided for in Article 102(1) of Regulation (EU) 2016/429, for the following types of registered or approved establishments:

(a) all establishments keeping terrestrial animals;

(b) establishments keeping:

(i) bovine, ovine, caprine and porcine animals;

(ii) equine animals;

(iii) poultry and captive birds;

(iv) dogs, cats and ferrets;

(v) honeybees;

(c) travelling circuses and animal acts;

(d) animal shelters for dogs, cats and ferrets;

(e) control posts;

(f) quarantine establishments for kept terrestrial animals other than primates;

(g) confined establishments.

9. Chapter 2 of Title III of Part II lays down the record-keeping obligations of operators of registered or approved hatcheries, in addition to those provided for in Article 103(1) of Regulation (EU) 2016/429.

10. Chapter 3 of Title III of Part II lays down the record-keeping obligations of registered transporters, in addition to those provided for in Article 104(1) of Regulation (EU) 2016/429.

11. Chapter 4 of Title III of Part II lays down the record-keeping obligations of operators conducting assembly operations, in addition to those provided for in Article 105(1) of Regulation (EU) 2016/429, for

(a) operators of registered or approved establishments for assembly operations of kept ungulates and poultry;

(b) operators conducting assembly operations of kept ungulates and poultry independently from an establishment;

(c) operators of assembly centres of dogs, cats and ferrets registered with the competent authority.

12. Titles I to IV of Part III lay down traceability requirements for kept animals of the bovine, ovine and caprine, porcine and equine species, including the means of identification, documentation and computer databases.

13. Chapter 1 of Title V of Part III lays down traceability requirements for kept dogs, cats and ferrets, including those for pet animals when they are moved to another Member State for other than non-commercial purposes.

14. Chapter 2 of Title V of Part III lays down traceability requirements for kept camelid and cervid animals.

15. Chapter 3 of Title V of Part III lays down traceability requirements for kept captive birds.

16. Chapter 4 of Title V of Part III lays down traceability requirements for kept terrestrial animals in travelling circuses and animal acts.

17. Title VI of Part III lays down traceability requirements for hatching eggs.

18. Title VII of Part III lays down traceability requirements for kept bovine, ovine, caprine, porcine, equine, cervid and camelid animals after their entry into the Union.

19. Part IV lays down certain transitional measures with regard to Directives 64/432/EEC and 92/65/EEC, Regulations (EC) No 1760/2000, (EC) No 21/2004 and (EC) No 1739/2005, Directives 2008/71/EC, 2009/156/EC and 2009/158/EC, and Implementing Regulation (EU) 2015/262 in relation to:

(a) the registration and approval of establishments;

(b) the identification of kept terrestrial animals;

(c) the movement and identification documents for kept terrestrial animals in travelling circuses and animal acts;

(d) the single lifetime identification document for kept equine animals.

Article 2

Definitions

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

(1) 'dog' means a kept animal of the *Canis lupus* species;

(2) 'cat' means a kept animal of the *Felis silvestris* species;

(3) 'ferret' means a kept animal of the *Mustela putorius furo* species;

(4) 'type of transport' means the way transportation is carried out, such as by road, rail, air or water;

(5) 'means of transport' means road or rail vehicles, vessels and aircrafts;

(6) 'day-old chicks' means all poultry less than 72 hours old;

(7) 'assembly centre of dogs, cats and ferrets' means an establishment where those animals of the same health status are assembled from more than one establishment;

(8) 'animal shelter' means an establishment where former stray, feral, lost, abandoned or confiscated terrestrial animals are kept and whose health status might not be known for all of them at the time of entry into the establishment;

(9) 'control posts' means control posts as referred to in Regulation (EC) No 1255/97;

(10) 'environmentally isolated production establishment' means an establishment where its structures together with its strict biosecurity measures, ensure an effective isolation of the production of animals from the associated facilities and from the environment;

(11) 'bumble bee' means an animal of the species belonging to the genus *Bombus*;

(12) 'primates' means animals of the species belonging to the order Primates excluding humans;

(13) 'honeybees' means animals of the *Apis mellifera* species;

(14) 'establishment veterinarian' means a veterinarian responsible for the activities carried out at the quarantine establishment for kept terrestrial animals other than primates or at confined establishment as laid down in this Regulation;

(15) 'unique registration number' means a number assigned by the competent authority to a registered establishment as referred to in Article 93 of Regulation (EU) 2016/429;

(16) 'unique approval number' means a number assigned by the competent authority to an establishment approved by it in accordance with Articles 97 and 99 of Regulation (EU) 2016/429;

(17) 'unique code' means the unique code whereby operators keeping kept animals of the equine species are required to ensure that those animals are individually identified as provided for in Article 114(1)(a) of Regulation (EU) 2016/429 and which is recorded in the computer database of the Member State provided for in Article 109(1) of that Regulation;

(18) 'identification code of the animal' means the individual code displayed by the means of identification applied to an animal and comprising:

(a) the country code of the Member State where the means of identification was applied to the animal;

(b) followed by the numeric individual identification number assigned to the animal not exceeding 12 digits;

(19) 'bovine animal' or 'animal of the bovine species' means an animal of the species of ungulates belonging to the genera *Bison*, *Bos* (including the subgenera *Bos*, *Bibos*, *Novibos*, *Poephagus*) and *Bubalus* (including the subgenus *Anoa*) and the offspring of crossings of those species;

(20) 'ovine animal' or 'animal of the ovine species' means an animal of the species of ungulates belonging to the genus *Ovis* and the offspring of crossings of those species;

(21) 'caprine animal' or 'animal of the caprine species' means an animal of the species of ungulates belonging to the genus *Capra* and the offspring of crossings of those species;

(22) 'porcine animal' or 'animal of the porcine species' means an animal of the species of ungulates of family *Suidae* listed in Annex III to Regulation (EU) 2016/429;

(23) 'electronic identifier' means a marker with radio frequency identification ('RFID');

(24) 'animal of the equine species' or 'equine animal' means an animal of species of solipeds belonging to the genus *Equus* (including horses, asses, and zebras) and the offspring of crossings of those species;

(25) 'computer database' means a computer database of kept terrestrial animals as provided for in Article 109(1) of Regulation (EU) 2016/429;

(26) 'supply chain' means an integrated production chain of a common health status as regards listed diseases consisting of a collaborative network of specialised establishments approved by the competent authority for the purpose of Article 53, between which porcine animals are moved to complete the production cycle;

(27) 'single lifetime identification document' means the single lifetime document whereby operators keeping kept animals of the equine species are required to ensure that those animals are individually identified, as provided for in Article 114(1)(c) of Regulation (EU) 2016/429;

(28) 'breed society' means any breeders' association, breeding organisation or public body, other than competent authorities, which is recognised by the competent authority of a Member State in accordance with Article 4(3) of Regulation (EU) 2016/1012 for the purpose of carrying out a breeding programme on purebred breeding animals entered in the breeding book(s) it maintains or establishes;

(29) 'breeding body' means any breeders' association, breeding organisation, private undertaking, stock-rearing organisation or official service in a third country which, in respect of purebred breeding animals of the bovine, porcine, ovine, caprine or equine species or of hybrid breeding pigs, has been accepted by that third country in connection with the entry into the Union of breeding animals for breeding;

(30) 'registered equine animal' means:

(a) a purebred breeding animal of the species *Equus caballus* and *Equus asinus* entered or eligible for entry in the main section of a breeding book established by a breed society or breeding body recognised in accordance with Articles 4 or 34 of Regulation (EU) 2016/1012;

(b) a kept animal of the species *Equus caballus* registered with an international association or organisation, either directly or through its national federation or branches, which manages horses for competition or racing ('registered horse');

(31) 'camelid animal' means an animal of species of ungulates of family *Camelidae* listed in Annex III to Regulation (EU) 2016/429;

(32) 'cervid animal' means an animal of the species of ungulates of family *Cervidae* listed in Annex III to Regulation (EU) 2016/429;

(33) 'reindeer' means an ungulate animal of the *Rangifer tarandus* species listed in Annex III to Regulation (EU) 2016/429;

(34) 'travelling circus' means an exhibition or fair that includes animals or animal acts which is intended to move between Member States;

(35) 'animal act' any act featuring animals kept for the purpose of an exhibition or fair, and which may form part of a circus;

(36) 'breeding poultry' means poultry 72 hours old or more, intended for the production of hatching eggs;

(37) 'flock' means all poultry or captive birds of the same health status kept on the same premises or in the same enclosure and constituting a single epidemiological unit; in housed poultry includes all birds sharing the same airspace.

PART II

REGISTRATION, APPROVAL, REGISTERS AND RECORD-KEEPING

TITLE I

REGISTRATION AND APPROVAL OF TRANSPORTERS AND OPERATORS OF ESTABLISHMENTS BY THE COMPETENT AUTHORITY

CHAPTER 1

Registration of transporters of kept terrestrial animals other than ungulates for transport between Member States and for transport to third countries

Article 3

Registration obligations of transporters of kept dogs, cats and ferrets, and poultry

1. Transporters engaged in the transportation of kept dogs, cats and ferrets, and poultry between Member States or between a Member State and a third country shall, in order to be registered in accordance with Article 93 of Regulation (EU) 2016/429, before they commence such activities provide the competent authority with information on:

(a) the name and address of the transporter concerned;

(b) the species for which transportation is planned;

(c) the type of transport;

(d) the means of transport.

2. Transporters of kept dogs, cats and ferrets, as referred to in paragraph 1, shall inform the competent authority of the numbers of animals for which transportation is planned.

3. Transporters of poultry, as referred to in paragraph 1, shall inform the competent authority of the categories of poultry for which transportation is planned.

4. Transporters as referred to in paragraph 1 shall inform the competent authority of any:

(a) change concerning the matters referred to in paragraphs 1, 2 and 3;

(b) cessation of the transport activity.

CHAPTER 2

Approval of establishments for assembly operations of ungulates and poultry, hatcheries and establishments keeping poultry

Article 4

Derogations from the requirement to apply to the competent authority for approval for operators of establishments for assembly operations of certain equine animals and of hatcheries of captive birds

Operators of the following establishments shall not apply to the competent authority for approval of their establishments in accordance with Article 96(1) of Regulation (EU) 2016/429:

(a) establishments for assembly operations of equine animals where those animals are gathered for the purposes of competitions, races, shows, training, collective leisure or work activities or in the context of breeding activities;

(b) hatcheries of captive birds.

Article 5

Requirements for granting approval of establishments for assembly operations of ungulates

When granting approval of establishments for assembly operations of ungulates, from which those animals are to be moved to another Member State or which receive those animals from another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in Part 1 of Annex I hereto:

(a) point 1, in relation to isolation and other biosecurity measures;

(b) point 2, in relation to facilities and equipment;

(c) point 3, in relation to personnel;

(d) point 4, in relation to supervision by the competent authority.

Article 6

Requirements for granting approval of establishments for assembly operations of poultry

When granting approval of establishments for assembly operations of poultry from which those animals are to be moved to another Member State or which receive those animals from another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in Part 2 of Annex I hereto:

(a) point 1, in relation to isolation and other biosecurity measures;

(b) point 2, in relation to facilities and equipment;

(c) point 3, in relation to personnel;

(d) point 4, in relation to supervision by the competent authority.

Article 7

Requirements for granting approval of hatcheries

When granting approval of hatcheries from which hatching eggs of poultry or day-old chicks are to be moved to another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in:

(a) point 1 of Part 3 of Annex I, in relation to biosecurity measures;

(b) point 2 of Part 3 of Annex I and Parts 1 and 2 of Annex II, in relation to surveillance;

(c) point 3 of Part 3 of Annex I, in relation to facilities and equipment;

(d) point 4 of Part 3 of Annex I, in relation to personnel;

(e) point 5 of Part 3 of Annex I, in relation to supervision by the competent authority.

Article 8

Requirements for granting approval of establishments keeping poultry

When granting approval of establishments keeping poultry from which poultry intended for purposes other than slaughter or hatching eggs are to be moved to another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in:

(a) point 1 of Part 4 of Annex I, in relation to biosecurity measures;

(b) point 2 of Part 4 of Annex I and Part 2 of Annex II, in relation to surveillance;

(c) point 3 of Part 4 of Annex I, in relation to facilities and equipment.

CHAPTER 3

Approval of establishments keeping terrestrial animals

Article 9

Obligation on operators of certain type of establishments keeping terrestrial animals to apply to the competent authority for approval

Operators of the following types of establishments shall apply to the competent authority for approval in accordance with Article 96(1) of Regulation (EU) 2016/429 and shall not commence their activities until their establishment has been approved:

(a) assembly centres of dogs, cats and ferrets from which those animals are moved to another Member State;

(b) animal shelters of dogs, cats and ferrets from which those animals are moved to another Member State;

(c) control posts;

(d) environmentally isolated production establishments for bumble bees from which those animals are moved to another Member State;

(e) quarantine establishments for kept terrestrial animals other than primates from which those animals are moved within the same Member State or to another Member State.

Article 10

Requirements for granting approval of assembly centres of dogs, cats and ferrets

When granting approval of assembly centres of dogs, cats and ferrets from which those animals are to be moved to another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in Part 5 of Annex I hereto:

(a) point 1, in relation to isolation and other biosecurity measures;

(b) point 3, in relation to facilities and equipment.

