

Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (repealed)

TITLE V

**PRINCIPLES AND TECHNICAL INSTRUMENTS FOR
PRUDENTIAL SUPERVISION AND DISCLOSURE**

CHAPTER 1

Principles of prudential supervision

Section 1

Competence of home and host Member State

Article 40

1 The prudential supervision of a credit institution, including that of the activities it carries on in accordance with Articles 23 and 24, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2 Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

[^{F13} The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.]

Textual Amendments

F1 Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 41

Host Member States shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.

Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of their monetary policies.

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Such measures may not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Article 42

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

[^{F2}The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), EBA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information contained in this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of credit institutions.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

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

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

Textual Amendments

- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).

[^{F1}Article 42a

1 The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 129(1) applies or to the competent authorities of the home Member State, for a branch of a credit institution to be considered as significant.

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

- a whether the market share of the branch of a credit institution in terms of deposit exceeds 2 % in the host Member State;
- b the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in the host Member State; and
- c the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and the consolidating supervisor where Article 129(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

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

[^{F2}If, at the end of the initial two-month period any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities of the host Member State shall defer their decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The competent authorities of the host Member State shall take their decision in conformity with that of EBA. The two-month period shall be deemed to be the ‘conciliation phase’ within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.]

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

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

2 The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 132(1)(c) and (d) and carry out the tasks referred to in Article 129(1)(c) in cooperation with the competent authorities of the host Member State.

If a competent authority of a home Member State becomes aware of an emergency situation within a credit institution as referred to in Article 130(1), it shall alert as soon as practicable the authorities referred to in the fourth paragraph of Article 49 and in Article 50.

3 Where Article 131a does not apply, the competent authorities supervising a credit institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and Article 42. The establishment and functioning of the college shall be based on written arrangements determined, after consultation with competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

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The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 40(3) and the obligations referred to in paragraph 2 of this Article.

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

[^{F2}In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.

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

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of colleges of supervisors.

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

Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 42b

[^{F31} In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- a the competent authorities participate in the activities of EBA;
- b the competent authorities follow the guidelines and recommendations of EBA and state the reasons if they do not do so;
- c national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA or under this Directive.]]

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Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F4** Deleted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 43

1 Host Member States shall provide that, where a credit institution authorised in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification of the information referred to in Article 42.

2 The competent authorities of the home Member State may also, for purposes of the verification of branches, have recourse to one of the other procedures laid down in Article 141.

3 Paragraphs 1 and 2 shall not affect the right of the competent authorities of the host Member State to carry out, in the discharge of their responsibilities under this Directive, on-the-spot verifications of branches established within their territory.

Section 2

Exchange of information and professional secrecy

Article 44

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

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

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

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[^{F32} Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to EBA in accordance with this Directive, with other Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1.]

Textual Amendments

- F3** Substituted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).

Article 45

Competent authorities receiving confidential information under Article 44 may use it only in the course of their duties and only for the following purposes:

- (a) to check that the conditions governing the taking-up of the business of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;
- (b) to impose penalties;
- (c) in an administrative appeal against a decision of the competent authority; or
- (d) in court proceedings initiated pursuant to Article 55 or to special provisions provided for in this in other Directives adopted in the field of credit institutions.

[^{F3} Article 46

In accordance with Article 33 of Regulation (EU) No 1093/2010, Member States and EBA may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Article 47 and Article 48(1) of this Directive only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1) of this Directive. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

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

Textual Amendments

- F3** Substituted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority](#)

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 47

Articles 44(1) and 45 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or between Member States, between competent authorities and the following:

- (a) authorities entrusted with the public duty of supervising other financial organisations and insurance companies and the authorities responsible for the supervision of financial markets;
- (b) bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures; and
- (c) persons responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions;

in the discharge of their supervisory functions.

Articles 44(1) and 45 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the exercise of their functions.

In both cases, the information received shall be subject to the conditions of professional secrecy specified in Article 44(1).

Article 48

1 Notwithstanding Articles 44 to 46, Member States may authorise exchange of information between the competent authorities and the following:

- a the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures; and
- b the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

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

- a the information shall be for the purpose of performing the supervisory task referred to in the first subparagraph;
- b information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1); and
- c where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

2 Notwithstanding Articles 44 to 46, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

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

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- a the information is for the purpose of performing the task referred to in the first subparagraph;
- b information received in this context is subject to the conditions of professional secrecy specified in Article 44(1); and
- c where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

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

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

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this Article.

The Commission shall draw up a report on the application of the provisions of this Article.

Article 49

[^{F3}This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:

- (a) central banks of the European System of the Central Banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;
- (b) where appropriate, other public authorities responsible for overseeing payment systems;
- (c) the European Systemic Risk Board (hereinafter the ‘ESRB’), where that information is relevant for the exercise of its statutory tasks under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board⁽¹⁾.

This Section shall not prevent the authorities or bodies referred to in the first subparagraph from communicating to the competent authorities such information as they may need for the purposes of Article 45.]

This Section shall not prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of Article 45.

Information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

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[^{F3}In an emergency situation as referred to in Article 130(1), Member States shall allow the competent authorities to communicate, without delay, information to the central banks in the European System of the Central Banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the ESRB under Regulation (EU) No 1092/2010, where such information is relevant for the exercise of its statutory tasks.]

Textual Amendments

- F3** Substituted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).

Article 50

Notwithstanding Articles 44(1) and 45, the Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

[^{F1}In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first paragraph of this Article in all Member States concerned.]

Textual Amendments

- F1** Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management](#) (Text with EEA relevance).

Article 51

The Member States shall provide that information received under Articles 44(2) and 47 and information obtained by means of the on-the-spot verification referred to in Article 43(1) and (2) may never be disclosed in the cases referred to in Article 50 except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Article 52

This Section shall not prevent the competent authorities of a Member State from communicating the information referred to in Articles 44 to 46 to a clearing house or other similar body recognised under national law for the provision of clearing or

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settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

The Member States shall, however, ensure that information received under Article 44(2) may not be disclosed in the circumstances referred to in this Article without the express consent of the competent authorities which disclosed it.

Section 3

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

Article 53

1 Member States shall provide at least that any person authorised within the meaning of Directive 84/253/EEC⁽²⁾ performing in a credit institution the task described in Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC⁽³⁾, or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that credit institution of which he has become aware while carrying out that task which is liable to:

- a constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of credit institutions;
- b affect the continuous functioning of the credit institution; or
- c lead to refusal to certify the accounts or to the expression of reservations.

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

2 The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

Section 4

Power of sanction and right to apply to the courts

Article 54

Without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, the Member States shall provide that their respective competent authorities may, as against credit institutions, or those who effectively control the business of credit institutions, which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their activities, adopt or impose penalties or measures aimed specifically at ending the observed breaches or the causes of such breaches.

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[^{F5}Member States shall ensure that, for the purposes of the first paragraph, their respective competent authorities have the power to impose or apply financial and non-financial penalties or other measures. Those penalties or measures shall be effective, proportionate and dissuasive.]

Textual Amendments

- F5** Inserted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\)](#).

Article 55

Member States shall ensure that decisions taken in respect of a credit institution in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts. The same shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

CHAPTER 2

Technical instruments of prudential supervision

Section 1

Own funds

Article 56

Wherever a Member State lays down by law, regulation or administrative action a provision in implementation of Community legislation concerning the prudential supervision of an operative credit institution which uses the term or refers to the concept of own funds, it shall bring this term or concept into line with the definition given in Articles 57 to 61 and Articles 63 to 66.

Article 57

Subject to the limits imposed in Article 66, the unconsolidated own funds of credit institutions shall consist of the following items:

- (a) [^{F6}capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and in the event of bankruptcy or liquidation ranks after all other claims;]
- (b) reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss;
- (c) funds for general banking risks within the meaning of Article 38 of Directive 86/635/EEC;

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- (ca) [F¹instruments other than those referred to in point (a), which meet the requirements set out in points (a), (c), (d) and (e) of Article 63(2) and in Article 63a;]
- (d) revaluation reserves within the meaning of Article 33 of Directive 78/660/EEC;
- (e) value adjustments within the meaning of Article 37(2) of Directive 86/635/EEC;
- (f) other items within the meaning of Article 63;
- (g) the commitments of the members of credit institutions set up as cooperative societies and the joint and several commitments of the borrowers of certain institutions organised as funds, as referred to in Article 64(1); and
- (h) fixed-term cumulative preferential shares and subordinated loan capital as referred to in Article 64(3).

The following items shall be deducted in accordance with Article 66:

- (i) own shares at book value held by a credit institution;
- (j) intangible assets within the meaning of Article 4(9) ('Assets') of Directive 86/635/EEC;
- (k) material losses of the current financial year;
- (l) holdings in other credit and financial institutions amounting to more than 10 % of their capital;
- (m) subordinated claims and instruments referred to in Article 63 and Article 64(3) which a credit institution holds in respect of credit and financial institutions in which it has holdings exceeding 10 % of the capital in each case;
- (n) holdings in other credit and financial institutions of up to 10 % of their capital, the subordinated claims and the instruments referred to in Article 63 and Article 64(3) which a credit institution holds in respect of credit and financial institutions other than those referred to in points (l) and (m) in respect of the amount of the total of such holdings, subordinated claims and instruments which exceed 10 % of that credit institution's own funds calculated before the deduction of items in points (l) to (p);
- (o) participations within the meaning of Article 4(10) which a credit institution holds in:
 - (i) insurance undertakings within the meaning of Article 6 of Directive 73/239/EEC⁽⁴⁾, Article 4 of Directive 2002/83/EC⁽⁵⁾ or Article 1(b) of Directive 98/78/EC⁽⁶⁾,
 - (ii) reinsurance undertakings within the meaning of Article 1(c) of Directive 98/78/EC, or
 - (iii) insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC;
- (p) each of the following items which the credit institution holds in respect of the entities defined in point (o) in which it holds a participation:
 - (i) instruments referred to in Article 16(3) of Directive 73/239/EEC, and
 - (ii) instruments referred to in Article 27(3) of Directive 2002/83/EC;

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- (q) for credit institutions calculating risk-weighted exposure amounts under Section 3, Subsection 2, negative amounts resulting from the calculation in Annex VII, Part 1, point 36 and expected loss amounts calculated in accordance with Annex VII, Part 1 points 32 and 33; and
- (r) [^{F7}the exposure amount of securitisation positions which receive a risk weight of 1 250 % under this Directive and the exposure amount of securitisation positions in the trading book that would receive a 1 250 % risk weight if they were in the same credit institutions non-trading book.]

[^{F6}For the purposes of point (b), the Member States shall permit inclusion of interim or year-end profits before a formal decision has been taken only if these profits have been verified by persons responsible for the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend.]

In the case of a credit institution which is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement to positions in the securitisation shall be excluded from the item specified in point (b).

Textual Amendments

- F1** Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F7** Substituted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\).](#)

Article 58

Where shares in another credit institution, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points (l) to (p) of Article 57.

Article 59

As an alternative to the deduction of the items referred to in points (o) and (p) of Article 57, Member States may allow their credit institutions to apply mutatis mutandis methods 1, 2 or 3 of Annex I to Directive 2002/87/EC. Method 1 (accounting consolidation) may be applied only if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Article 60

Member States may provide that for the calculation of own funds on a stand-alone basis, credit institutions subject to supervision on a consolidated basis in accordance with Chapter 4, Section 1, or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in points (l) to (p) of Article 57 which are held in credit institutions, financial institutions, insurance or reinsurance undertakings or insurance holding companies, which are included in the scope of consolidated or supplementary supervision.

This provision shall apply to all the prudential rules harmonised by Community acts.

Article 61

[^{F6}The concept of own funds as defined in Article 57(a) to (h) embodies a maximum number of items and amounts. Member States may decide on the use of those items and on the deduction of items other than those listed in Article 57(i) to (r).]

The items listed in points (a) to (e) of Article 57 shall be available to a credit institution for unrestricted and immediate use to cover risks or losses as soon as these occur. The amount shall be net of any foreseeable tax charge at the moment of its calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

Textual Amendments

- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 62

Member States may report to the Commission on the progress achieved in convergence with a view to a common definition of own funds. On the basis of these reports the Commission shall, if appropriate, by 1 January 2009, submit a proposal to the European Parliament and to the Council for amendment of this Section.

Article 63

1 The concept of own funds used by a Member State may include other items provided that, whatever their legal or accounting designations might be, they have the following characteristics:

- a they are freely available to the credit institution to cover normal banking risks where revenue or capital losses have not yet been identified;
- b their existence is disclosed in internal accounting records; and
- c their amount is determined by the management of the credit institution, verified by independent auditors, made known to the competent authorities and placed under the supervision of the latter.

2 Securities of indeterminate duration and other instruments that fulfil the following conditions may also be accepted as other items:

- a they may not be reimbursed on the bearer's initiative or without the prior agreement of the competent authority;

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- b the debt agreement shall provide for the credit institution to have the option of deferring the payment of interest on the debt;
- c the lender's claims on the credit institution shall be wholly subordinated to those of all non-subordinated creditors;
- d the documents governing the issue of the securities shall provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the credit institution in a position to continue trading; and
- e only fully paid-up amounts shall be taken into account.

To these securities and other instruments may be added cumulative preferential shares other than those referred to in point (h) of Article 57.

[^{F1}Instruments referred to in Article 57(ca) shall comply with the requirements set out in points (a), (c), (d) and (e) of this Article.]

3 For credit institutions calculating risk-weighted exposure amounts under Section 3, Subsection 2, positive amounts resulting from the calculation in Annex VII, Part 1, point 36, may, up to 0,6 % of risk weighted exposure amounts calculated under Subsection 2, be accepted as other items. For these credit institutions value adjustments and provisions included in the calculation referred to in Annex VII, Part 1, point 36 and value adjustments and provisions for exposures referred to in point (e) of Article 57 shall not be included in own funds other than in accordance with this paragraph. For these purposes, risk-weighted exposure amounts shall not include those calculated in respect of securitisation positions which have a risk weight of 1 250 %.

Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

[^{F1}Article 63a

1 Instruments referred to in Article 57(ca) shall comply with the requirements set out in paragraphs 2 to 5 of this Article.

2 The instruments shall be undated or have an original maturity of at least 30 years. The instruments may include one or more call options at the sole discretion of the issuer, but they shall not be redeemed before five years after the date of issue. If the provisions governing undated instruments provide for a moderate incentive for the credit institution to redeem as determined by the competent authorities, such incentive shall not occur within 10 years of the date of issue. The provisions governing dated instruments shall not permit an incentive to redeem on a date other than the maturity date.

Dated and undated instruments may be called or redeemed only with the prior consent of the competent authorities. The competent authorities may grant permission provided the request is made at the initiative of the credit institution and either financial or solvency conditions of the credit institution are not unduly affected. The competent authorities may require institutions to replace the instrument by items of the same or better quality referred to in point (a) or (ca) of Article 57.

The competent authorities shall require the suspension of the redemption for dated instruments if the credit institution does not comply with the capital requirements set

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out in Article 75 and may require such suspension at other times based on the financial and solvency situation of credit institutions.

The competent authority may at any time grant permission for early redemption of dated or undated instruments in the event that there is a change in the applicable tax treatment or regulatory classification of such instruments which was unforeseen at the date of issue.

3 The provisions governing the instrument shall allow the credit institution to cancel, when necessary, the payment of interest or dividends for an unlimited period of time, on a non-cumulative basis.

However, the credit institution shall cancel such payments if it does not comply with the capital requirements set out in Article 75.

The competent authorities may require the cancellation of such payments based on the financial and solvency situation of the credit institution. Any such cancellation shall not prejudice the right of the credit institution to substitute the payment of interest or dividend by a payment in the form of an instrument referred to in Article 57(a), provided that any such mechanism allows the credit institution to preserve financial resources. Such substitution may be subject to specific conditions established by the competent authorities.

[^{F34} The provisions governing the instrument shall provide for principal, unpaid interest or dividend to be such as to absorb losses and to not hinder the recapitalisation of the credit institution through appropriate mechanisms, as developed by EBA under paragraph 6.]

5 In the event of the bankruptcy or liquidation of the credit institution, the instruments shall rank after the items referred to in Article 63(2).

[^{F36} In order to ensure consistent harmonisation and to ensure the convergence of supervisory practices, EBA shall develop draft regulatory technical standards to specify the requirements applicable to the instruments referred to in paragraph 1 of this Article EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall also issue guidelines in relation to instruments referred to in point (a) of the first paragraph of Article 57.

EBA shall monitor the application of those guidelines.]]