Article 11

Requirements for granting approval of animal shelters of dogs, cats and ferrets

When granting approval of animal shelters from which dogs, cats and ferrets are to be moved to another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in Part 5 of Annex I hereto:

(a) point 2, in relation to isolation and other biosecurity measures;

(b) point 3, in relation to facilities and equipment.

Article 12

Requirements for granting approval of control posts

When granting approval of control posts, the competent authority shall ensure that such control posts comply with the following requirements set out in Part 6 of Annex I hereto:

(a) point 1, in relation to isolation and other biosecurity measures;

(b) point 2, in relation to facilities and equipment.

Article 13

Requirements for granting approval of environmentally isolated production establishments for bumble bees

When granting approval for environmentally isolated production establishments for bumble bees from which bumble bees are to be moved to another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in Part 7 of Annex I hereto:

(a) point 1, in relation to biosecurity and surveillance measures;

(b) point 2, in relation to facilities and equipment.

Article 14

Requirements for granting approval of quarantine establishments for kept terrestrial animals other than primates

When granting approval for quarantine establishments for kept terrestrial animals other than primates from which those animals are to be moved within the same Member State or to another Member State, the competent authority shall ensure that such establishment comply with the following requirements set out in Part 8 of Annex I hereto:

(a) point 1, in relation to quarantine, isolation and other biosecurity measures;

(b) point 2, in relation to surveillance and control measures;

(c) point 3, in relation to facilities and equipment.

Article 15

Obligations on operators of quarantine establishments for kept terrestrial animals other than primates

Operators of quarantine establishments for kept terrestrial animals other than primates referred to in Article 14 shall:

(a) put in place the necessary arrangements to perform veterinary post-mortem inspections in appropriate facilities in the establishment or in a laboratory;

(b) secure by contract or by means of another legal instrument the services of an establishment veterinarian who shall be responsible for:

  (i) supervising the activities of the establishment and compliance with the requirements for approval laid down in Article 14;

  (ii) reviewing the disease surveillance plan referred to in point 2(a) of Part 8 of Annex I whenever required and at least annually.

CHAPTER 4

Approval of confined establishments from which terrestrial animals are to be moved within a Member State or to another Member State

Article 16

Requirements for granting approval of status of confined establishments for terrestrial animals

When granting approval of a confined establishment for terrestrial animals which are to be moved within the same Member State or to another Member State, the competent authority shall ensure that such establishments comply with the following requirements set out in Part 9 of Annex I hereto:

(a) point 1, in relation to quarantine, isolation and other biosecurity measures;

(b) point 2, in relation to surveillance and control measures;

(c) point 3, in relation to facilities and equipment.

Article 17

Obligations on operators of confined establishments for terrestrial animals

Operators of confined establishments for terrestrial animals referred to in Article 16 shall:

(a) put in place the necessary arrangements to perform veterinary post-mortem inspections in appropriate facilities in the establishment or in a laboratory;

(b) secure by contract or by means of another legal instrument the services of an establishment veterinarian who shall be responsible for:

(i) supervising of the activities of the establishment and compliance with the requirements for approval laid down in Article 16;

(ii) reviewing of the disease surveillance plan referred to in point 2(a) of Part 9 of Annex I whenever required and at least annually.

TITLE II

REGISTERS TO BE KEPT BY THE COMPETENT AUTHORITY OF REGISTERED AND APPROVED TRANSPORTERS AND OPERATORS OF ESTABLISHMENTS

CHAPTER 1

Registers of establishments, transporters and operators registered with the competent authority

Article 18

Information obligation of the competent authority as regards registers of establishments of kept terrestrial animals and hatcheries

The competent authority shall include in its register of establishments of kept terrestrial animals and of hatcheries registered with it the following information for each establishment:

(a) the unique registration number assigned to it;

(b) the date of registration with the competent authority;

(c) the name and address of the operator of the establishment;

(d) the address and geographical coordinates (latitude and longitude) of the location of the establishment;

(e) a description of its facilities;

(f) the type of establishment;

(g) the species, categories and numbers of terrestrial animals or hatching eggs which are kept on the establishment;

(h) the period during which animals or hatching eggs are kept on the establishment if it is not continuously occupied, including seasonal occupation or occupation during particular events;

(i) the health status of the establishment where one has been assigned to it by the competent authority;

(j) the restrictions on movements of animals, hatching eggs or products to and from the establishment, where such restrictions are applied by the competent authority;

(k) the date of any cessation of activity when the operator has informed the competent authority thereof.

Article 19

Information obligation of the competent authority as regards registers of transporters of kept ungulates, dogs, cats and ferrets, and poultry

1. The competent authority shall include, in its register of transporters engaged in the transportation between Member States or between a Member State and a third country of kept ungulates, dogs cats and ferrets, and poultry, registered with it, the following information for each transporter:

(a) the unique registration number assigned to it;

(b) the date of registration with the competent authority;

(c) the name and address of the operator;

(d) the species for which transportation is planned;

(e) the type of transport;

(f) the means of transport;

(g) the date of any cessation of activity when the operator has informed the competent authority thereof.

2. For each transporter of kept ungulates, dogs cats and ferrets, as referred to in paragraph 1, the competent authority shall include information in its register of transporters on the number of animals for which transportation is planned.

3. For each transporter of poultry as referred to in paragraph 1, the competent authority shall include information in its register of transporters on the categories of poultry for which transportation is planned.

Article 20

Information obligation of the competent authority as regards registers of operators conducting assembly operations for kept ungulates and poultry independently of an establishment

The competent authority shall include in its register of operators conducting assembly operations for kept ungulates and poultry registered with it, independently of an establishment, including those who buy and sell those animals, the following information for each operator:

(a) the unique registration number assigned to it;

(b) the date of registration with the competent authority;

(c) the name and address of the operator;

(d) the species and categories of kept ungulates and poultry to be assembled;

(e) the date of any cessation of activity when the operator has informed the competent authority thereof.

CHAPTER 2

Registers of establishments approved by the competent authority

Article 21

Information obligation of the competent authority as regards registers of approved establishments

The competent authority shall include in its register of approved establishments referred to in Chapters 2, 3 and 4 of Title I of Part II, the following information for each establishment:

(a) the unique approval number assigned by the competent authority;

(b) the date of approval granted by the competent authority or of any suspension or withdrawal of such approval;

(c) the name and address of the operator;

(d) the address and geographical coordinates (latitude and longitude) of the location of the establishment;

(e) a description of its facilities;

(f) the type of establishment;

(g) the species, categories and numbers of terrestrial animals or hatching eggs or day-old chicks kept on the establishment;

(h) the period during which animals are kept on the establishment if it is not continuously occupied, including seasonal occupation or occupation during particular events;

(i) the health status assigned to the establishment if one is assigned by the competent authority;

(j) the restrictions imposed on movements of animals or germinal products to and from the establishment by the competent authority, where such restrictions are imposed;

(k) the date of any cessation of activity when the operator has informed the competent authority thereof.

TITLE III

RECORD-KEEPING OBLIGATIONS OF OPERATORS IN ADDITION TO THOSE PROVIDED FOR IN REGULATION (EU) 2016/429

CHAPTER 1

Operators of establishments registered or approved with the competent authority

Article 22

Record-keeping obligations of operators of all establishments keeping terrestrial animals

Operators of all registered or approved establishments keeping terrestrial animals shall record the following information:

(a) the identification code of each identified animal as displayed by means of identification, where applied, kept on the establishment;

(b) the unique registration or approval number of the establishment of origin of the animals, where they originate in another establishment;

(c) the unique registration or approval number of the establishment of destination of the animals, where they are destined for another establishment.

Article 23

Record-keeping obligations of operators of establishments keeping bovine, ovine, caprine and porcine animals

1. Operators of registered establishments keeping bovine, ovine, caprine and porcine animals shall record the following information concerning those animals:

(a) the date of birth of each animal kept on the establishment;

(b) the date of natural death, slaughter or loss of each animal on the establishment;

(c) the type of electronic identifier or tattoo and its location, if applied to the animal;

(d) the initial identification code of each identified animal, where such code has been changed and the reason for that change.

2. Operators of establishments keeping ovine and caprine animals, shall record the information referred to in paragraph 1(a) in a format of the year of the birth of each such animal kept on the establishment.

3. Operators of establishments keeping porcine animals shall be exempted from recording the information referred to in paragraph 1(a).

4. Where ovine, caprine or porcine animals kept on the establishment are only identified by the unique identification number of their establishment of birth, the operators of establishments shall record the information referred to in paragraph 1 for each group of animals having the same unique identification number of their establishment of birth and the total number of animals in that group.

5. Where porcine animals kept on the establishment are not identified in accordance with Article 53, the operators of establishments shall:

(a) not be required to record the information referred to in paragraph 1;

(b) record for each group of animals moved from their establishment, the information referred to in Article 102(1)(b) of Regulation (EU) 2016/429 and the total number of animals in that group.

Article 24

Record-keeping obligations of operators of establishments keeping equine animals

Operators of registered establishments keeping equine animals shall record the following information for each kept equine animal:

(a) the unique code;

(b) the date of birth on the establishment;

(c) the date of natural death, loss or slaughter on the establishment.

Article 25

Record-keeping obligations of operators of establishments keeping poultry and captive birds

Operators of registered or approved establishments keeping poultry and operators of establishments keeping captive birds shall record the following information:

(a) the production performances for poultry;

(b) the morbidity rate for the poultry and captive birds on the establishment together with information concerning the cause.

Article 26

Record-keeping obligations of operators of establishments keeping dogs, cats and ferrets

Operators of registered establishments keeping dogs, cats and ferrets shall record the following information for each such animal:

(a) the date of birth;

(b) the date of death or loss on the establishment.

Article 27

Record-keeping obligations of operators of establishments keeping honeybees

Operators of registered establishments keeping honeybees shall record for each apiary the details of temporary transhumance, if any, of the kept beehives, comprising information covering at least the place of each transhumance, its date of start and finish, and the number of the beehives moved.

Article 28

Record-keeping obligations of operators of travelling circuses and animal acts

Operators of registered travelling circuses and animal acts shall record the following information for each animal:

(a) the date of death or loss of the animal on the establishment;

(b) the name and address of the operator having responsibility for the animals or the pet owner;

(c) details on the movements of travelling circuses and animal acts.

Article 29

Record-keeping obligations of operators of animal shelters for dogs, cats and ferrets

Operators of approved animal shelters for dogs, cats and ferrets shall record the following information for each such animal:

(a) the estimated age and sex, breed or colour of coat;

(b) the date of application or the date of reading of the injectable transponder;

(c) the observations made on incoming animals during the isolation period;

(d) the date of death or loss on the establishment.

Article 30

Record-keeping obligations of operators of control posts

Operators of approved control posts shall record the licence plate number or registration number of the means of transport unloading animals and the unique registration number of the transporter where available.

Article 31

Record-keeping obligations of operators of quarantine establishments for kept terrestrial animals other than primates

Operators of approved quarantine establishments for kept terrestrial animals other than primates shall record the following information:

(a) the estimated age and sex of animals kept on the establishment;

(b) the licence plate number or registration number of the means of transport unloading and loading animals and the unique registration number of the transporter where available;

(c) details of the implementation and results of the disease surveillance plan provided for in point 2(a) of Part 8 of Annex I;

(d) the results of clinical and laboratory tests and of post-mortem testing provided for in point 2(b) of Part 8 of Annex I;

(e) details of the vaccination and treatment of susceptible animals provided for in point 2(c) of Part 8 of Annex I;

(f) instructions, if any, of the competent authority as regards observations made during any isolation or quarantine period.

Article 32

Record-keeping obligations of operators of confined establishments

Operators of approved confined establishments shall record the following additional information:

(a) the estimated age and sex of animals kept on the establishment;

(b) the licence plate number or registration number of the means of transport unloading and loading animals and the unique registration number of the transporter where available;

(c) details of the implementation and results of the disease surveillance plan provided for in point 2(a) of Part 9 of Annex I;

(d) the results of clinical, laboratory tests and post-mortem testing provided for in point 2(b) of Part 9 of Annex I;

(e) details of the vaccination and treatment of susceptible animals provided for in point 2(c) of Part 9 of Annex I;

(f) details of isolation or quarantine of incoming animals, instructions, if any, of the competent authority as regards isolation and quarantine and observations made during any isolation or quarantine period.

CHAPTER 2

Hatcheries

Article 33

Record-keeping obligations of operators of hatcheries

Operators of registered or approved hatcheries shall record the following information for each flock:

(a) the species and number of day-old chicks or hatchlings of other species or hatching eggs kept at the hatchery;

(b) movements of day-old chicks, hatchlings of other species and hatching eggs into and out of their establishments, stating as appropriate:

  (i) their place of origin or intended destination, including the unique registration or approval number of the establishment as appropriate;

  (ii) the dates of such movements;

(c) the number of incubated eggs which have not hatched and their intended destination, including the unique registration or approval number of the establishment as appropriate;

(d) hatching yields;

(e) details of any vaccination programmes.

CHAPTER 3

Transporters registered with the competent authority

Article 34

Record-keeping obligations of registered transporters of kept terrestrial animals

Registered transporters shall record the following additional information for each means of transport used for the transport of kept terrestrial animals:

(a) the licence plate number or registration number;

(b) the dates and times of loading of the animals at the establishment of origin;

(c) the name, address and unique registration or approval number of each establishment visited;

(d) the dates and times of unloading of animals at the establishment of destination;

(e) the dates and the places of cleaning, disinfection and disinfestation of the means of transport;

(f) the reference numbers of the documents accompanying the animals.