Textual Amendments

- F1** Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F3** Substituted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

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Article 64

1 The commitments of the members of credit institutions set up as cooperative societies referred to in point (g) of Article 57, shall comprise those societies' uncalled capital, together with the legal commitments of the members of those cooperative societies to make additional non-refundable payments should the credit institution incur a loss, in which case it shall be possible to demand those payments without delay.

The joint and several commitments of borrowers in the case of credit institutions organised as funds shall be treated in the same way as the preceding items.

All such items may be included in own funds in so far as they are counted as the own funds of institutions of this category under national law.

2 Member States shall not include in the own funds of public credit institutions guarantees which they or their local authorities extend to such entities.

3 Member States or the competent authorities may include fixed-term cumulative preferential shares referred to in point (h) of Article 57 and subordinated loan capital referred to in that provision in own funds, if binding agreements exist under which, in the event of the bankruptcy or liquidation of the credit institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital shall fulfil the following additional criteria:

- a only fully paid-up funds may be taken into account;
- b the loans involved shall have an original maturity of at least five years, after which they may be repaid;
- c the extent to which they may rank as own funds shall be gradually reduced during at least the last five years before the repayment date; and
- d the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the credit institution, the debt shall become repayable before the agreed repayment date.

For the purposes of point (b) of the second subparagraph, if the maturity of the debt is not fixed, the loans involved shall be repayable only subject to five years' notice unless the loans are no longer considered as own funds or unless the prior consent of the competent authorities is specifically required for early repayment. The competent authorities may grant permission for the early repayment of such loans provided the request is made at the initiative of the issuer and the solvency of the credit institution in question is not affected.

4 Credit institutions shall not include in own funds either the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost, or any gains or losses on their liabilities valued at fair value that are due to changes in the credit institutions' own credit standing.

[^{F55} Credit institutions shall apply the requirements of Part B of Annex VII to Directive 2006/49/EC to all their assets measured at fair value when calculating the amount of own funds and shall deduct from the total of the items (a) to (ca) minus (i) to (k) in Article 57 the amount of any additional value adjustments necessary. The Committee of European Banking Supervisors shall establish guidelines regarding the details of the application of this provision.]

Textual Amendments

- F5** Inserted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading](#)

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book and for re-securitisations, and the supervisory review of remuneration policies (Text with EEA relevance).

Article 65

1 Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under Article 57 shall be used in accordance with the rules laid down in Chapter 4, Section 1. Moreover, the following may, when they are credit ('negative') items, be regarded as consolidated reserves for the calculation of own funds:

- [^{F6}a any minority interests within the meaning of Article 21 of Directive 83/349/EEC, where the global integration method is used. Any instruments referred to in Article 57(ca), which give rise to minority interests shall meet the requirements under points (a), (c), (d) and (e) of Article 63(2) and Articles 63a and 66;]
- b the first consolidation difference within the meaning of Articles 19, 30 and 31 of Directive 83/349/EEC;
- c the translation differences included in consolidated reserves in accordance with Article 39(6) of Directive 86/635/EEC; and
- d any difference resulting from the inclusion of certain participating interests in accordance with the method prescribed in Article 33 of Directive 83/349/EEC.

2 Where the items referred to in points (a) to (d) of paragraph 1 are debit ('positive') items, they shall be deducted in the calculation of consolidated own funds.

Textual Amendments

- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 66

[^{F6}1 The items referred to in Article 57(d) to (h) shall be subject to the following limits:

- a the total of the items referred to in Article 57(d) to (h) must not exceed a maximum of 100 % of the items in points (a) to (ca) minus (i), (j) and (k) of that Article; and
- b the total of the items referred to in Article 57(g) to (h) must not exceed a maximum of 50 % of the items in points (a) to (ca) minus (i), (j) and (k) of that Article.

1a Notwithstanding paragraph 1 of this Article, the total of the items in Article 57(ca) shall be subject to the following limits:

- a instruments that must be converted during emergency situations and may be converted at the initiative of the competent authority, at any time, based on the financial and solvency situation of the issuer into items referred to in Article 57(a) within a pre-determined range must in total not exceed a maximum of 50 % of the items in points (a) to (ca) minus (i), (j) and (k) of that article;
- b within the limit referred to in point (a) of this paragraph, all other instruments must not exceed a maximum of 35 % of the items in points (a) to (ca) minus (i), (j) and (k) of Article 57;
- c within the limits referred to in points (a) and (b) of this paragraph, dated instruments and instruments with provisions that provide for an incentive for the credit institution to redeem must not exceed a maximum of 15 % of the items in points (a) to (ca) minus (i), (j) and (k) of Article 57;

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- d the amount of items exceeding the limits set out in points (a), (b) and (c) must be subject to the limit set out in paragraph 1 of this Article.]

[^{F72} Half of the total of the items in Article 57(l) to (r) shall be deducted from the total of the items in points (a) to (ca) minus (i) to (k) of that Article, and half from the total of the items in points (d) to (h) of that Article, after application of the limits laid down in paragraph 1 of this Article. To the extent that half of the total of the items in points (l) to (r) exceeds the total of the items in Article 57(d) to (h), the excess shall be deducted from the total of the items in points (a) to (ca) minus (i) to (k) of that Article.

Items in Article 57(r) shall not be deducted if they have been included for the purposes of Article 75 in the calculation of risk-weighted exposure amounts as specified in this Directive or in the calculation of capital requirements as specified in Annex I or V to Directive 2006/49/EC.]

3 For the purposes of Sections 5 and 6, the provisions laid down in this Section shall be read without taking into account the items referred to in points (q) and (r) of Article 57 and Article 63(3).

[^{F64} The competent authorities may authorise credit institutions to exceed the limits laid down in paragraphs 1 and 1a temporarily during emergency situations.]

Textual Amendments

- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F7** Substituted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\).](#)

Article 67

Compliance with the conditions laid down in this Section shall be proved to the satisfaction of the competent authorities.

Section 2

Provision against risks

Subsection 1

Level of application

Article 68

1 Credit institutions shall comply with the obligations laid down in Articles 22 and 75 and Section 5 on an individual basis.

2 Every credit institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every credit institution not included in

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the consolidation pursuant to Article 73, shall comply with the obligations laid down in Articles 120 and 123 on an individual basis.

3 Every credit institution which is neither a parent undertaking, nor a subsidiary, and every credit institution not included in the consolidation pursuant to Article 73, shall comply with the obligations laid down in Chapter 5 on an individual basis.

Article 69

1 The Member States may choose not to apply Article 68(1) to any subsidiary of a credit institution, where both the subsidiary and the credit institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the credit institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

- a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;
- b either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;
- c the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary; and
- d the parent undertaking holds more than 50 % of the voting rights attaching to shares in the capital of the subsidiary and/or has the right to appoint or remove a majority of the members of the management body of the subsidiary described in Article 11.

[^{F82} The Member States may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or mixed financial holding company established in the same Member State as the credit institution, provided that it is subject to the same supervision as that applicable to credit institutions, and in particular to the standards laid down in Article 71(1).]

3 The Member States may choose not to apply Article 68(1) to a parent credit institution in a Member State where that credit institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and all the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

- a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent credit institution in a Member State; and
- b the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent credit institution in a Member State.

The competent authority which makes use of this paragraph shall inform the competent authorities of all other Member States.

4 Without prejudice to the generality of Article 144, the competent authority of the Member States exercising the discretion laid down in paragraph 3 shall publicly disclose, in the manner indicated in Article 144:

- a criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

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- b the number of parent credit institutions which benefit from the exercise of the discretion laid down in paragraph 3 and the number of these which incorporate subsidiaries in a third country; and
- c on an aggregate basis for the Member State:
 - (i) the total amount of own funds on the consolidated basis of the parent credit institution in a Member State, which benefits from the exercise of the discretion laid down in paragraph 3, which are held in subsidiaries in a third country;
 - (ii) the percentage of total own funds on the consolidated basis of parent credit institutions in a Member State which benefits from the exercise of the discretion laid down in paragraph 3, represented by own funds which are held in subsidiaries in a third country; and
 - (iii) the percentage of total minimum own funds required under Article 75 on the consolidated basis of parent credit institutions in a Member State, which benefits from the exercise of the discretion laid down in paragraph 3, represented by own funds which are held in subsidiaries in a third country.

Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\)](#).

Article 70

1 Subject to paragraphs 2 to 4 of this Article, the competent authorities may allow on a case by case basis parent credit institutions to incorporate in the calculation of their requirement under Article 68(1) subsidiaries which meet the conditions laid down in points (c) and (d) of Article 69(1), and whose material exposures or material liabilities are to that parent credit institution.

2 The treatment in paragraph 1 shall be allowed only where the parent credit institution demonstrates fully to the competent authorities the circumstances and arrangements, including legal arrangements, by virtue of which there is no material practical or legal impediment, and none are foreseen, to the prompt transfer of own funds, or repayment of liabilities when due by the subsidiary to its parent undertaking.

3 Where a competent authority exercises the discretion laid down in paragraph 1, it shall on a regular basis and not less than once a year inform the competent authorities of all the other Member States of the use made of paragraph 1 and of the circumstances and arrangements referred to in paragraph 2. Where the subsidiary is in a third country, the competent authorities shall provide the same information to the competent authorities of that third country as well.

4 Without prejudice to the generality of Article 144, a competent authority which exercises the discretion laid down in paragraph 1 shall publicly disclose, in the manner indicated in Article 144:

- a the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- b the number of parent credit institutions which benefit from the exercise of the discretion laid down in paragraph 1 and the number of these which incorporate subsidiaries in a third country; and

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- c on an aggregate basis for the Member State:
- (i) the total amount of own funds of parent credit institutions which benefit from the exercise of the discretion laid down in paragraph 1 which are held in subsidiaries in a third country;
 - (ii) the percentage of total own funds of parent credit institutions which benefit from the exercise of the discretion laid down in paragraph 1 represented by own funds which are held in subsidiaries in a third country; and
 - (iii) the percentage of total minimum own funds required under Article 75 of parent credit institutions which benefit from the exercise of the discretion laid down in paragraph 1 represented by own funds which are held in subsidiaries in a third country.

Article 71

1 Without prejudice to Articles 68 to 70, parent credit institutions in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of their consolidated financial situation.

[^{F82} Without prejudice to Articles 68, 69 and 70, credit institutions controlled by a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company.

Where more than one credit institution is controlled by a parent financial holding company in a Member State or by a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the credit institution to which supervision on a consolidated basis applies in accordance with Articles 125 and 126.]

Textual Amendments

F8 Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 72

1 EU parent credit institutions shall comply with the obligations laid down in Chapter 5 on the basis of their consolidated financial situation.

Significant subsidiaries of EU parent credit institutions shall disclose the information specified in Annex XII, Part 1, point 5, on an individual or sub-consolidated basis.

[^{F82} Credit institutions controlled by an EU parent financial holding company or by an EU parent mixed financial holding company shall comply with the obligations laid down in Chapter 5 on the basis of the consolidated financial situation of that financial holding company or that mixed financial holding company.

Significant subsidiaries of EU parent financial holding companies or EU parent mixed financial holding companies shall disclose the information specified in Annex XII, Part 1, point 5, on an individual or sub-consolidated basis.]

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3 The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Articles 125 and 126 may decide not to apply in full or in part paragraphs 1 and 2 to the credit institutions which are included within comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country.

Textual Amendments

F8 Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\)](#).

F⁹ Article 72a

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

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

3 The consolidating supervisor shall inform EBA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁷⁾ (EIOPA) of the decisions taken under paragraphs 1 and 2 of this Article. EBA, EIOPA and 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) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of the guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.]

Textual Amendments

F9 Inserted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\)](#).

Article 73

1 The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Articles 125 and 126 may decide in the following cases that a credit institution, financial institution or ancillary services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

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- a where the undertaking concerned is situated in a third country where there are legal impediments to the transfer of the necessary information;
- b where, in the opinion of the competent authorities, the undertaking concerned is of negligible interest only with respect to the objectives of monitoring credit institutions and in any event where the balance-sheet total of the undertaking concerned is less than the smaller of the following two amounts:
 - (i) EUR 10 million, or
 - (ii) 1 % of the balance-sheet total of the parent undertaking or the undertaking that holds the participation,
- c where, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking concerned would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

If, in the cases referred to in point (b) of the first subparagraph, several undertakings meet the above criteria set out therein, they shall nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the specified objectives.

[^{F82} Competent authorities shall require subsidiary credit institutions to apply the requirements laid down in Articles 75, 120 and 123 and Section 5 of this Directive on a sub-consolidated basis if those credit institutions, or their parent undertaking where that parent undertaking is a financial holding company or mixed financial holding company, have a credit institution, a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary established in a third country, or hold a participation in such an undertaking.]

3 Competent authorities shall require the parent undertakings and subsidiaries subject to this Directive to meet the obligations laid down in Article 22 on a consolidated or sub-consolidated basis, to ensure that their arrangements, processes and mechanisms are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Subsection 2

[^{F6}Calculation and reporting requirements]

Article 74

1 Save where otherwise provided, the valuation of assets and off-balance-sheet items shall be effected in accordance with the accounting framework to which the credit institution is subject under Regulation (EC) No 1606/2002 and Directive 86/635/EEC.

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2 Notwithstanding the requirements laid down in Articles 68 to 72, the calculations to verify the compliance of credit institutions with the obligations laid down in Article 75 shall be carried out not less than twice each year.

[^{F3}In order to ensure uniform conditions of application of this Directive, for the communication of those calculations by credit institutions, the competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to introduce, within the Union, uniform formats (with associated instructions), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

In order to ensure uniform conditions of application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.

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

The credit institutions shall communicate the results and any component data required to the competent authorities.

Textual Amendments

F3 Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Subsection 3

Minimum level of own funds

Article 75

Without prejudice to Article 136, Member States shall require credit institutions to provide own funds which are at all times more than or equal to the sum of the following capital requirements:

- (a) for credit risk and dilution risk in respect of all of their business activities with the exception of their trading book business and illiquid assets if deducted from own funds under Article 13(2)(d) of Directive 2006/49/EC, 8 % of the total of their risk-weighted exposure amounts calculated in accordance with Section 3;
- (b) [^{F7}in respect of their trading-book business, for position risk and counter-party risk and, in so far as it is authorised that the limits laid down in Articles 111 to 117 are exceeded, for large exposures exceeding such limits, the capital requirements determined in accordance with Article 18 and Articles 28 to 32 of Directive 2006/49/EC;

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- (c) in respect of all their business activities, for foreign exchange risk, for settlement risk and for commodities risk, the capital requirements determined in accordance with Article 18 of Directive 2006/49/EC;]
- (d) in respect of all of their business activities, for operational risk, the capital requirements determined in accordance with Section 4.

Textual Amendments

- F7** Substituted by Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (Text with EEA relevance).

Section 3

Minimum own funds requirements for credit risk

Article 76

Credit institutions shall apply either the Standardised Approach provided for in Articles 78 to 83 or, if permitted by the competent authorities in accordance with Article 84, the Internal Ratings Based Approach provided for in Articles 84 to 89 to calculate their risk-weighted exposure amounts for the purposes of Article 75(a).

Article 77

‘Exposure’ for the purposes of this Section means an asset or off-balance sheet item.

Subsection 1

Standardised approach

Article 78

1 Subject to paragraph 2, the exposure value of an asset item shall be its balance-sheet value and the exposure value of an off-balance sheet item listed in Annex II shall be the following percentage of its value: 100 % if it is a full-risk item, 50 % if it is a medium-risk item, 20 % if it is a medium/low-risk item, 0 % if it is a low-risk item. The off-balance sheet items referred to in the first sentence of this paragraph shall be assigned to risk categories as indicated in Annex II. In the case of a credit institution using the Financial Collateral Comprehensive Method under Annex VIII, Part 3, where an exposure takes the form of securities or commodities sold, posted or lent under a repurchase transaction or under a securities or commodities lending or borrowing transaction, and margin lending transactions the exposure value shall be increased by the volatility adjustment appropriate to such securities or commodities as prescribed in Annex VIII, Part 3, points 34 to 59.

2 The exposure value of a derivative instrument listed in Annex IV shall be determined in accordance with Annex III with the effects of contracts of novation and other netting agreements taken into account for the purposes of those methods in accordance with Annex III. The exposure value of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions may be determined either in accordance with Annex III or Annex VIII.

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3 Where an exposure is subject to funded credit protection, the exposure value applicable to that item may be modified in accordance with Subsection 3.