CHAPTER 4

Operators conducting assembly operations

Article 35

Record-keeping obligations of operators of establishments of assembly operations of kept ungulates and poultry

Operators of registered or approved establishments for assembly operations of kept ungulates and poultry shall record the following information:

(a) the date of death and loss of animals on the establishment;

(b) the licence plate number or registration number of the means of transport loading or unloading the animals and the unique registration number of the transporter of those animals where available;

(c) the reference numbers of the documents required to accompany animals.

Article 36

Record-keeping obligations of operators conducting assembly operations of kept ungulates and poultry independently of an establishment

Registered operators conducting assembly operations for kept ungulates and poultry independently of an establishment shall record the following information for each animal subject to purchase:

(a) the unique approval or registration number of the establishment for assembly operations through which the animal has passed after leaving the establishment of origin and prior to its purchase, where available;

(b) the date of purchase;

(c) the name and address of the purchaser of the animal;

(d) the licence plate or registration number of the means of transport loading or unloading the animals and the unique registration number of the transporter, where available;

(e) the reference numbers of the documents required to accompany the animals.

Article 37

Record-keeping obligations of operators of assembly centres of dogs, cats and ferrets

Operators of approved assembly centres of dogs, cats and ferrets shall record the licence plate number or registration number of the means of transport loading or unloading the animals and the unique registration number of the transporter, where available.

PART III

TRACEABILITY OF KEPT TERRESTRIAL ANIMALS AND HATCHING EGGS

TITLE I

TRACEABILITY OF KEPT BOVINE ANIMALS

CHAPTER 1

Means and methods of identification

Article 38

Obligations on operators keeping bovine animals as regards the means and methods of identification of kept bovine animals, their application and use

1. Operators keeping bovine animals shall ensure that bovine animals are individually identified by means of a conventional ear tag as referred to in point (a) of Annex III which must:

(a) be attached to each ear flap of the animal with a visible, legible and indelible display of the identification code of the animal on the means of identification;

(b) be applied to bovine animals on the establishment of birth;

(c) not be removed, modified or replaced without the permission of the competent authority of the Member State where the bovine animals are kept.

2. Operators keeping bovine animals may replace:

(a) one of a conventional ear tag referred to in paragraph 1 by an electronic identifier approved by the competent authority of the Member State where the bovine animals are kept;

(b) both conventional ear tags referred to in paragraph 1 by an electronic identifier approved by the competent authority of the Member State where the bovine animals are kept in accordance with the exemptions provided for in Article 39(1).

Article 39

Exemptions granted by the competent authority for operators of confined establishments and for operators to identify bovine animals kept for cultural, historical, recreational, scientific or sporting purposes

1. The competent authority may exempt operators of confined establishments and operators keeping bovine animals for cultural, historical, recreational, scientific or sporting purposes from the identification requirements for bovine animals provided for in Article 38(1)(a).

2. When granting exemptions as provided in paragraph 1, the competent authority shall ensure that at least one of the means of identification listed in points (d) and (e) of Annex III is approved by the competent authority for the application of the means of identification of bovine animals kept by operators exempted in accordance with paragraph 1 of this Article.

The competent authority shall establish procedures for application by operators when requesting such an exemption as provided in paragraph 1 of this Article.

Article 40

Special provisions for the identification of bovine animals of breeds reared specifically for traditional cultural and sporting events

The competent authority may authorise operators keeping bovine animals of breeds reared specifically for traditional cultural and sporting events to identify those animals individually by an alternative means of identification authorised by the competent authority after the removal of conventional ear tag referred to in Article 38(1)(a) provided that an unequivocal link between the identified animal and its identification code is maintained.

Article 41

Replacement of the conventional ear tag for kept bovine animals as referred to in Article 38(1)

1. Member States may authorise one of the conventional ear tags referred to in Article 38(1)(a) to be replaced by one of the means of identification listed in points (c), (d) and (e) of Annex III for all or specific categories of bovine animals kept in their territory.

2. Member States shall ensure that the means of identification listed in points (a), (c), (d) and (e) of Annex III comply with the following requirements:

(a) they display the identification code of the animal;

(b) they are approved by the competent authority of the Member State where the bovine animals are kept.

3. Member States shall establish procedures for the following:

(a) application by manufacturers for approval of means of identification for bovine animals kept in their territory;

(b) application by operators keeping bovine animals for the means of identification to be allocated to their establishment.

4. Member State shall establish and make available to the public of the list of breeds of bovine animals reared specifically for traditional cultural and sporting events kept in its territory.

CHAPTER 2

Computer database

Article 42

Rules for information in computer database of kept bovine animals

The competent authority shall store the information referred to in Article 109(1)(a) of Regulation (EU) 2016/429 for each kept bovine animal in a computer database in accordance with the following rules:

(a) the identification code of the animal must be recorded;

(b) the type of electronic identifier, if applied to the bovine animal, must be recorded as listed in points (c), (d) and (e) of Annex III;

(c) the following information must be recorded for establishments keeping bovine animals:

(i) the unique registration number assigned to it;

(ii) the name and address of the operator of establishment;

(d) the following information must be recorded for each movement of bovine animal into and from the establishment:

(i) the unique registration number of the establishments of origin and destination;

(ii) the date of arrival;

(iii) the date of departure;

(e) the date of natural death, loss or slaughter of bovine animal on the establishment must be recorded.

Article 43

Rules on the exchange of electronic data between computer databases of Member States in respect of bovine animals

1. Member States shall ensure that their computer databases in respect of bovine animals complies with the following requirements:

(a) they are secured in accordance with applicable national law;

(b) they contain at least the up-to-date information provided for in Article 42.

2. Member States shall ensure that their computer databases is managed by an information system capable of applying and managing qualified electronic signatures for data exchange messages to guarantee non-repudiation concerning:

(a) the authenticity of exchanged messages so that guarantees are provided on the origin of the message;

(b) the integrity of exchanged messages so that guarantees are provided that the message has not been altered or corrupted;

(c) the temporal information of exchanged messages so that guarantee are provided that they were sent at a specific time.

3. Member State shall, without any undue delay but in any event within a period of 24 hours of becoming aware of it, notify the Member State with whom electronic data exchange has been established, of any breach of security or loss of integrity that has a significant impact on the data validity or on the personal data maintained therein.

CHAPTER 3

Identification document

Article 44

Identification document of kept bovine animals

Identification document of kept bovine animals provided for in Article 112(b) of Regulation (EU) 2016/429 shall contain the following information:

(a) the information provided for in Article 42(a) to (d);

(b) the date of birth of each animal;

(c) the name of issuing competent authority, or the issuing body to which the task was assigned;

(d) the date of issuance.

TITLE II

TRACEABILITY OF KEPT OVINE AND CAPRINE ANIMALS

CHAPTER 1

Means and methods of identification

Article 45

Obligations on operators of kept ovine and caprine animals as regards the means and methods of identification of those animals, their application and use

1. Operators keeping ovine and caprine animals intended to be moved directly to a slaughterhouse before the age of 12 months shall ensure that each such animal is identified by at least a conventional ear tag attached to an ear flap of the animal or a conventional pastern band as listed in point (a) or (b) of Annex III with a visible, legible and indelible display of, either:

(a) the unique registration number of the establishment of birth of animal;

or

(b) the identification code of the animal.

2. Operators keeping ovine and caprine animals not intended to be moved directly to slaughterhouse before the age of 12 months shall ensure that each such animal is individually identified as follows:

(a) by a conventional ear tag as listed in point (a) of Annex III with a visible, legible and indelible display of the identification code of the animal;

and

(b) by one of the means of identification listed in points (c) to (f) of Annex III approved by the competent authority of the Member State where the ovine and caprine animals are kept with legible and indelible display of the identification code of the animal.

3. Operators keeping ovine and caprine animals shall ensure that:

(a) the means of identification are applied to ovine and caprine animals on the establishment of birth;

(b) no means of identification are removed, modified or replaced without the permission of the competent authority.

4. Operators keeping ovine and caprine animals may replace:

(a) one of the approved means of identification referred to in paragraph 2 in accordance with the derogations provided for in Article 46(1), (2), (3) and (4);

(b) both means of identification referred to in paragraph 2 of this Article by an electronic identifier approved by the competent authority of the Member State where the ovine and caprine animals are kept in accordance with the exemptions provided for in Article 47(1).

Article 46

Derogations from the requirements laid down in Article 45 as regards the means and methods of identification of kept ovine and caprine animals, their application and use

1. By way of derogation from the requirement laid down in Article 45(2)(a), operators keeping ovine and caprine animals belonging to a population of animals that are born with ears that are too small to attach a conventional ear tag as listed in point (a) of Annex III, shall ensure that such animals are individually identified by a conventional pastern band as listed in point (b) of that Annex with a visible, legible and indelible display of the identification code of the animal.

2. By way of derogation from the requirement laid down in Article 45(2)(a), operators keeping ovine and caprine animals not intended to be moved to another Member State may replace the a conventional ear tag as listed in point (a) of Annex III by a tattoo listed in point (g) of that Annex with a visible, legible and indelible display of the identification code of the animal provided that the competent authority has authorised the use of a ruminal bolus as listed in point (d) of that Annex.

3. By way of derogation from Article 45(2)(b), operators keeping ovine and caprine animals not intended to be moved to another Member State and the operators keeping ovine or caprine animals exempted from the application of an electronic identifier in accordance with Article 48, may replace the electronic identifier by a tattoo as listed in point (g) of Annex III with visible, legible and indelible display of the identification code of the animal.

4. By way of derogation from Article 45(2), operators keeping ovine and caprine animals intended to be transported to the slaughterhouse either after undergoing an assembly operation or after undergoing a fattening operation in another establishment may identify each animal at least by an electronic ear tag as listed in point (c) of Annex III attached to an ear flap of the animal with visible, legible and indelible display of the unique registration number of the establishment of birth of animal and with legible and indelible display of the identification code of that animal provided that those animals:

(a) are not intended to be moved to another Member State;

and

(b) are slaughtered before the age of 12 months.

Article 47

Exemptions from the requirements of Article 45(2) for operators of confined establishments and those keeping animals for cultural, recreational or scientific purposes

1. The competent authority may exempt operators of confined establishments and operators keeping ovine and caprine animals for cultural, recreational or scientific purposes from identification requirements of Article 45(2) subject the conditions laid down in paragraph 2 of this Article.

2. The competent authority shall ensure that either a ruminal bolus as listed in points (d) of Annex III, or an injectable transponder as listed in point (e) of that Annex III, has been authorised by it for the identification of the ovine and caprine animals referred to in paragraph 1, and that such authorised means of identification complies with the requirements laid down in Article 48(3).

The competent authority shall establish procedures for application by operators when requesting such an exemption as provided in paragraph 1 of this Article.

Article 48

Derogation by the Member States from the requirements of Article 45(2) and obligations of the Member States regarding the means of identification

1. By way of derogation from Article 45(2)(b), Member States may authorise operators keeping ovine or caprine animals to replace the means of identification listed in points (c) to (f) of Annex III, by a conventional ear tag or a conventional pastern band as listed in points (a) or (b) of that Annex subject to compliance with the following conditions:

(a) the total number of ovine and caprine animals kept within its territory does not exceed 600 000 as recorded in a computer database;

and

(b) the kept ovine and caprine animals are not intended to be moved to another Member State.

2. By way of derogation from Article 45(2)(b), Member States may authorise operators keeping caprine animals to replace the means of identification listed in points (c) to (f) of Annex III, by a conventional ear tag or a conventional pastern band as listed in in points (a) or (b) of that Annex subject to compliance with the following conditions:

(a) the total number of caprine animals kept within its territory does not exceed 160 000 as recorded in a computer database;

and

(b) the kept caprine animals are not intended to be moved to another Member State.

3. Member State shall ensure that the means of identification listed in points (a) to (f) of Annex III comply with the following requirements:

(a) they display the identification code of the animal;

(b) they are approved by the competent authority of the Member State where the ovine or caprine animals are kept.

4. Member States shall establish procedures for application by:

(a) manufacturers for approval of means of identification for ovine and caprine animals kept in their territory;

(b) operators for the means of identification for ovine and caprine animals to be allocated to their establishment.

CHAPTER 2

Computer database

Article 49

Rules for information in computer database of kept ovine and caprine animals

The competent authority shall store the information referred to in Article 109(1)(b) of Regulation (EU) 2016/429 in respect of kept ovine and caprine animals in a computer database in accordance with the following rules:

(a) the following information must be recorded for establishments keeping those animals:

(i) the unique registration number assigned to it;

(ii) the name and address of the operator of establishment;

(b) the following information must be recorded for each movement of those animals into and from the establishment:

(i) the total number of animals;

(ii) the unique registration number of their establishments of origin and destination;

(iii) the date of arrival;

(iv) the date of departure.

CHAPTER 3

Movement document

Article 50

Movement document of kept ovine and caprine animals to be moved within the territory of a Member State

Movement document, as provided for in Article 113(1)(b) of Regulation (EU) 2016/429, for kept ovine and caprine animals to be moved within the territory of single Member State shall contain the following information:

(a) the individual identification code of the animal or the unique registration number of the establishment of birth of the animal as displayed by the means of identification;

(b) the type of electronic identifier, listed out in points (c) to (f) of Annex III, and its location, if applied to the animal;

(c) the information provided for in Article 49(a)(i) and Article 49(b)(i), (ii) and (iv);

(d) the unique registration number of the transporter;

(e) the licence plate number or registration number of the means of transport.