4 Notwithstanding paragraph 2, the exposure value of credit risk exposures outstanding, as determined by the competent authorities, with a central counterparty shall be determined in accordance with Annex III, Part 2, point 6, provided that the central counterparty's counterparty credit risk exposures with all participants in its arrangements are fully collateralised on a daily basis.

Article 79

1 Each exposure shall be assigned to one of the following exposure classes:

- a claims or contingent claims on central governments or central banks;
- b claims or contingent claims on regional governments or local authorities;
- c claims or contingent claims on administrative bodies and non-commercial undertakings;
- d claims or contingent claims on multilateral development banks;
- e claims or contingent claims on international organisations;
- f claims or contingent claims on institutions;
- g claims or contingent claims on corporates;
- h retail claims or contingent retail claims;
- i claims or contingent claims secured on real estate property;
- j past due items;
- k items belonging to regulatory high-risk categories;
- l claims in the form of covered bonds;
- m securitisation positions;
- n short-term claims on institutions and corporate;
- o claims in the form of collective investment undertakings ('CIU'); or
- p other items.

2 To be eligible for the retail exposure class referred to in point (h) of paragraph 1, an exposure shall meet the following conditions:

- a the exposure shall be either to an individual person or persons, or to a small or medium sized entity;
- b the exposure shall be one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced; and
- c the total amount owed to the credit institution and parent undertakings and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, but excluding claims or contingent claims secured on residential real estate collateral, shall not, to the knowledge of the credit institution, exceed EUR 1 million. The credit institution shall take reasonable steps to acquire this knowledge.

Securities shall not be eligible for the retail exposure class.

3 The present value of retail minimum lease payments is eligible for the retail exposure class.

Article 80

1 To calculate risk-weighted exposure amounts, risk weights shall be applied to all exposures, unless deducted from own funds, in accordance with the provisions of Annex VI, Part 1. The application of risk weights shall be based on the exposure class to which the exposure

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is assigned and, to the extent specified in Annex VI, Part 1, its credit quality. Credit quality may be determined by reference to the credit assessments of External Credit Assessment Institutions ('ECAIs') in accordance with the provisions of Articles 81 to 83 or the credit assessments of Export Credit Agencies as described in Annex VI, Part 1.

2 For the purposes of applying a risk weight, as referred to in paragraph 1, the exposure value shall be multiplied by the risk weight specified or determined in accordance with this Subsection.

3 For the purposes of calculating risk-weighted exposure amounts for exposures to institutions, Member States shall decide whether to adopt the method based on the credit quality of the central government of the jurisdiction in which the institution is incorporated or the method based on the credit quality of the counterparty institution in accordance with Annex VI.

4 Notwithstanding paragraph 1, where an exposure is subject to credit protection the risk weight applicable to that item may be modified in accordance with Subsection 3.

5 Risk-weighted exposure amounts for securitised exposures shall be calculated in accordance with Subsection 4.

6 Exposures the calculation of risk-weighted exposure amounts for which is not otherwise provided for under this Subsection shall be assigned a risk-weight of 100 %.

7 With the exception of exposures giving rise to liabilities in the form of the items referred to in paragraphs (a) to (h) of Article 57, competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures of a credit institution to 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 12(1) of Directive 83/349/EEC, provided that the following conditions are met:

- [^{F8}a the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements;]
- b the counterparty is included in the same consolidation as the credit institution on a full basis;
- c the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution;
- d the counterparty is established in the same Member State as the credit institution; and
- 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 credit institution.

In such a case, a risk weight of 0 % shall be assigned.

8 With the exception of exposures giving rise to liabilities in the form of the items referred to in points (a) to (h) of Article 57, competent authorities may exempt from the requirements of paragraph 1 of this Article the exposures to counterparties which are members of the same institutional protection scheme as the lending credit institution, provided that the following conditions are met:

- a the requirements set out in points (a), (d) and (e) of paragraph 7;
- b the credit institution and the counterparty have entered into a contractual or statutory liability arrangement which protects those institutions and in particular ensures their liquidity and solvency to avoid bankruptcy in case it becomes necessary (referred to below as an institutional protection scheme);
- c the arrangements ensure that the institutional protection scheme will be able to grant support necessary under its commitment from funds readily available to it;

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- d the institutional protection scheme disposes of suitable and uniformly stipulated systems for the monitoring and classification of risk (which gives a complete overview of the risk situations of all the individual members and the institutional protection scheme as a whole) with corresponding possibilities to take influence; those systems shall suitably monitor defaulted exposures in accordance with Annex VII, Part 4, point 44;
- e the institutional protection scheme conducts its own risk review which is communicated to the individual members;
- f the institutional protection scheme draws up and publishes once in a year either, a consolidated report comprising the balance sheet, the profit-and-loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole, or a report comprising the aggregated balance sheet, the aggregated profit-and-loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole;
- g members of the institutional protection scheme are obliged to give advance notice of at least 24 months if they wish to end the arrangements;
- h the multiple use of elements eligible for the calculation of own funds ('multiple gearing') as well as any inappropriate creation of own funds between the members of the institutional protection scheme shall be eliminated;
- i the institutional protection scheme shall be based on a broad membership of credit institutions of a predominantly homogeneous business profile; and
- j the adequacy of the systems referred to in point (d) is approved and monitored at regular intervals by the relevant competent authorities.

In such a case, a risk weight of 0 % shall be assigned.

Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\)](#).

Article 81

1 An external credit assessment may be used to determine the risk weight of an exposure in accordance with Article 80 only if the ECAI which provides it has been recognised as eligible for those purposes by the competent authorities ('an eligible ECAI' for the purposes of this Subsection).

[^{F62} The competent authorities shall recognise an ECAI as eligible for the purpose of Article 80 only if they are satisfied that its assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency, and that the resulting credit assessments meet the requirements of credibility and transparency. For those purposes, the competent authorities shall take into account the technical criteria set out in Annex VI, Part 2. Where an ECAI is registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009 of 16 September 2009 of the European Parliament and of the Council on credit rating agencies⁽⁹⁾, the competent authorities shall consider the requirements of objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.

[^{F2}In order to ensure consistent harmonisation of this Article, EBA, in consultation with the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European

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Parliament and of the Council⁽¹⁰⁾, shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

3 If an ECAI has been recognised as eligible by the competent authorities of a Member State, the competent authorities of other Member States may recognise that ECAI as eligible without carrying out their own evaluation process.

4 Competent authorities shall make publicly available an explanation of the recognition process, and a list of eligible ECAIs.

Textual Amendments

- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).
- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management](#) (Text with EEA relevance).

Article 82

1 The competent authorities shall determine, taking into account the technical criteria set out in Annex VI, Part 2, with which of the credit quality steps set out in Part 1 of that Annex the relevant credit assessments of an eligible ECAI are to be associated. Those determinations shall be objective and consistent.

2 When the competent authorities of a Member State have made a determination under paragraph 1, the competent authorities of other Member States may recognise that determination without carrying out their own determination process.

Article 83

1 The use of ECAI credit assessments for the calculation of a credit institution's risk-weighted exposure amounts shall be consistent and in accordance with Annex VI, Part 3. Credit assessments shall not be used selectively.

2 Credit institutions shall use solicited credit assessments. However, with the permission of the relevant competent authority, they may use unsolicited assessments.

Subsection 2

Internal Ratings Based Approach

Article 84

1 In accordance with this Subsection, the competent authorities may permit credit institutions to calculate their risk-weighted exposure amounts using the Internal Ratings Based Approach ('IRB Approach'). Explicit permission shall be required in the case of each credit institution.

2 Permission shall be given only if the competent authority is satisfied that the credit institution's systems for the management and rating of credit risk exposures are sound and implemented with integrity and, in particular, that they meet the following standards in accordance with Annex VII, Part 4:

- a the credit institution's rating systems provide for a meaningful assessment of obligor and transaction characteristics, a meaningful differentiation of risk and accurate and consistent quantitative estimates of risk;
- b internal ratings and default and loss estimates used in the calculation of capital requirements and associated systems and processes play an essential role in the risk management and decision-making process, and in the credit approval, internal capital allocation and corporate governance functions of the credit institution;
- c the credit institution has a credit risk control unit responsible for its rating systems that is appropriately independent and free from undue influence;
- d the credit institution collects and stores all relevant data to provide effective support to its credit risk measurement and management process; and
- e the credit institution documents its rating systems and the rationale for their design and validates its rating systems.