Article 51

Derogation from certain requirements of Article 50 for movement document of kept ovine and caprine animals intended to be assembled within the territory of a Member State

The competent authority may grant derogations from the requirements in Article 50(a) for operators of establishments from which kept ovine and caprine animals are to be moved to an establishment where they are intended to be assembled, provided the following conditions are fulfilled:

(a) the operators must not transport the kept ovine and caprine animals in the same means of transport as animals from other establishments, unless the batches of those animals are kept physically separated from each other in the means of transport;

(b) the operators of establishments where the animals are to be assembled shall, subject to a permission by the competent authority, record the individual identification code of each animal as referred to in Article 50(a) on behalf of the operator of establishment from where ovine and caprine animals are received and such records are kept by that operator;

(c) the competent authority must have granted access to the computer database referred to in Article 49 to the operators of establishments where assembly operations are to be conducted for the ovine and caprine animals;

(d) the operators of establishments where the animals are to be assembled must have in place procedures to ensure that the information referred to in point (b) is recorded in the computer database referred to in Article 49.

TITLE III

TRACEABILITY OF KEPT PORCINE ANIMALS

CHAPTER 1

Means and methods of identification

Article 52

Obligations on operators keeping porcine animals as regards the means and methods of identification of kept porcine animals, their application and use

1. Operators of establishments keeping porcine animals shall ensure that each porcine animal is identified by the following means of identification:

(a) a conventional ear tag as listed in point (a) of Annex III or an electronic ear tag as listed in point (c) of Annex III, attached to an ear flap of the animal with a visible, legible and indelible display of the unique registration number of

(i) the establishment of birth of animal;

or

(ii) the last establishment of the supply chain referred to in Article 53 when those animals are moved to an establishment outside of that supply chain;

or

(b) a tattoo as listed in point (g) of Annex III applied to an animal with indelible display of the unique registration number of

(i) the establishment of birth of animal;

or

(ii) the last establishment of the supply chain referred to in Article 53 when those animals are moved to an establishment outside of that supply chain.

2. Operators of establishments keeping porcine animals shall ensure that:

(a) the means of identifications are applied to porcine animals on:

(i) the establishment of birth;

or

(ii) the last establishment of the supply chain referred to in Article 53 when those animals are moved to an establishment outside of that supply chain;

b) no means of identification are removed, modified or replaced without the permission of the competent authority.

3. Operators of establishments keeping porcine animals may replace the means of identification referred to in paragraph 1 of this Article by an electronic identifier approved by the competent authority of the Member State where the porcine animals are kept in accordance with the exemptions provided for in Article 54(1).

Article 53

Derogations from the requirements of Article 52 as regards the means and methods of identification of kept porcine animals of the supply chain

By way of derogation from Article 52, the competent authority may allow the operators of establishments of the supply chain to derogate from the obligation to identify porcine animals when those animals are intended to be moved within that supply chain within its Member State territory provided that the practical application of traceability measures in that Member State ensures the full traceability of those animals.

Article 54

Exemptions granted by the competent authority for operators of confined establishments and for operators to identify porcine animals kept for cultural, recreational or scientific purposes

1. The competent authority may exempt operators of confined establishments and operators keeping porcine animals for cultural, recreational or scientific purposes from the identification requirements for porcine animals provided for in Article 52(1).

2. When granting exemptions as provided for in paragraph 1 of this Article, the competent authority shall ensure that an injectable transponder as listed in point (e) of Annex III, has been authorised by it for the identifications of porcine animals referred to in paragraph 1 of this Article, and that such authorised means of identification complies with the requirements of Article 55(1).

3. The competent authority shall establish procedures for application by operators when requesting such an exemption as provided in paragraph 1 of this Article.

Article 55

Member States obligations as regards the means and methods of identification of kept porcine animals, their application and use

1. Member States shall ensure that the means of identification listed in points (a), (c), (e) and (g) of Annex III comply with the following requirements:

(a) they display either:

(i) the unique registration number of the establishment of birth of the animal;

or

(ii) in the case of animals that are to be moved from the establishment of a supply chain referred to in Article 53 to another establishment outside of that supply chain, the unique registration number of the last establishment of a supply chain;

(b) they are approved by the competent authority of the Member State where porcine animals are kept.

2. Member States shall establish procedures for application by:

(a) manufacturers for approval of the means of identification for porcine animals kept in their territory;

(b) operators for the means of identification for porcine animals to be allocated to their establishment.

3. Member States shall establish and make available to the public of the list of establishments of the supply chain referred to in Article 53 in their territory.

CHAPTER 2

Computer database

Article 56

Rules for information in computer database of kept porcine animals

The competent authority shall store the information referred to in Article 109(1)(c) of Regulation (EU) 2016/429 in respect of kept porcine animals in a computer database in accordance with the following rules:

(a) the following information must be recorded for establishments keeping those animals:

  (i) the unique registration number assigned it;

  (ii) the name and address of the operator of establishment;

(b) the following information must be recorded for each movement of those animals into and from the establishment:

  (i) the total number of animals;

  (ii) the unique registration number of their establishments of origin and destination;

  (iii) the date of arrival;

  (iv) the date of departure.

CHAPTER 3

Movement document

Article 57

Movement documents of kept porcine animals to be moved within its Member State territory

Movement documents as provided for in Article 115(b) of Regulation (EU) 2016/429 for kept animals of the porcine species to be moved within the territory of a single Member State shall contain the following information:

(a) the information to be kept in the computer database as referred to in Article 56(a)(i) and Article 56(b)(i), (ii) and (iv);

(b) the unique registration number of the transporter;

(c) the licence plate number or registration number of the means of transport.

TITLE IV

TRACEABILITY OF KEPT EQUINE ANIMALS

CHAPTER 1

Means and methods of identification

Article 58

Obligations on operators keeping equine animals as regards the means and methods of identification of those animals, their application and use

1. Operators of kept equine animals shall ensure that each animal is individually identified by the following means of identification:

  (a) an injectable transponder as listed in point (e) of Annex III;

  (b) a single lifetime identification document.

2. Operators of kept equine animals shall ensure that:

(a) equine animals are identified within the time periods provided for in Article 12(1) and (2) of Regulation (EU) 2015/262;

(b) no means of identification referred to in paragraph 1 are removed, modified or replaced without the permission of the competent authority of the establishment where those animals are habitually kept.

3. Operators of kept equine animals, and if such operators are not the owner of the animals, acting on behalf of and in agreement with the owner of the animal, shall submit an application for the issuing of a single lifetime identification document, referred to in Article 65 or 66, to the competent authority of the establishment where the animals are habitually kept, and shall provide the competent authority with the necessary information to complete that identification document and the records in the database referred to in Article 64.

Article 59

Member States obligations for means and methods of identification of kept equine animals, their application and use

1. Member States may authorise the injectable transponder referred to in Article 58(1)(a) to be replaced by:

(a) a single conventional ear tag as listed in point (a) of Annex III applied to equine animals kept for meat production, provided that those animals were either born in that Member State or imported into that Member State without bearing a physical means of identification prior to entry into the Union;

(b) an alternative method authorised by the competent authority in accordance with Article 62, which establishes an unequivocal link between the equine animal and the single lifetime identification document referred to in Article 58(1)(b).

2. Member States shall ensure that the means of identification referred to in Article 58(1)(a) and in paragraph 1(a) of this Article comply with the following requirements:

(a) they display the identification code of the animal;

(b) they are approved by the competent authority of the Member State where the equine animals are identified in accordance with Article 58(2)(a).

3. Member States shall:

(a) establish procedures for application by manufacturers for approval of means of identification for kept equine animals identified in their territory;

(b) establish deadlines for submission of the applications for the issuing of identification document provided for in Article 58(1)(b).

Article 60

Derogations for the identification of kept equine animals living under semi-wild conditions

1. By way of derogation from Article 58(2)(a), Member States may specify populations of kept equine animals living under semi-wild conditions in certain areas of their territory, which shall only be required to be identified in accordance with Article 58(1) when they are:

(a) removed from such populations, excluding their transfer under official supervision from one specified population to another;

or

(b) brought into captivity for domestic use.

2. Prior to making use of the derogation provided for in paragraph 1, Member States shall notify the Commission of the populations of equine animals and the areas where those animals live under semi-wild conditions.

3. By way of derogation from Article 58(1), Member States may authorise the application of an injectable transponder as listed in point (e) of Annex III more than 12 months prior to the issuing of an identification document in accordance with paragraph 1 of this Article, provided that the identification code of the animal displayed on the injectable transponder is recorded by the operator at the time of implantation of the injectable transponder and transmitted to the competent authority.

Article 61

Derogations for the identification of kept equine animals moved to a slaughterhouse or accompanied by a temporary identification document

1. By way of derogation from Article 58(2)(a), the competent authority may authorise the use of a simplified method of identification of equine animals intended to be moved to the slaughterhouse for which no single lifetime identification document was issued in accordance with Article 67(1), provided that

(a) the equine animals are less than 12 months old;

(b) there is an uninterrupted line of traceability of the animals from the establishment of birth to the slaughterhouse situated in the same Member State.

The equine animals must be transported directly to the slaughterhouse and during that transport they must be individually identified by injectable transponder, conventional or electronic ear tag, or conventional or electronic pastern band as listed in points (a), (b), (c), (e) or (f) of Annex III respectively.

2. By way of derogation from Article 58(2)(a), the competent authority shall, on request by the operator of the equine animal, issue a temporary identification document for the period of time when the identification document issued in accordance with Article 67(1) is surrendered to that competent authority in order to update identification details in that document.

Article 62

Authorisation of alternative methods of identification of kept equine animals

1. Member States may authorise suitable alternative methods of identification of kept equine animals, including the recording of marks, which ensure an unequivocal link between the equine animal and the single lifetime identification document and show that the equine animal has undergone the process of identification.

2. Member States authorising alternative methods of identification as provided for in paragraph 1shall ensure that:

(a) the alternative methods of identification are only used in exceptional cases for the identification of equine animals entered in specific breeding books or are used for specific purposes, or in case of equine animals which cannot be identified by an injectable transponder for medical or animal welfare reasons;

(b) any authorised alternative method of identification or any combination of those methods provide at least the same guarantees as the injectable transponder;

(c) the format of the information on the alternative method of identification applied to an equine animal must be suitable for entry in a searchable database.

Article 63

Obligation on operators using the alternative methods of identification

1. Operators making use of an authorised alternative method of identification, as provided for in Article 62(1), shall provide to the competent authority and where necessary to other operators the means of accessing that identification information or have the onus of verifying the identity of the equine animal by those authorities or operators.

2. Where alternative methods of identification are based on characteristics of the equine animal which may change over time, the operator shall provide the necessary information to the competent authority for them to update the identification document referred to in Article 62 and the database referred to in Article 64.

3. Breed societies and international associations or organisations which manage horses for competition or races may require that equine animals which were identified by use of an alternative method of identification provided for in Article 62 are to be identified by implantation of an injectable transponder for the purpose of the entry or registration of purebred breeding animals of the equine species in breeding books or the registration of horses for competition or race purposes.

CHAPTER 2

Computer database

Article 64

Rules for information in computer database of kept equine animals

The competent authority shall store the information referred to in Article 109(1)(d) of Regulation (EU) 2016/429 in respect of kept equine animals in a computer database in accordance with the following rules:

(a) for the establishment where those equine animals are habitually kept must be recorded:

(i) the unique registration number assigned to it;

(ii) the name and address of the operator of establishment;

(b) for each equine animal habitually kept on the establishment must be recorded:

(i) the unique code;

(ii) where available, the identification code of the animal displayed by a physical means of identification;

(iii) where the injected transponder has not been approved by the competent authority of the Member State where the equine animal was identified in accordance with Article 58(2), the reading system of that injected transponder;

(iv) any information concerning new, duplicate or replacement identification documents issued for the animal;

(v) the species of the animal;

(vi) the sex of the animals, with a possibility to enter the date of gelding;

(vii) the date and country of birth as declared by the operator of the kept equine animal;

(viii) the date of natural death on the establishment or loss as declared by the operator of the kept equine animal, or the date of slaughter of that animal;

(ix) the name and address of the competent authority, or the issuing body to which the task was assigned, which has issued the identification document;

(x) the date of issuance of the identification document.

(c) for each equine animal kept on the establishment for a period exceeding 30 days, the unique code shall be recorded; however, except in the following cases:

(i) for equine animals participating in competitions, races, shows, training and hauling for a period not exceeding 90 days;

(ii) for male equine animals for breeding kept during the breeding season;

(iii) for female equine animals for breeding kept for a period not exceeding 90 days.

CHAPTER 3

Identification document

Article 65

Single lifetime identification document of kept equine animals

1. The single lifetime identification document shall contain at least the following information:

(a) the identification code of the animal displayed by the injectable transponder or ear tag;

(b) the unique code assigned to the animal for its lifetime which encodes

(i) the computer database in which the competent authority or issuing body recorded the information necessary to issue the first single lifetime identification document referred to in Article 58(1)(b), and where necessary a replacement single lifetime identification document referred to in Article 69(2)(b);

(ii) the numerical identification code of the individual equine animal in that database;

(c) the species of the animal;

(d) the sex of the animal, with the possibility to enter the date of gelding;

(e) the date and country of birth as declared by the operator of the kept equine animal;

(f) the name and address of the issuing competent authority, or the issuing body to which the task was assigned;

(g) the date of issue of the single lifetime identification document;

(h) where applicable, information on the replacement of the physical means of identification and the identification code of the animal displayed by that replaced physical means of identification;

(i) where applicable,

(i) the validation mark issued and included in the single lifetime identification document by the competent authority, or by the body to which this activity was delegated, for a period not exceeding 4 years, which documents that the animal is habitually resident in an establishment recognised by the competent authority as an establishment with a low health risk due to frequent animal health visits, additional identity checks and health testing and the absence of natural breeding on the establishment, except in dedicated and separated premises, with the possibility of renewal of the validity period of issued valditation mark;

or

(ii) the licence issued and included in the single lifetime identification document for a period not exceeding 4 years for participation in equestrian competitions by the national federation of the Federation Equestre Internationale or for participation in races by the competent racing authority and which documents at least two visits per year by a veterinarian, including those necessary to carry out regular equine influenza vaccination and examinations required for movements to other Member States or third countries, with the possibility of renewal of the validity period of issued licence.

2. Single lifetime identification documents for registered equine animals and for equidae identified in accordance with Article 62 shall, in addition to the information referred to in paragraph 1 of this Article, contain at least the following information:

(a) a pictorial and a verbal description of the animal, including the possibility to update this information;

(b) where applicable, detailed information on alternative methods of identification;

(c) where applicable, information on the breed in accordance with Annex of Delegated Regulation (EU) 2017/1940;

(d) where applicable, information necessary for the use of the single lifetime identification document for sporting purposes in accordance with the requirements of the relevant organisations managing horses for competition or races, including information on tests for and vaccinations against listed or not-listed diseases as required for access to competitions and races and to obtain the licence referred to in paragraph 1(i)(ii).

Article 66

Obligations on operators of kept equine animals as regards the single lifetime identification documents

1. Operators of kept equine animals shall ensure that those animals are at all times accompanied by their single lifetime identification document.

2. By way of derogation from paragraph 1, operators shall not be required to ensure that kept equine animals are accompanied by their single lifetime identification document when those animals are:

(a) stabled or on pasture, and the single lifetime identification document can be presented without delay by the operator of the kept equine animal or the operator of the establishment on which the animal is kept;

(b) temporarily ridden, driven, led or taken either:

(i) in the vicinity of the establishment on which the animal is kept within a Member State;

or

(ii) during transhumance of animals to and from registered summer grazing grounds provided that the single lifetime identification documents can be presented at the establishment of departure;

(c) unweaned equine animals and accompanying their dam or foster mare;

(d) participating in a training or test of an equestrian competition, race or event which requires them to leave temporarily the establishement on which the training, competition, race or event takes place;

(e) moved or transported in an emergency situation relating to the animals themselves or to the establishment where they are kept.

3. Operators of kept equine animals shall not move an equine animal accompanied by the temporary document referred to in Article 61(2) to the slaughterhouse.

4. Operators of kept equine animals shall return the single lifetime identification document to the issuing competent authority, or the issuing body to which the task was delegated, as decoded from the unique code after the death or loss of the equine animal.

Article 67

Obligations on the competent authority as regards the issue of duplicate and replacement single lifetime identification documents

1. On application by the operator, the competent authority, or the issuing body to which the task was assigned shall issue a duplicate single lifetime identification document where the identity of the kept equine animal can be established and the operator either

(a) declared the loss of the single lifetime identification document issued in respect of the animal;

or

(b) failed to identify the animal within the time periods provided for in Article 58(2)(a).

2. On application by the operator or on its own initiative, the competent authority shall issue a replacement single identification document where the identity of the animal cannot be established and the operator either

(a) declared the loss of the single lifetime identification document issued in respect of the animal;

or

(b) failed to comply with the identification requirements of Article 58(2)(b).

Article 68

Obligations on the competent authority as regards the issue of new single lifetime documents for registered equine animal

Where an identified equine animal becomes a registered equine animal and the single lifetime identification document issued in respect of that animal cannot be adapted to meet the requirements laid down in Article 65(2), the competent authority, or the issuing body to which the task was assigned, on application of the operator of the equine animal, shall issue a new single lifetime identification document to replace the former one containing the information required in accordance with Article 65(1) and (2).

Article 69

Obligations on the competent authority as regards the concerning duplicate, replacement and new identification documents

1. The competent authority, or the issuing body to which the task was assigned shall enter information concerning the issuing of a duplicate or replacement identification document in accordance with Article 67 or the issuing of a new identification document in accordance with Article 68 in the computer database referred to in Article 64.

2. The competent authority, or the issuing body to which the task was assigned shall enter

(a) in the duplicate single lifetime identification document and in the new single lifetime identification document, the unique code assigned to the animal in accordance with Article 65(1)(b) on the occasion of the issue of the first single lifetime identification document;

or

(b) in the replacement single lifetime identification document, the unique code assigned to the equine animal on the occasion of its issue.

TITLE V

TRACEABILITY OF KEPT DOGS, CATS AND FERRETS, CAMELID AND CERVID ANIMALS, CAPTIVE BIRDS AND TERRESTRIAL ANIMALS IN TRAVELLING CIRCUSES AND ANIMAL ACTS

CHAPTER 1

Traceability of kept dogs, cats and ferrets

Section 1

Means of identification

Article 70

Obligations on operators keeping dogs, cats and ferrets as regards the means and methods of identification of those animals, their application and use

Operators keeping dogs, cats and ferrets shall ensure that:

(a) those animals are individually identified by an injectable transponder as listed in point (e) of Annex III when they are moved to another Member State;

(b) the injectable transponder intended for implantation in the animal is approved by the competent authority;

(c) they provide to the competent authority and where necessary to other operators the reading device which enables at any time the verification of the individual identification of the animal where the implanted injectable transponder has not been approved by the competent authority.

Section 2

Identification document

Article 71

Identification document of kept dog, cats and ferrets

Operators keeping dogs, cats and ferrets shall ensure that each of those animals where it is moved to another Member State is accompanied by an identification document referred to in Article 6(d) of Regulation (EU) No 576/2013, duly completed and issued in accordance with Article 22 of that Regulation.

Section 3

Traceability of pet animals

Article 72

Traceability requirements for other than non-commercial movements of pet animals

Operators shall ensure that pet animals moved to another Member State for purposes other than non-commercial movement comply with the rules laid down in Articles 70 and 71.

CHAPTER 2

Traceability of kept camelid and cervid animals

Article 73

Obligations on operators keeping camelid and cervid animals as regards the means and methods of identification of those animals, their application and use

1. Operators keeping camelid animals shall ensure that those animals are individually identified by either:

(a) a conventional ear tag as listed in point (a) of Annex III attached to each ear flap of the animals with visible, legible and indelible display of the identification code of the animal;

or

(b) an injectable transponder as listed in point (e) of Annex III with legible and indelible display of the identification code of the animal.

2. Operators keeping cervid animals shall ensure that those animals are individually identified by one of the following means of identification:

(a) a conventional ear tag as listed in point (a) of Annex III attached to each ear flap of the animals with visible, legible and indelible display of the identification code of the animal;

or

(b) an injectable transponder as listed in point (e) of Annex III with legible and indelible display of the identification code of the animal;

or

(c) a tattoo as listed in point (g) of Annex III applied to an animal with indelible display of the identification code of the animal.

3. Operators of establishments keeping camelid and cervid animals shall ensure that:

(a) the means of identification are applied to those animals on the establishment of birth;

(b) no means of identification are removed, modified or replaced without the permission of the competent authority;

(c) they provide to the competent authority and where necessary to other operators the reading device which enables at any time the verification of the individual identification of the animal where the implanted injectable transponder has not been approved by the competent authority.

Article 74

Exemption for operators keeping reindeer

By way of exemption from the requirements of Article 73(2), operators keeping reindeer shall ensure that those animals kept on their establishments are each identified by an alternative method authorised by the competent authority of Member State.

Article 75

Member States' obligations for the means of identification of kept camelid and cervid animals

1. Member States shall ensure that the means of identification listed in points (a), (e) and (g) of Annex III comply with the following requirements:

(a) they display the identification code of the animal;

(b) they are approved by the competent authority of the Member State where the camelid and cervid animals are kept.

2. Member States shall establish procedures for the following:

(a) application for approval by manufacturers of means of identification for camelid and cervid animals kept in their territory;

(b) application by operators keeping camelid and cervid animals for the means of identification to be allocated to their establishment.

CHAPTER 3

Traceability of captive birds

Article 76

Obligations on operators keeping psittacidae as regards the means and methods of identification of those animals, their application and use

1. Operators keeping psittacidae shall ensure that those animals are individually identified where they are moved to another Member State by one of the following means of identification:

(a) a leg ring as listed in point (h) of Annex III attached at least to one leg of the animal with a visible, legible and indelible display of the identification code of the animal;

or

(b) an injectable transponder as listed in point (e) of Annex III with legible and indelible display of the identification code of the animal;

or

(c) a tattoo as listed in point (g) of Annex III applied to an animal with a visible and indelible display of the identification code of the animal.

2. Operators keeping psittacidae shall:

(a) ensure that the means of identification referred to in paragraph 1(b) is approved by the competent authority;

(b) provide to the competent authority and where necessary to other operators the reading device which enables at any time the verification of the individual identification of the animal in case the means of identification referred to in paragraph 1(b) has not been approved by the competent authority.

CHAPTER 4

Traceability of kept terrestrial animals in travelling circuses and animal acts

Section 1

Movement and identification documents of kept terrestrial animals in travelling circuses and animal acts

Article 77

Obligations on competent authority as regards the movement document of kept terrestrial animals in travelling circuses and animal acts

1. The competent authority shall issue a movement document as provided for in Article 117(b) of Regulation (EU) 2016/429 for all kept terrestrial animals in travelling circuses or animal acts intended to be moved to another Member State, except lagomorphs, rodents, honeybees and bumble bees.

2. The competent authority shall ensure that the movement document provided for in paragraph 1 contains at least the following information:

(a) the commercial name of the travelling circus or animal act;

(b) the unique registration number of the travelling circus or animal act assigned by the competent authority;

(c) the name and address of the operator of the travelling circus or animal act;

(d) the species and quantity;

(e) for each animal for which the operator of the travelling circus or animal act is not responsible, the name and address of the operator responsible for the animal or pet owner;

(f) the identification code of the animal displayed by the means of identification provided for in Articles 38, 39, 45, 47, 52, 54, 58, 70, 73, 74 and 76;

(g) the type of electronic identifier and its location, if applied to the animal as referred to in point (f);

(h) the identification mark, means of identification and its location if applicable, for animals other than those referred to in point (f) applied by the operator;

(i) the date of movement of each animal into and from the travelling circus or animal act;

(j) the name, address and signature of the official veterinarian issuing the identification document;

(k) the date of issue of the movement document.

Article 78

Obligations on the competent authority as regards the identification document of kept terrestrial animals in travelling circuses and animal acts

1. The competent authority shall issue an identification document as provided for in Article 117(b) of Regulation (EU) 2016/429 for each kept terrestrial animal in travelling circuses or animal acts intended to be moved to another Member State, except for animals of the equine species, birds, dogs, cats and ferrets, lagomorphs and rodents.

2. The competent authority shall ensure that the identification document provided for in paragraph 1 contains the following information:

(a) the name, address and contact information of the operator responsible for the animal;

(b) species, sex, colour, and any notable or discernible features or characteristics of the animal;

(c) the identification code of the animal identified by the means of identification provided for in Articles 38, 39, 45, 47, 52, 54, 58, 70, 73, 74 and 76;

(d) the type of electronic identifier and its location, if applied to the animal referred to in point (c);

(e) the identification mark, means of identification and its location if applicable, for other animals than those referred to in point (c) applied by the operator;

(f) details of the vaccination of the animal, if applicable;

(g) details of the treatments of the animal, if applicable;

(h) details of diagnostic tests;

(i) the name and address of the competent authority issuing the identification document;

(j) the date of issue of the identification document.

Article 79

Obligations on the competent authority as regards the identification document of kept birds in travelling circuses and animal acts

1. The competent authority shall issue an identification document as provided for in Article 117(b) of Regulation (EU) 2016/429 for group of kept birds in travelling circuses or animal acts intended to be moved to another Member State.

2. The competent authority shall ensure that the identification document provided for in paragraph 1 contains the following information:

(a) the name, address and contact information of the operator responsible for the birds;

(b) the species of the birds;

(c) the identification code, the means of identification and its location if applied to the birds;

(d) details of the vaccination of the birds, if applicable;

(e) details of the treatments of the birds, if applicable;

(f) details of diagnostic tests;

(g) the name and address of the competent authority issuing the identification document;

(h) the date of issue of the identification document.

TITLE VI

TRACEABILITY OF HATCHING EGGS

Article 80

Obligation on operators as regards the traceability of hatching eggs

Operators of establishments keeping poultry and operators of hatcheries shall ensure that each hatching egg is marked with the unique approval number of the establishment of origin of the hatching eggs.