[^{F8}Where an EU parent credit institution and its subsidiaries or an EU parent financial holding company and its subsidiaries or an EU parent mixed financial holding company and its subsidiaries use the IRB Approach on a unified basis, the competent authorities may allow the minimum requirements of Part 4 of Annex VII to be met by the parent and its subsidiaries considered together.]

[^{F2}In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify the assessment methodology under which the competent authorities permit credit institutions to use the IRB approach.

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

3 A credit institution applying for the use of the IRB Approach shall demonstrate that it has been using for the IRB exposure classes in question rating systems that were broadly in line with the minimum requirements set out in Annex VII, Part 4 for internal risk measurement and management purposes for at least three years prior to its qualification to use the IRB Approach.

4 A credit institution applying for the use of own estimates of LGDs and/or conversion factors shall demonstrate that it has been estimating and employing own estimates of LGDs and/or conversion factors in a manner that was broadly consistent with the minimum requirements for use of own estimates of those parameters set out in Annex VII, Part 4 for at least three years prior to qualification to use own estimates of LGDs and/or conversion factors.

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5 If a credit institution ceases to comply with the requirements set out in this Subsection, it shall either present to the competent authority a plan for a timely return to compliance or demonstrate that the effect of non-compliance is immaterial.

[^{F8}6 Where the IRB Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the EU parent financial holding company and its subsidiaries, or the EU parent mixed financial holding company and its subsidiaries, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132.]

Textual Amendments

- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F8** Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 85

1 Without prejudice to Article 89, credit institutions and any parent undertaking and its subsidiaries shall implement the IRB Approach for all exposures.

Subject to the approval of the competent authorities, implementation may be carried out sequentially across the different exposure classes, referred to in Article 86, within the same business unit, across different business units in the same group or for the use of own estimates of LGDs or conversion factors for the calculation of risk weights for exposures to corporates, institutions, and central governments and central banks.

In the case of the retail exposure class referred to in Article 86, implementation may be carried out sequentially across the categories of exposures to which the different correlations in Annex VII, Part 1, points 10 to 13 correspond.

2 Implementation as referred to in paragraph 1 shall be carried out within a reasonable period of time to be agreed with the competent authorities. The implementation shall be carried out subject to strict conditions determined by the competent authorities. Those conditions shall be designed to ensure that the flexibility under paragraph 1 is not used selectively with the purpose of achieving reduced minimum capital requirements in respect of those exposure classes or business units that are yet to be included in the IRB Approach or in the use of own estimates of LGDs and/or conversion factors.

3 Credit institutions using the IRB Approach for any exposure class shall at the same time use the IRB Approach for the equity exposure class.

4 Subject to paragraphs 1 to 3 of this Article and Article 89, credit institutions which have obtained permission under Article 84 to use the IRB Approach shall not revert to the use of Subsection 1 for the calculation of risk-weighted exposure amounts except for demonstrated good cause and subject to the approval of the competent authorities.

5 Subject to paragraphs 1 and 2 of this Article and Article 89, credit institutions which have obtained permission under Article 87(9) to use own estimates of LGDs and conversion factors, shall not revert to the use of LGD values and conversion factors referred to in Article

87(8) except for demonstrated good cause and subject to the approval of the competent authorities.

Article 86

- 1 Each exposure shall be assigned to one of the following exposure classes:
 - a claims or contingent claims on central governments and central banks;
 - b claims or contingent claims on institutions;
 - c claims or contingent claims on corporates;
 - d retail claims or contingent retail claims;
 - e equity claims;
 - f securitisation positions; or
 - g other non credit-obligation assets.
- 2 The following exposures shall be treated as exposures to central governments and central banks:
 - a exposures to regional governments, local authorities or public sector entities which are treated as exposures to central governments under Subsection 1; and
 - b exposures to Multilateral Development Banks and International Organisations which attract a risk weight of 0 % under Subsection 1.
- 3 The following exposures shall be treated as exposures to institutions:
 - a exposures to regional governments and local authorities which are not treated as exposures to central governments under Subsection 1;
 - b exposures to Public Sector Entities which are treated as exposures to institutions under the Subsection 1; and
 - c exposures to Multilateral Development Banks which do not attract a 0 % risk weight under Subsection 1.
- 4 To be eligible for the retail exposure class referred to in point (d) of paragraph 1, exposures shall meet the following criteria:
 - a they shall be either to an individual person or persons, or to a small or medium sized entity, provided in the latter case that the total amount owed to the credit institution and parent undertakings and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, but excluding claims or contingent claims secured on residential real estate collateral, shall not, to the knowledge of the credit institution, which shall have taken reasonable steps to confirm the situation, exceed EUR 1 million;
 - b they are treated by the credit institution in its risk management consistently over time and in a similar manner;
 - c they are not managed just as individually as exposures in the corporate exposure class; and
 - d they each represent one of a significant number of similarly managed exposures.

The present value of retail minimum lease payments is eligible for the retail exposure class.
- 5 The following exposures shall be classed as equity exposures:
 - a non-debt exposures conveying a subordinated, residual claim on the assets or income of the issuer; and
 - b debt exposures the economic substance of which is similar to the exposures specified in point (a).

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6 Within the corporate exposure class, credit institutions shall separately identify as specialised lending exposures, exposures which possess the following characteristics:

- a the exposure is to an entity which was created specifically to finance and/or operate physical assets;
- b the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate; and
- c the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise.

7 Any credit obligation not assigned to the exposure classes referred to in points (a), (b) and (d) to (f) of paragraph 1 shall be assigned to the exposure class referred to in point (c) of that paragraph.

8 The exposure class referred to in point (g) of paragraph 1 shall include the residual value of leased properties if not included in the lease exposure as defined in Annex VII, Part 3, paragraph 4.

9 The methodology used by the credit institution for assigning exposures to different exposure classes shall be appropriate and consistent over time.

Article 87

1 The risk-weighted exposure amounts for credit risk for exposures belonging to one of the exposure classes referred to in points (a) to (e) or (g) of Article 86(1) shall, unless deducted from own funds, be calculated in accordance with Annex VII, Part 1, points 1 to 27.

2 The risk-weighted exposure amounts for dilution risk for purchased receivables shall be calculated according to Annex VII, Part 1, point 28. Where a credit institution has full recourse in respect of purchased receivables for default risk and for dilution risk, to the seller of the purchased receivables, the provisions of Articles 87 and 88 in relation to purchased receivables need not be applied. The exposure may instead be treated as a collateralised exposure.

3 The calculation of risk-weighted exposure amounts for credit risk and dilution risk shall be based on the relevant parameters associated with the exposure in question. These shall include probability of default (PD), LGD, maturity (M) and exposure value of the exposure. PD and LGD may be considered separately or jointly, in accordance with Annex VII, Part 2.

4 Notwithstanding paragraph 3, the calculation of risk-weighted exposure amounts for credit risk for all exposures belonging to the exposure class referred to in point (e) of Article 86(1) shall be calculated in accordance with Annex VII, Part 1, points 17 to 26 subject to approval of the competent authorities. Competent authorities shall only allow a credit institution to use the approach set out in Annex VII, Part 1, points 25 and 26 if the credit institution meets the minimum requirements set out in Annex VII, Part 4, points 115 to 123.

5 Notwithstanding paragraph 3, the calculation of risk weighted exposure amounts for credit risk for specialised lending exposures may be calculated in accordance with Annex VII, Part 1, point 6. Competent authorities shall publish guidance on how credit institutions should assign risk weights to specialised lending exposures under Annex VII, Part 1, point 6 and shall approve credit institution assignment methodologies.

6 For exposures belonging to the exposure classes referred to in points (a) to (d) of Article 86(1), credit institutions shall provide their own estimates of PDs in accordance with Article 84 and Annex VII, Part 4.

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7 For exposures belonging to the exposure class referred to in point (d) of Article 86(1), credit institutions shall provide own estimates of LGDs and conversion factors in accordance with Article 84 and Annex VII, Part 4.

8 For exposures belonging to the exposure classes referred to in points (a) to (c) of Article 86(1), credit institutions shall apply the LGD values set out in Annex VII, Part 2, point 8, and the conversion factors set out in Annex VII, Part 3, point 9(a) to (d).

9 Notwithstanding paragraph 8, for all exposures belonging to the exposure classes referred to in points (a) to (c) of Article 86(1), competent authorities may permit credit institutions to use own estimates of LGDs and conversion factors in accordance with Article 84 and Annex VII, Part 4.