TITLE VII

TRACEABILITY OF KEPT TERRESTRIAL ANIMALS AFTER THEIR ENTRY INTO UNION

Article 81

Obligations on operators as regards the means and methods of identification of kept bovine, ovine, caprine, porcine, cervid or camelid animals after their entry into the Union

1. In case the means of identification have been applied to kept bovine, ovine, caprine, porcine, cervid or camelid animals in third countries or territories, after their entry into the Union and where they remain in the Union, operators of the establishments of the first arrival of those animals shall ensure that the animals are identified by the means of identification provided for in Articles 38, 39, 45, 47, 52, 54, 73 and 74, as appropriate.

2. In case of kept bovine, ovine, caprine, porcine, cervid or camelid animals originating from Member States and identified in accordance with the Union rules, after their entry from third countries or territories into the Union and where they remain in the Union, operators of the establishments of the first arrival of those animals shall ensure that animals are identified by the means of identification provided for in 38, 39, 45, 47, 52, 54, 73 and 74, as appropriate.

3. Operators shall not apply the rules referred to in paragraphs 1 and 2 to kept bovine, ovine, caprine, porcine, cervid or camelid animals intended to move to a slaughterhouse situated in a Member State, provided the animals are slaughtered within 5 days after their entry into Union.

Article 82

Member States' obligations as regards the means and methods of identification of kept bovine, ovine, caprine, porcine, cervid or camelid animals after their entry into Union

Member States shall establish procedures for operators of establishments keeping animals referred to in Article 81(2) to follow when requesting the means of identification to be allocated to their establishment.

Article 83

Obligations on operators as regards the means and methods of identification of kept animals of the equine species after their entry into Union

Operators of kept animals of the equine species shall ensure that after the entry of equine animals into the Union and where they remain in the Union, they are identified in accordance with Article 58 after the date of completion of the customs procedure, as defined in Article 5(16)(a) of Regulation (EU) No 952/2013.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Article 84

Repeal

The following acts are repealed as from 21 April 2021:

— Regulation (EC) No 509/1999,

— Regulation (EC) No 2680/1999,

— Decision 2000/678/EC,

— Decision 2001/672/EC,

— Regulation (EC) No 911/2004,

— Decision 2004/764/EC,

— Regulation (EC) No 644/2005,

— Regulation (EC) No 1739/2005,

— Decision 2006/28/EC,

— Decision 2006/968/EC,

— Decision 2009/712/EC,

— Regulation (EU) 2015/262.

References to the repealed acts shall be construed as references to this Regulation.

Article 85

Transitional measures related to the repeal of Regulation (EC) No 1739/2005

Notwithstanding Article 84 of this Regulation, Article 5 and Article 7(1) and (2) of Regulation (EC) No 1739/2005 concerning the register of animals and animal passports and Annexes I, III and IV thereto shall remain applicable until a date to be determined by the Commission in an implementing act adopted in accordance with Article 120(2) of Regulation (EU) 2016/429.

Article 86

Transitional measures related to the repeal of Regulation (EU) 2015/262

Notwithstanding Article 84 of this Regulation:

(a) the deadlines for the identification of equidae born in the Union provided for in Article 12(1) and (2) of Regulation (EU) 2015/262 shall remain applicable until a date to be determined by the Commission in an implementing act adopted in accordance with Article 120(2) of Regulation (EU) 2016/429;

(b) the rules on equidae intended for slaughter for human consumption and medication records provided for in Article 37 of Regulation (EU) 2015/262 shall remain applicable until a date to be determined by the Commission in a delegated act adopted in accordance with Article 109(1) of Regulation (EU) 2019/6;

(c) the rules on the format and content of identification documents issued for equidae born in the Union provided for in Annex I to Regulation (EU) 2015/262 shall remain applicable until a date to be determined by the Commission in an implementing act adopted in accordance with Article 120(2) of Regulation (EU) 2016/429.

Article 87

Transitional measures regarding identification of kept terrestrial animals

1. Articles 1 to 10 of Regulation (EC) No 1760/2000, Regulation (EC) No 21/2004, and Directive 2008/71/EC, as well as the acts adopted on the basis thereof, shall continue to apply until 21 April 2021.

2. Kept bovine, ovine, caprine and porcine animals that have been identified before 21 April 2021 in accordance with Regulation (EC) No 1760/2000, Regulation (EC) No 21/2004 and Directive 2008/71/EC, as well as the acts adopted on the basis thereof, shall be considered to have been identified in accordance with this Regulation.

3. Kept equine animals that have been identified before 21 April 2021 in accordance with Implementing Regulation (EU) 2015/262 shall be considered to have been identified in accordance with this Regulation.

4. Kept camelid and cervid animals that have been identified before 21 April 2021 in accordance with applicable national law shall be considered to have been identified in accordance with this Regulation.

5. Kept psittacidae that have been identified before 21 April 2021 in accordance with Directive 92/65/EEC shall be considered to have been identified in accordance with this Regulation.

Article 88

Transitional measures regarding the information in the registers kept by competent authorities

Member States shall ensure that information referred to in Articles 18 to 21 of this Regulation for existing establishments and operators referred to in Article 279(1) of Regulation (EU) 2016/429 has been included for each establishment and operator in the registers for them kept by competent authorities by 21 April 2021.

Article 89

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 21 April 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 June 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

REQUIREMENTS FOR GRANTING APPROVAL OF ESTABLISHMENTS AS REFERRED TO IN CHAPTERS 2, 3 AND 4 OF TITLE I OF PART II

PART 1

Requirements for granting approval of establishments for assembly operations of ungulates referred to in Article 5

1. The requirements in relation to isolation and biosecurity measures of establishments for assembly operations of ungulates, as referred to in Article 5, shall be the following:

   (a) appropriate isolation facilities for the ungulates must be available;

   (b) at any given time, the establishment must only accommodate the same category of ungulates of the same species and health status;

   (c) an appropriate system must be in place to ensure the collection of waste water;

   (d) the areas where the ungulates are kept and any passageways, and material and equipment that comes into contact with them must be cleaned and disinfected after the removal of each batch of ungulates, and where necessary before the introduction of any new batch of ungulates, in accordance with established operational procedures;

   (e) appropriate sanitary breaks must be taken after the cleaning and disinfecting operations and prior to the arrival of any new batch of ungulates in the facilities where ungulates are kept.

2. The requirements in relation to facilities and equipment of establishments for assembly operations of ungulates, as referred to in Article 5, shall be the following:

   (a) suitable equipment and facilities must be available for the purpose of loading and unloading ungulates;

   (b) adequate housing of a suitable standard for the ungulates must be available and constructed in such a way that contact with livestock outside and direct communication with isolation accommodation are prevented, and that inspection and any necessary treatment can be easily carried out;

   (c) an appropriate storage area must be available for bedding material, fodder, litter and manure;

   (d) the areas where those animals are kept and the passageways, floors, walls, ramps and all other material or equipment that comes into contact with them can be readily cleaned and disinfected;

   (e) appropriate equipment must be available for the cleaning and disinfection of facilities, equipment and means of transport used for the ungulates.

3. The requirements in relation to the personnel of establishments for assembly operations of ungulates, as referred to in Article 5, shall be the following:

   (a) they must possess the appropriate ability and knowledge, and have received specific training, or have acquired the equivalent practical experience in:

      (i) the handling of, and if necessary the administration of appropriate care to, the ungulates kept on the establishment;

      (ii) the disinfection and hygiene techniques needed to prevent the spread of transmissible diseases.

4. The requirements in relation to the supervision by the competent authority of establishments for assembly operations of ungulates, as referred to in Article 5, shall be the following:

   (a) the operator must provide the official veterinarian with the possibility to use an office for

      (i) supervising the assembly operations of ungulates;

      (ii) inspecting the establishment for compliance with the requirements laid down in points 1, 2 and 3;

      (iii) providing animal health certification of ungulates;

   (b) the operator must ensure that assistance is provided on request from the official veterinarian to carry out the supervision duties referred to in 4(a)(i).

PART 2

Requirements for granting approval of establishments for assembly operations of poultry referred to in Article 6

1. The requirements in relation to the isolation and other biosecurity measures of establishments for assembly operations of poultry, as referred to in Article 6, shall be the following:

   (a) appropriate isolation facilities for the poultry must be available;

   (b) at any given time the establishment must only accommodate the same category of poultry of the same species and health status;

   (c) an appropriate system must be in place to ensure the collection of waste water;

   (d) the areas where the poultry are kept and any passageways, and the material and equipment that comes into contact with them must be cleaned and disinfected after the removal of each batch of poultry, and where necessary before the introduction of any new batch of poultry, in accordance with established operational procedures;

   (e) appropriate sanitary breaks must be taken after the cleaning and disinfecting operations and prior to the arrival of any new batch of poultry in the facilities where poultry are kept;

   (f) visitors must wear protective clothing and the personnel must wear appropriate working clothing and act in accordance with the hygiene rules drawn up by the operator.

2. The requirements in relation to facilities and equipment of establishments for assembly operations of poultry, as referred to in Article 6, shall be the following:

   (a) the establishment must only house poultry;

   (b) an appropriate storage area must be available for bedding material, feed, litter and manure;

   (c) the poultry must not come into contact with rodents and with birds coming from outside the establishment;

   (d) the areas where those animals are kept and the passageways, floors, walls, ramps and all other material or equipment that comes into contact with them must be readily cleaned and disinfected;

   (e) appropriate equipment must be available for the cleaning and disinfection of facilities, equipment and means of transport used for the poultry;

   (f) the establishment must have good conditions of hygiene and allow health monitoring to be carried out.

3. The requirements in relation to the personnel of establishments for assembly operations of poultry, as referred to in Article 6, shall be the following:

   (a) they possess the appropriate ability and knowledge, and have received specific training, or have acquired the equivalent practical experience in:

      (i) the handling of, and if necessary the administration of appropriate care to, the poultry kept on the establishment;

      (ii) the disinfection and hygiene techniques needed to prevent the spread of transmissible diseases.

4. The requirements in relation to supervision by the competent authority of establishments for assembly operations of poultry, as referred to in Article 6, shall be the following:

   (a) the operator must provide the official veterinarian with the possibility to use an office for:

      (i) supervising the assembly operations of poultry;

      (ii) inspecting the establishment for compliance with the requirements laid down in points 1, 2 and 3;

      (iii) providing animal health certification of poultry;

   (b) the operator must ensure that assistance is provided on request from the official veterinarian to carry out the supervision duties referred to in 4(a)(i).

PART 3

Requirements for granting approval of hatcheries referred to in Article 7

1. The requirements in relation to biosecurity measures of hatcheries, as referred to in Article 7, shall be the following:

   (a) hatching eggs of poultry must come either from approved establishments keeping breeding poultry or from other approved hatcheries of poultry;

   (b) eggs must be cleaned and disinfected, between the time of their arrival at the hatchery and the incubation process or at the time of their dispatch unless they have been previously disinfected on the establishment of origin;

   (c) the following must be cleaned and disinfected:

      (i) the incubators and equipment after hatching;

      (ii) the packaging materials after each use, unless they are disposable to be destroyed after first use;

   (d) an appropriate system must be in place to ensure the collection of waste water;

   (e) protective clothing is provided for visitors working;

   (f) appropriate working clothing and the code of conduct with hygiene rules must be provided to personnel.

2. The requirements in relation to the surveillance of hatcheries, as referred to in Article 7, shall be the following:

   (a) the operator must implement a microbiological quality control programme in accordance with Part 1 of Annex II;

   (b) the operator of the hatchery must ensure that arrangements are in place with the operator of the establishment keeping the poultry, where the hatching eggs are originating for sampling to be carried in the hatchery for testing for the disease agents referred to in the disease surveillance programme referred to in Part 2 of Annex II, in order to complete that programme.

3. The requirements in relation to the facilities and equipment of hatcheries, as referred to in Article 7, shall be the following:

   (a) hatcheries must be physically and operationally separated from facilities keeping poultry or any other birds;

   (b) the following functional units and equipment must be kept separate:

      (i) egg storage and grading;

      (ii) egg disinfection;

      (iii) pre-incubation;

      (iv) incubation for hatching;

      (v) sexing and vaccination of day-old chicks;

      (vi) packaging of hatching eggs and day-old chicks for dispatch;

   (c) day-old chicks or hatching eggs kept at the hatchery must not come into contact with rodents and with birds outside the hatchery;

   (d) operations must be based on a one-way circuit for hatching eggs, mobile equipment and personnel;

   (e) appropriate natural or artificial lighting, air flow and temperature systems must be available;

   (f) it must be possibly to readily clean and disinfect the floors, walls and all other material or equipment at the hatchery;

   (g) appropriate equipment must be available for the cleaning and disinfection of facilities, equipment and means of transport used for the day-old chicks and hatching eggs.

4. The requirements in relation to the personnel in contact with hatching eggs and day-old chicks, as referred to in Article 7, shall be the following:

   (a) the personnel must possess the appropriate ability and knowledge, and have for that purpose received specific training, or have acquired the equivalent practical experience in the disinfection and hygiene techniques needed to prevent the spread of transmissible diseases.

5. The requirements in relation to supervision by the competent authority of hatcheries, as referred to in Article 7, shall be the following:

   (a) the operator must provide the official veterinarian with the possibility to use an office for

      (i) inspecting the hatchery for compliance with the requirements laid down in points 1 to 4;

      (ii) providing animal health certification of hatching eggs and day-old chicks;

   (b) the operator must ensure that assistance is provided on request from the official veterinarian to carry out the supervision duties referred to in 5(a)(i).