10 The risk-weighted exposure amounts for securitised exposures and for exposures belonging to the exposure class referred to in point (f) of Article 86(1) shall be calculated in accordance with Subsection 4.

[^{F611} Where exposures in the form of a collective investment undertaking (CIU) meet the criteria set out in Annex VI, Part 1, points 77 and 78 and the credit institution is aware of all or parts of the underlying exposures of the CIU, the credit institution shall look through to those underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with the methods set out in this Subsection. Paragraph 12 shall apply to the part of the underlying exposures of the CIU the credit institution is not aware of or could not reasonably be aware of. In particular, paragraph 12 shall apply where it would be unduly burdensome for the credit institution to look through the underlying exposures in order to calculate risk-weighted exposure amounts and expected loss amounts in accordance with methods set out in this Subsection.

Where the credit institution does not meet the conditions for using the methods set out in this Subsection for all or parts of the underlying exposures of the CIU, risk weighted exposure amounts and expected loss amounts shall be calculated in accordance with the following approaches:

- a for exposures belonging to the exposure class referred to in Article 86(1)(e), the approach set out in Annex VII, Part 1, points 19 to 21.
- b for all other underlying exposures, the approach set out in Articles 78 to 83, subject to the following modifications:
 - (i) for exposures subject to a specific risk weight for unrated exposures or subject to the credit quality step yielding the highest risk weight for a given exposure class, the risk weight must be multiplied by a factor of two but must not be higher than 1 250 %;
 - (ii) for all other exposures, the risk weight must be multiplied by a factor of 1,1 and must be subject to a minimum of 5 %.

Where, for the purposes of point (a), the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. Without prejudice to Article 154(6), where those exposures, taken together with the credit institution's direct exposures in that exposure class, are not material within the meaning of Article 89(2), Article 89(1) may be applied subject to the approval of the competent authorities.]

12 Where exposures in the form of a CIU do not meet the criteria set out in Annex VI, Part 1, points 77 and 78, or the credit institution is not aware of all of the underlying exposures of the CIU, the credit institution shall look through to the underlying exposures and calculate risk-weighted exposure amounts and expected loss amounts in accordance with the approach set

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out in Annex VII, Part 1, points 19 to 21. If, for those purposes, the credit institution is unable to differentiate between private equity, exchange-traded and other equity exposures, it shall treat the exposures concerned as other equity exposures. For these purposes, non equity exposures are assigned to one of the classes (private equity, exchange traded equity or other equity) set out in Annex VII, Part 1, point 19 and unknown exposures are assigned to other equity class.

[^{F6}Alternatively to the method described in the first subparagraph, credit institutions may calculate themselves or may rely on a third party to calculate and report the average risk weighted exposure amounts based on the CIU's underlying exposures in accordance with the approaches referred to in points (a) and (b) of paragraph 11, provided that the correctness of the calculation and the report is adequately ensured.]

Textual Amendments

F6 Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 88

1 The expected loss amounts for exposures belonging to one of the exposure classes referred to in points (a) to (e) of Article 86(1) shall be calculated in accordance with the methods set out in Annex VII, Part 1, points 29 to 35.

2 The calculation of expected loss amounts in accordance with Annex VII, Part 1, points 29 to 35 shall be based on the same input figures of PD, LGD and the exposure value for each exposure as being used for the calculation of risk-weighted exposure amounts in accordance with Article 87. For defaulted exposures, where credit institutions use own estimates of LGDs, expected loss ('EL') shall be the credit institution's best estimate of EL ('EL_{BE}') for the defaulted exposure, in accordance with Annex VII, Part 4, point 80.

3 The expected loss amounts for securitised exposures shall be calculated in accordance with Subsection 4.

4 The expected loss amount for exposures belonging to the exposure class referred to in point (g) of Article 86(1) shall be zero.

5 The expected loss amounts for dilution risk of purchased receivables shall be calculated in accordance with the methods set out in Annex VII, Part 1, point 35.

6 The expected loss amounts for exposures referred to in Article 87(11) and (12) shall be calculated in accordance with the methods set out in Annex VII, Part 1, points 29 to 35.

Article 89

1 Subject to the approval of the competent authorities, credit institutions permitted to use the IRB Approach in the calculation of risk-weighted exposure amounts and expected loss amounts for one or more exposure classes may apply Subsection 1 for the following:

- a the exposure class referred to in point (a) of Article 86(1), where the number of material counterparties is limited and it would be unduly burdensome for the credit institution to implement a rating system for these counterparties;
- b the exposure class referred to in point (b) of Article 86(1), where the number of material counterparties is limited and it would be unduly burdensome for the credit institution to implement a rating system for these counterparties;

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- c exposures in non-significant business units as well as exposure classes that are immaterial in terms of size and perceived risk profile;
- [^{F6}d exposures to central governments of the Member States and their regional governments, local authorities and administrative bodies provided that:]
 - (i) there is no difference in risk between the exposures to that central government and those other exposures because of specific public arrangements, and
 - (ii) exposures to the central government are assigned a 0 % risk weight under Subsection 1;
- [^{F8}e exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and exposures between credit institutions which meet the requirements set out in Article 80(8);]
- f equity exposures to entities whose credit obligations qualify for a 0 % risk weight under Subsection 1 (including those publicly sponsored entities where a zero risk weight can be applied);
- g equity exposures incurred under legislative programmes to promote specified sectors of the economy that provide significant subsidies for the investment to the credit institution and involve some form of government oversight and restrictions on the equity investments. This exclusion is limited to an aggregate of 10 % of original own funds plus additional own funds;
- h the exposures identified in Annex VI, Part 1, point 40 meeting the conditions specified therein; or
- i State and State-reinsured guarantees pursuant to Annex VIII, Part 2, point 19.

This paragraph shall not prevent the competent authorities of other Member States to allow the application of the rules of Subsection 1 for equity exposures which have been allowed for this treatment in other Member States.

2 For the purposes of paragraph 1, the equity exposure class of a credit institution shall be considered material if their aggregate value, excluding equity exposures incurred under legislative programmes as referred to in paragraph 1, point (g), exceeds, on average over the preceding year, 10 % of the credit institution's own funds. If the number of those equity exposures is less than 10 individual holdings, that threshold shall be 5 % of the credit institution's own funds.

Textual Amendments

- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Subsection 3

Credit risk mitigation

Article 90

For the purposes of this Subsection, ‘lending credit institution’ shall mean the credit institution which has the exposure in question, whether or not deriving from a loan.

Article 91

Credit institutions using the Standardised Approach under Articles 78 to 83 or using the IRB Approach under Articles 84 to 89, but not using their own estimates of LGD and conversion factors under Articles 87 and 88, may recognise credit risk mitigation in accordance with this Subsection in the calculation of risk-weighted exposure amounts for the purposes of Article 75 point (a) or as relevant expected loss amounts for the purposes of the calculation referred to in point (q) of Article 57, and Article 63(3).

Article 92

1 The technique used to provide the credit protection together with the actions and steps taken and procedures and policies implemented by the lending credit institution shall be such as to result in credit protection arrangements which are legally effective and enforceable in all relevant jurisdictions.

2 The lending credit institution shall take all appropriate steps to ensure the effectiveness of the credit protection arrangement and to address related risks.

3 In the case of funded credit protection, to be eligible for recognition the assets relied upon shall be sufficiently liquid and their value over time sufficiently stable to provide appropriate certainty as to the credit protection achieved having regard to the approach used to calculate risk-weighted exposure amounts and to the degree of recognition allowed. Eligibility shall be limited to the assets set out in Annex VIII, Part 1.

4 In the case of funded credit protection, the lending credit institution shall have the right to liquidate or retain, in a timely manner, the assets from which the protection derives in the event of the default, insolvency or bankruptcy of the obligor — or other credit event set out in the transaction documentation — and, where applicable, of the custodian holding the collateral. The degree of correlation between the value of the assets relied upon for protection and the credit quality of the obligor shall not be undue.

5 In the case of unfunded credit protection, to be eligible for recognition the party giving the undertaking shall be sufficiently reliable, and the protection agreement legally effective and enforceable in the relevant jurisdictions, to provide appropriate certainty as to the credit protection achieved having regard to the approach used to calculate risk-weighted exposure amounts and to the degree of recognition allowed. Eligibility shall be limited to the protection providers and types of protection agreement set out in Annex VIII, Part 1.