PART 4

Requirements for granting approval of establishments keeping poultry referred to in Article 8

1. The requirements in relation to biosecurity measures of establishments keeping poultry, as referred to in Article 8, shall be the following:

   (a) the hatching eggs must be:

      (i) collected at frequent intervals, at least daily and as soon as possible after laying;

      (ii) cleaned and disinfected as soon as possible, unless disinfection takes place at a hatchery in the same Member State;

      (iii) placed either in new or in cleaned and disinfected packaging material;

   (b) if an establishment houses poultry species of the orders *Galliformes* and *Anseriformes* at the same time, a clear separation must be made between them;

   (c) appropriate sanitary breaks must be taken after the cleaning and disinfecting operations and prior to the arrival of any new flock of poultry in the facilities where poultry is kept;

   (d) visitors must wear protective clothing and the personnel must wear appropriate working clothing and act in accordance with the hygiene rules drawn up by the operator;

   (e) an appropriate system must be in place to ensure the collection of waste water.

2. The requirements in relation to surveillance of establishments keeping poultry, as referred to in Article 8, shall be the following:

   (a) the operator must apply and adhere to a disease surveillance programme referred to in Part 2 of Annex II;

   (b) the operator of the establishment must ensure that arrangements are in place with the operator of the hatchery where the hatching eggs are destined for sampling to be carried in the hatchery for testing for the disease agents referred to in the disease surveillance programme referred to in Part 2 of Annex II, in order to complete of that programme.

3. The requirements in relation to the facilities and equipment of establishments keeping poultry, as referred to in Article 8, shall be the following:

   (a) the setting and layout must be compatible with the type of production pursued;

   (b) the establishment must house only poultry:

      (i) from the establishment itself;

      or

      (ii) from other approved establishments keeping poultry;

      or

      (iii) from approved hatcheries of poultry;

      or

      (iv) which entered into the Union from authorised third countries and territories;

   (c) the poultry must be prevented from coming into contact with rodents and with birds coming from outside;

   (d) the facilities must provide good conditions of hygiene and allow health monitoring to be carried out;

(e) it must be possibly to readily clean and disinfect the floors, walls and all other material or equipment at the establishment;

(f) the establishment must have appropriate equipment, compatible with the type of production pursued, which is available for the cleaning and disinfection of facilities, equipment and means of transport at the most suitable spot in the establishment.

PART 5

Requirements for granting approval of assembly centres of dogs, cats and ferrets and of animal shelters for those animals referred to respectively in Articles 10 and 11

1. The requirements in relation to isolation and other biosecurity measures of assembly centres of dogs, cats and ferrets, as referred to in Article 10, shall be the following:

(a) they must only admit dogs, cats and ferrets coming from registered establishments keeping those animals;

(b) appropriate isolation facilities for the dogs, cats and ferrets must be available;

(c) appropriate sanitary breaks must be taken after the cleaning and disinfecting operations and prior to the arrival of any new batch of dogs, cats and ferrets in the facilities keeping such animals;

(d) appropriate system must be in place to ensure the collection of waste water.

2. The requirements in relation to isolation and other biosecurity measures of animal shelters for dogs, cats and ferrets, as referred to in Article 11, shall be the following:

(a) appropriate isolation facilities for the dogs, cats and ferrets must be available;

(b) the areas where the cats, dogs and ferrets are kept and any passageways, and material and equipment that comes into contact with them must be cleaned and disinfected after the removal of each batch of those animals, and where necessary before the introduction of any new batch of such animals, in accordance with established operational procedures;

(c) appropriate sanitary breaks must be taken after the cleaning and disinfecting operations and prior to the arrival of any new batch of dogs, cats and ferrets in the facilities where those animals are kept;

(d) appropriate system must be in place to ensure the collection of waste water.

3. The requirements in relation to facilities and equipment of assembly centres of dogs, cats and ferrets, and animal shelters for those animals, as referred to respectively in Articles 10 and 11, shall be the following:

(a) adequate housing of a suitable standard for those animals must be available and must be constructed in such a way that contact with animals from the outside is prevented and there is no direct communication with the isolation accommodation, and inspections and any necessary treatments can be easily carried out;

(b) the areas where those animals are kept and any passageways, floors, walls and all other material or equipment that comes into contact with them can be readily cleaned and disinfected;

(c) appropriate storage areas must be available respectively for bedding material, litter, manure and petfood;

(d) appropriate equipment must be available for the cleaning and disinfection of facilities, implements and means of transport.

PART 6

Requirements for granting approval of control posts referred to in Article 12

1. The requirements in relation to isolation and other biosecurity measures of control posts, as referred to in Article 12, shall be the following:

(a) control posts must be located, designed, constructed and operated in such a way as to ensure sufficient biosecurity to prevent the spread of listed or emerging diseases to other establishments and between consecutive consignments of animals passing through these premises;

(b) control post must be constructed, equipped and operated in such a way as to ensure that cleaning and disinfection procedures can be readily carried out; a means of transport wash must be provided on-the-spot;

(c) control posts must have suitable facilities for the separate isolation of animals suspected of being infected with an animal disease;

(d) appropriate sanitary breaks must be taken between two consecutive consignments of animals and if appropriate adapted depending on whether the animals come from a similar region, zone or compartment with the same health status; in particular, there must be no animals present in the control posts for a period of at least 24 hours after a maximum period of 6 days' use and after cleansing and disinfecting operations have been completed, and prior to the arrival of any new consignment of animals;

(e) before accepting animals, operators of control posts must:

(i) have started the cleansing and disinfection operations within a period of 24 hours following the departure of all animals previously held there;

(ii) ensure that no animals enter the control posts until the cleansing and disinfection operations are completed to the satisfaction of the official veterinarian.

2. The requirements in relation to facilities and equipment of control posts, as referred to in Article 12, shall be the following:

(a) they must be cleansed and disinfected before and after each use, as required by the official veterinarian;

(b) equipment that comes into contact with the animals present on the control posts must be exclusively dedicated to the premises concerned unless it has been subject to a cleaning and disinfection procedure after coming in contact with the animals or their faeces or urine; in particular, the operator of the control post must provide clean equipment and protective clothes, which must be kept exclusively for the use of any persons entering the control post, and suitable equipment must be made available for cleansing and disinfecting those items;

(c) litter must be removed when a consignment of animals is moved from an enclosure and, after the cleansing and disinfecting operations, must be replaced by fresh bedding;

(d) fodder, litter, faeces and urine must not be collected from the premises unless they have been subject to an appropriate treatment in order to avoid the spread of animal diseases;

(e) they must have suitable facilities for holding, inspecting, examining the animals, whenever necessary;

(f) an appropriate storage area must be available for bedding material, feed, fodder, litter and manure;

(g) an appropriate system must be in place to ensure the collection of waste water.

PART 7

Requirements for granting approval of environmentally isolated production establishments of bumble bees referred to in Article 13

1. The requirements in relation to biosecurity and surveillance measures of environmentally isolated production establishments for bumble bees, as referred to in Article 13, shall be the following:

(a) the operator must ensure, verify and record by internal controls that the entry into the establishment of small hive beetles is prevented and their presence within the establishment is detectable.

2. The requirements in relation to facilities and equipment of environmentally isolated production establishments for bumble bees, as referred to in Article 13, shall be the following:

(a) the production of bumble bees must be isolated from all the associated activities of the establishment and must be conducted in flying insect-proof facilities;

(b) the bumble bees must be kept isolated within that building throughout the whole production;

(c) the storage and handling of pollen within facilities must be isolated from the bumble bees throughout the whole production of bumble bees until it is fed to them.

PART 8

Requirements for granting approval of quarantine establishments for kept terrestrial animals other than primates referred to in Article 14

1. The requirements in relation to quarantine, isolation and other biosecurity measures of quarantine establishments for kept terrestrial animals other than primates, as referred to in Article 14, shall be the following:

   (a) each unit of the quarantine establishment must:

      (i) be located at a secure distance from surrounding establishments or other places where animals are kept to avoid transmission of contagious animal diseases between resident and quarantined animals;

      (ii) start the required quarantine period when the last animal of the batch is introduced into the quarantine establishment;

      (iii) be emptied of animals, cleaned and disinfected at the end of the quarantine period for the last batch and then be kept free of animals for a period of at least seven days before a batch of animals that has entered into the Union from third countries and territories is introduced into the quarantine establishment;

   (b) litter must be removed when a consignment of animals is moved from an enclosure, and it must be replaced by fresh bedding, after the cleansing and disinfecting operations have been completed;

   (c) fodder, litter, faeces and urine must not be collected from the premises unless they have been subject to an appropriate treatment in order to avoid the spread of animal diseases;

   (d) precautions must be taken to prevent cross-contamination between incoming and outgoing consignments of animals;

   (e) animals released from the quarantine establishment must comply with Union requirements for movements of kept terrestrial animals between Member States.

2. The requirements in relation to surveillance and control measures of quarantine establishments for kept terrestrial animals other than primates, as referred to in Article 14, shall be the following:

   (a) the disease surveillance plan must include appropriate zoonoses control of the animals, and must be implemented and updated according to the number and species of the animals present in the establishment and to the epidemiological situation in and around the establishment as regards listed and emerging diseases;

   (b) animals suspected of being infected or contaminated by listed or emerging disease agents must be subject to clinical, laboratory or post-mortem testing;

   (c) the vaccination and treatment of susceptible animals against transmissible animal diseases must carried out as appropriate;

   (d) where ordered by the competent authority, sentinel animals must be used for the early detection of possible disease.

3. The requirements in relation to facilities and equipment of quarantine establishments for kept terrestrial animals other than primates, as referred to in Article 14, shall be the following:

   (a) the establishments must be clearly demarcated and the access of animals and humans to animal facilities must be controlled;

   (b) there must be sufficiently large premises at the disposal of the staff responsible for carrying out veterinary checks, including changing rooms, showers and toilets;

   (c) adequate means for catching, confining, where necessary restraining and isolating animals must be available;

   (d) equipment and facilities for cleaning and disinfecting must be available;

   (e) the part of the establishment where the animals are kept must be:

      (i) where ordered by the competent authority to address specific animal health risks, insect-proof with HEPA filter air inlet and outlet, internal vector control, double door access and operating procedures;

      (ii) in the case of captive birds, bird, fly and vermin proof;

      (iii) sealable so as to permit fumigation;

(iv) of a suitable standard and so constructed that contact with animals outside is prevented and that inspections and any necessary treatment can be easily carried out;

(v) constructed in such way that floors, walls and all other material or equipment can be readily cleaned and disinfected.

PART 9

Requirements for granting approval of confined establishments of kept terrestrial animals referred to in Article 16

1. The requirements in relation to quarantine, isolation and biosecurity measures of confined establishments of kept terrestrial animals, as referred to in Article 16, shall be the following:

   (a) they must only admit kept terrestrial animals which have been subject to a quarantine period appropriate to diseases relevant to the species, where those animals coming from establishment other than a confined establishment;

   (b) they must only admit primates complying with the rules as strict as those referred to in Article 6.12.4 of the Terrestrial Animal Health Code of the World Organisation for Animal Health (OIE), Edition 2018;

   (c) where necessary, adequate facilities to quarantine kept terrestrial animals introduced from other establishments must be available.

2. The requirements in relation to surveillance and control measures of confined establishments of kept terrestrial animals, as referred to in Article 16, shall be the following:

   (a) the disease surveillance plan must include appropriate zoonoses control of the kept terrestrial animals, and must be implemented and updated according to the number and species of the kept terrestrial animals present in the establishment and to the epidemiological situation in and around the establishment as regards listed and emerging diseases;

   (b) kept terrestrial animals suspected of being infected or contaminated by listed or emerging disease agents must be subject to clinical, laboratory or post-mortem testing;

   (c) the vaccination and treatment of susceptible kept terrestrial animals against transmissible diseases must be carried out as appropriate.

3. The requirements in relation to facilities and equipment of confined establishments of kept terrestrial animals, as referred to in Article 16, shall be the following:

   (a) the establishments must be clearly demarcated and the access of animals and humans to animal facilities must be controlled;

   (b) adequate means for catching, confining, where necessary restraining and isolating animals are available;

   (c) animal accommodation areas shall be of a suitable standard and constructed in such way that

      (i) contact with animals on the outside is prevented and that inspection and any necessary treatment can be easily carried out;

      (ii) floors, walls and all other material or equipment can be readily cleaned and disinfected.

ANNEX II

MICROBIOLOGICAL CONTROL PROGRAMME IN HATCHERIES AND DISEASE SURVEILLANCE PROGRAMMES IN ESTABLISHMENTS KEEPING POULTRY AND IN HATCHERIES

PART 1

Microbiological control programme in hatcheries as referred to in Article 7

Microbiological control programme for purpose of hygienic controls shall include the following:

(a) environmental samples must be collected and undergo a bacteriological examination;

(b) samples must be taken at least every six weeks and each sampling must include 60 samples.

PART 2

Diseases surveillance programmes in hatcheries as referred to in Article 7 and in establishments keeping poultry as referred to in Article 8

1. Objective of the diseases surveillance programmes

   Demonstration that flocks kept on approved establishments keeping poultry are free from the disease agents listed in points 2 and 3.

   The disease surveillance programmes shall, as a minimum, comprise of the disease agents and the listed kept species referred to in point 2.

2. Disease surveillance for *Salmonella* serotypes of animal health relevance

   2.1. Identification of infection with the agents:

   (a) *Salmonella* Pullorum: covering *Salmonella enterica* subspecies *enterica* serovar Gallinarum biochemical variant (biovar) Pullorum;

   (b) *Salmonella* Gallinarum: covering *Salmonella enterica* subspecies *enterica* serovar Gallinarum biochemical variant (biovar) Gallinarum;

   (c) *Salmonella arizonae*: covering *Salmonella enterica* subspecies arizonae serogroup K (O18) arizonae.

   2.2. Target poultry species:

   (a) for *Salmonella* Pullorum and *Salmonella* Gallinarum: *Gallus gallus, Meleagris gallopavo, Numida meleagris, Coturnix coturnix, Phasianus colchicus, Perdix perdix, Anas* spp.;

   (b) for *Salmonella arizonae*: *Meleagris gallopavo*.

   2.3. Examinations:

   Each flock must be clinically examined during each laying or productive period at the best time for detecting the disease in question.

   2.4. Sampling matrix:

   (a) samples must be taken from each flock in the establishment keeping poultry, as appropriate:

   (i) for serological testing: blood;

   (ii) for bacteriological testing:

   — post mortem tissues, especially liver, spleen, ovary, oviduct and ileo-caecal junction,

   — environmental samples,

   — swabs from the cloaca of live birds, in particular from those that appear sick or that have been identified as highly sero-positive;

   (b) samples to be taken in the hatchery for bacteriological testing:

   (i) chicks that fail to hatch (namely embryos dead-in-shell);

   (ii) second grade chicks;

   (iii) meconium of chicks;

   (iv) down or dust from hatchers and from the walls of the hatchery.

2.5. Sampling frame and frequency of sampling:

(a) in the establishment keeping poultry:

(i) sampling for *Salmonella* Pullorum and *Salmonella* Gallinarum:

Species	Time of sampling		Number of birds to be sampled/Number of environmental samples
	Breeding poultry	Productive poultry	
Gallus gallus, Meleagris gallopavo, Numida meleagris, Coturnix coturnix, Phasianus colchicus, Perdix perdix and *Anas spp*	At the point of lay	During production at least once a year	60

(ii) sampling for *Salmonella arizonae:*

Species	Time of sampling		Number of birds to be sampled/Number of environmental samples
	Breeding poultry	Productive poultry	
Meleagris gallopavo	At the point of lay	During production at least once a year	60

(iii) the number of birds to be sampled in accordance with points (i) and (ii) may be adapted by the competent authority to the known prevalence of infection in the specific Member State concerned and its past incidence in the establishment. In any case a statistically valid number of samples for serological/bacteriological testing to detect infection shall always be taken;

(b) in the hatchery, samples shall be collected and examined at least once every 6 weeks. The testing shall include at least:

(i) one pooled sample of down and meconium from chicks from each hatcher;

and

(ii) sample of:

— either 10 second grade chickens and 10 dead-in-shell chickens from every flock of origin present in a hatcher on the day of sample collection,

or

— 20 second grade chickens from every flock of origin present in a hatcher on the day of sample collection.

2.6. Processing of samples and testing methods:

(a) samples collected must be subject to:

(i) serological testing ([1]);

(ii) bacteriological testing either as an alternative or in addition to serological testing referred to in point (i); however, samples for bacteriological testing must not be taken from poultry or eggs that have been treated with antimicrobial medicinal products during the two to three weeks prior to testing;

(b) samples collected must be processed as follows:

(i) direct enrichment in Selenite-cysteine broth for faecal/meconium and intestinal samples or other appropriate media suitable for samples where competing flora is expected;

(ii) non-selective pre-enrichment followed by selective enrichment in soya based Rappaport-Vassiliadis (RVS) broth or Müller-Kauffmann Tetrathionate-Novobiocin broth (MKTTn) for samples (such as embryos dead-in-shell) where competing flora is expected to be minimal;

([1]) Occasionally in avian species other than *Galliformes* serological testing results in an unacceptable proportion of false-positive reactions.

(iii) direct plating of aseptically collected tissues on to a minimally selective agar, such as MacConkey agar;

(iv) *Salmonella* Pullorum and *Salmonella* Gallinarum do not readily grow in the modified semi-solid Rappaport Vassiliadis (MSRV) medium that is used for monitoring of zoonotic *Salmonella* spp. in the Union, but it is suitable for *Salmonella arizonae*;

(v) detection techniques must be capable of differentiating serological responses to *Salmonella* Pullorum and *Salmonella* Gallinarum infection from serological responses due to the use of *Salmonella* Enteritidis vaccine, where this vaccine is used ([2]). Such vaccination must therefore not be used if serological monitoring is to be used. If vaccination has been used, bacteriological testing must be used, but the confirmation method used must be capable of differentiating live vaccinal strains from field strains.

2.7. Results:

A flock is considered positive when, following the positive results of the testing performed in accordance with points 2.3 to 2.6, a second test of an appropriate type confirms the infection by the disease agents.

3. Diseases surveillance for *Mycoplasma* spp. of relevance for poultry:

3.1. Identification of infection with the following agents:

(a) *Mycoplasma gallisepticum*;

(b) *Mycoplasma meleagridis*.

3.2. Target species:

(a) *Mycoplasma gallisepticum: Gallus gallus, Meleagris gallopavo;*

(b) *Mycoplasma meleagridis: Meleagris gallopavo*.

3.3. Examinations:

Each flock must be clinically examined during each laying or productive period at the best time for detecting the disease in question.

3.4. Sampling matrix:

Samples to be taken from each flock in the establishment keeping poultry, as appropriate:

(a) blood;

(b) sperm;

(c) swabs taken from the trachea, the choanae or the cloaca;

(d) post mortem tissues, especially air sacs from day-old chicks with lesions;

(e) in particular for the detection *of Mycoplasma meleagridis*, oviduct and penis of turkeys.

3.5. Sampling frame and frequency of sampling:

(a) sampling for *Mycoplasma gallisepticum:*

Species	Time of sampling		Number of birds to be sampled
	Breeding poultry	Productive poultry	
Gallus gallus	• at 16 weeks of age • at the point of lay • and then every 90 days	During production every 90 days	• 60 • 60 • 60
Meleagris gallopavo	• at 20 weeks of age • at the point of lay • and then every 90 days	During production every 90 days	• 60 • 60 • 60

([2]) There is currently no test that can differentiate between the response to *Salmonella* Pullorum and *Salmonella* Gallinarum infection and vaccination for this serotype.

(b) sampling for *Mycoplasma meleagridis:*

Species	Time of sampling		Number of birds to be sampled
	Breeding poultry	Productive poultry	
Meleagris gallopavo	• at 20 weeks of age • at the point of lay • and then every 90 days	During production every 90 days	• 60 • 60 • 60

(c) the number of birds to be sampled according to points (a) and (b) may be adapted by the competent authority to the known prevalence of infection in the specific Member State concerned and its past incidence in the establishment. In any case a statistically valid numbers of samples for serological/bacteriological testing shall always be taken.

3.6. Examinations, sampling and testing methods:

Testing for the presence of infection by serological, bacteriological and molecular tests must be carried out by validated methods recognised by the competent authority.

3.7. Results:

A flock is considered positive when, following the positive results of the testing performed in accordance with points 3.3 to 3.6, a second test of an appropriate type confirms the infection by the disease agents.

PART 3

Additional information on diagnostic techniques

Laboratories that have been designated by the competent authority to carry out the testing as required in Parts 1 and 2 of this Annex may consult the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals of the World Organisation for Animal Health (OIE), Edition 2018 for further detailed description of the diagnostic techniques.

ANNEX III

MEANS OF IDENTIFICATIONS OF KEPT TERRESTRIAL ANIMALS

The means of identification of kept terrestrial animals are as follows:

(a) conventional ear tag;

(b) conventional pastern band;

(c) electronic ear tag;

(d) ruminal bolus;

(e) injectable transponder;

(f) electronic pastern band;

(g) tattoo;

(h) leg-ring.

DECISIONS

COUNCIL DECISION (EU) 2019/2036

of 25 November 2019

on the position to be taken on behalf of the European Union within the Council of the International Civil Aviation Organization as regards Amendment 17 to Annex 17 (Security) to the Convention on International Civil Aviation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention on International Civil Aviation (the 'Chicago Convention'), which regulates international air transport, entered into force on 4 April 1947. It established the International Civil Aviation Organization (ICAO).

(2) The Member States of the Union are contracting parties to the Chicago Convention and ICAO Member States, whereas the Union has observer status in certain ICAO bodies, including in the Assembly and other technical bodies.

(3) Pursuant to point (l) of Article 54 of the Chicago Convention, the ICAO Council is to adopt international standards and recommended practices ('SARPs').

(4) On 4 July 2019, the ICAO issued State letter AS8/2.1-19/48 to inform ICAO Member States that the proposed Amendment 17 to Annex 17 (Security) to the Chicago Convention ('Annex 17') will be presented to the ICAO Council for adoption during its 218th session, taking place from 18 to 29 November 2019, and is envisaged to become applicable in July 2020. Amendment 17 to Annex 17 includes new or revised provisions on vulnerability assessments, information sharing between states and stakeholders, training programmes and certification systems, access control, staff screening and other editorial amendments. State letter AS8/2.1-19/48 launched the period for consultation of ICAO Member States on Amendment 17 to Annex 17, and that period expired on 4 October 2019.

(5) Amendment 17 to Annex 17 was prepared by the ICAO Aviation Security Panel, in which experts of eight Member States of the Union are active members, and submitted for endorsement to the 217th session of the ICAO Council. Following the consultation of ICAO Member States, it is probable that Amendment 17 to Annex 17 will be adopted by the ICAO Council at its 218th session.

(6) Once adopted, the amended Annex 17 will be binding on all ICAO Member States, including all Member States of the Union, in accordance with and within the limits set out in the Chicago Convention. Article 38 of the Chicago Convention requires contracting parties to notify the ICAO using the notification of differences mechanism if they intend to deviate from SARPs. It is therefore appropriate to establish the position to be taken on behalf of the Union within the ICAO Council with regard to Amendment 17 to Annex 17.

(7) The position of the Union within the ICAO Council should be as set out in the Annex to this Decision and should be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Council of the International Civil Aviation Organization (ICAO) as regards Amendment 17 to Annex 17 (Security) to the Convention on International Civil Aviation shall be as set out in the Annex to this Decision.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the ICAO Council, acting jointly.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 25 November 2019.

For the Council
The President
F. MOGHERINI

Position to be taken on behalf of the European Union in the Council of the International Civil Aviation Organization, in respect of the revision of Annex 17 (Security) (Amendment 17) to the Convention on International Civil Aviation (the 'Chicago Convention')

General principles

Within the framework of the activities of the International Civil Aviation Organisation (ICAO) in respect of the revision of Annex 17 (Security) (Amendment 17) to the Chicago Convention concerning the development of Standards and Recommended Practices (SARPs), the Member States, acting jointly in the interests of the Union, shall:

(a) act in accordance with the objectives pursued by the Union within the framework of aviation security policy, notably in order to protect persons and goods within the European Union, and prevent acts of unlawful interference with civil aircraft that jeopardise the security of civil aviation.

(b) by applying and enforcing common rules established to safeguard civil aviation from acts of unlawful interference contribute to raising the bar of aviation security globally.

(c) continue to support the development by ICAO of security standards safeguarding civil aviation against acts of unlawful interference, in line with the United Nations Security Council Resolution 2309 of 22 September 2016 ([1]).

Position on the revision of Annex 17 (Security) (Amendment 17) The Member States, acting jointly in the interests of the Union, shall support the proposed Amendment 17 to Annex 17.

([1]) Resolution 2309 (2016) adopted by the Security Council at its 7775th meeting, on 22 September 2016: Threats to international peace and security caused by terrorist acts: Aviation security

CORRIGENDA

Corrigendum to Commission Implementing Regulation (EU) 2019/1982 of 28 November 2019 making certain imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgment of 20 September 2019, in case T-650/17, with regard to Implementing Regulation (EU) 2017/1146 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd

(Official Journal of the European Union L 308 of 29 November 2019)

Recital (8) is replaced with the following:

'(8) Following the General Court's judgment, the Commission decided by means of a Notice (*) ('the re-opening Notice'), to partially re-open the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, that led to the adoption of the anti-dumping Regulation at issue and to resume it at the point at which the irregularity occurred. The re-opening is limited in scope to the implementation of the judgment of the General Court with regard to Jinan Meide.

(*) Notice of re-opening the investigation following the judgment of 20 September 2019, in Case T-650/17, with regard to Commission Implementing Regulation (EU) 2017/1146 of 28 June 2017 re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron and spheroidal graphite cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd (OJ C 403, 29.11.2019, p. 63).'

Corrigendum to Commission Implementing Decision (EU) 2019/1835 of 30 October 2019 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD)

(Official Journal of the European Union L 279 of 31 October 2019)

In the Annex, on page 110, in the table concerning Budget Item: 6 7 0 1, the last line of the entry concerning the United Kingdom of Great Britain and Northern Ireland:

for:

'**Total GB:**	**EUR**	**-2 405 802,18**	**-3 894,02**	**-240 908,16**'

read:

'**Total GB:**	**EUR**	**-2 405 802,18**	**-3 894,02**	**-2 401 908,16**'

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