6 The minimum requirements set out in Annex VIII, Part 2 shall be complied with.

Article 93

1 Where the requirements of Article 92 are met the calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts, may be modified in accordance with Annex VIII, Parts 3 to 6.

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2 No exposure in respect of which credit risk mitigation is obtained shall produce a higher risk-weighted exposure amount or expected loss amount than an otherwise identical exposure in respect of which there is no credit risk mitigation.

3 Where the risk-weighted exposure amount already takes account of credit protection under Articles 78 to 83 or Articles 84 to 89, as relevant, the calculation of the credit protection shall not be further recognised under this Subsection.

Subsection 4

Securitisation

Article 94

Where a credit institution uses the Standardised Approach set out in Articles 78 to 83 for the calculation of risk-weighted exposure amounts for the exposure class to which the securitised exposures would be assigned under Article 79, it shall calculate the risk-weighted exposure amount for a securitisation position in accordance with Annex IX, Part 4, points 1 to 36.

In all other cases, it shall calculate the risk-weighted exposure amount in accordance with Annex IX, Part 4, points 1 to 5 and 37 to 76.

Article 95

1 Where significant credit risk associated with securitised exposures has been transferred from the originator credit institution in accordance with the terms of Annex IX, Part 2, that credit institution may:

- a in the case of a traditional securitisation, exclude from its calculation of risk-weighted exposure amounts, and, as relevant, expected loss amounts, the exposures which it has securitised; and
- b in the case of a synthetic securitisation, calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, in respect of the securitised exposures in accordance with Annex IX, Part 2.

2 Where paragraph 1 applies, the originator credit institution shall calculate the risk-weighted exposure amounts prescribed in Annex IX for the positions that it may hold in the securitisation.

Where the originator credit institution fails to transfer significant credit risk in accordance with paragraph 1, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question.

Article 96

1 To calculate the risk-weighted exposure amount of a securitisation position, risk weights shall be assigned to the exposure value of the position in accordance with Annex IX, based on the credit quality of the position, which may be determined by reference to an ECAI credit assessment or otherwise, as set out in Annex IX.

2 Where there is an exposure to different tranches in a securitisation, the exposure to each tranche shall be considered a separate securitisation position. The providers of credit protection to securitisation positions shall be considered to hold positions in the securitisation. Securitisation positions shall include exposures to a securitisation arising from interest rate or currency derivative contracts.

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3 Where a securitisation position is subject to funded or unfunded credit protection the risk-weight to be applied to that position may be modified in accordance with Articles 90 to 93, read in conjunction with Annex IX.

4 Subject to point (r) of Article 57 and Article 66(2), the risk-weighted exposure amount shall be included in the credit institution's total of risk-weighted exposure amounts for the purposes of Article 75(a).

Article 97

1 An ECAI credit assessment may be used to determine the risk weight of a securitisation position in accordance with Article 96 only if the ECAI has been recognised as eligible by the competent authorities for this purpose (hereinafter ‘an eligible ECAI’).

[^{F62} The competent authorities shall recognise an ECAI as eligible for the purpose of paragraph 1 of this Article only if they are satisfied as to its compliance with the requirements laid down in Article 81, taking into account the technical criteria set out in Annex VI, Part 2, and that it has a demonstrated ability in the area of securitisation, which may be evidenced by a strong market acceptance. Where an ECAI is registered as a credit rating agency in accordance with Regulation (EC) No 1060/2009, the competent authorities shall consider the requirements of objectivity, independence, ongoing review and transparency with respect to its assessment methodology to be satisfied.

[^{F2}In order to ensure consistent harmonisation of this Article, EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

3 If an ECAI has been recognised as eligible by the competent authorities of a Member State for the purposes of paragraph 1, the competent authorities of other Member States may recognise that ECAI as eligible for those purposes without carrying out their own evaluation process.

4 The competent authorities shall make publicly available an explanation of the recognition process and a list of eligible ECAIs.

5 To be used for the purposes of paragraph 1, a credit assessment of an eligible ECAI shall comply with the principles of credibility and transparency as elaborated in Annex IX, Part 3.

Textual Amendments

- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).
- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to](#)

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central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 98

1 For the purposes of applying risk weights to securitisation positions, the competent authorities shall determine with which of the credit quality steps set out in Annex IX the relevant credit assessments of an eligible ECAI are to be associated. Those determinations shall be objective and consistent.

2 When the competent authorities of a Member State have made a determination under paragraph 1, the competent authorities of other Member States may recognise that determination without carrying out their own determination process.

Article 99

The use of ECAI credit assessments for the calculation of a credit institution's risk-weighted exposure amounts under Article 96 shall be consistent and in accordance with Annex IX, Part 3. Credit assessments shall not be used selectively.

Article 100

1 Where there is a securitisation of revolving exposures subject to an early amortisation provision, the originator credit institution shall calculate, in accordance with Annex IX, an additional risk-weighted exposure amount in respect of the risk that the levels of credit risk to which it is exposed may increase following the operation of the early amortisation provision.

2 For those purposes, a 'revolving exposure' shall be an exposure whereby customers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit, and an early amortisation provision shall be a contractual clause which requires, on the occurrence of defined events, investors' positions to be redeemed before the originally stated maturity of the securities issued.

Article 101

[^{F7} A sponsor credit institution, or an originator credit institution which in respect of a securitisation has made use of Article 95 in the calculation of risk-weighted exposure amounts or has sold instruments from its trading book to a securitisation special purpose entity to the effect that it is no longer required to hold own funds for the risks of those instruments shall not, with a view to reducing potential or actual losses to investors, provide support to the securitisation beyond its contractual obligations.]

2 If an originator credit institution or a sponsor credit institution fails to comply with paragraph 1 in respect of a securitisation, the competent authority shall require it at a minimum, to hold capital against all of the securitised exposures as if they had not been securitised. The credit institution shall disclose publicly that it has provided non-contractual support and the regulatory capital impact of having done so.

Textual Amendments

- F7** Substituted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\)](#).

Section 4

Minimum own funds requirements for operational risk

Article 102

1 Competent authorities shall require credit institutions to hold own funds against operational risk in accordance with the approaches set out in Articles 103, 104 and 105.

2 Without prejudice to paragraph 4, credit institutions that use the approach set out in Article 104 shall not revert to the use of the approach set out in Article 103, except for demonstrated good cause and subject to approval by the competent authorities.

3 Without prejudice to paragraph 4, credit institutions that use the approach set out in Article 105 shall not revert to the use of the approaches set out in Articles 103 or 104 except for demonstrated good cause and subject to approval by the competent authorities.

4 Competent authorities may allow credit institutions to use a combination of approaches in accordance with Annex X, Part 4.

Article 103

The capital requirement for operational risk under the Basic Indicator Approach shall be a certain percentage of a relevant indicator, in accordance with the parameters set out in Annex X, Part 1.

Article 104

1 Under the Standardised Approach, credit institutions shall divide their activities into a number of business lines as set out in Annex X, Part 2.

2 For each business line, credit institutions shall calculate a capital requirement for operational risk as a certain percentage of a relevant indicator, in accordance with the parameters set out in Annex X, Part 2.

3 For certain business lines, the competent authorities may under certain conditions authorise a credit institution to use an alternative relevant indicator for determining its capital requirement for operational risk as set out in Annex X, Part 2, points 5 to 11.

4 The capital requirement for operational risk under the Standardised Approach shall be the sum of the capital requirements for operational risk across all individual business lines.

5 The parameters for the Standardised Approach are set out in Annex X, Part 2.

6 To qualify for use of the Standardised Approach, credit institutions shall meet the criteria set out in Annex X, Part 2.

Article 105

1 Credit institutions may use Advanced Measurement Approaches based on their own operational risk measurement systems, provided that the competent authority expressly approves the use of the models concerned for calculating the own funds requirement.

[^{F2}In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify the assessment methodology under which the competent authorities permit credit institutions to use Advanced Measurement Approaches.

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

2 Credit institutions shall satisfy their competent authorities that they meet the qualifying criteria set out in Annex X, Part 3.

[^{F83} Where an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132. The application shall include the elements listed in Part 3 of Annex X.

4 Where an EU parent credit institution and its subsidiaries or the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach on a unified basis, the competent authorities may allow the qualifying criteria set out in Part 3 of Annex X to be met by the parent and its subsidiaries considered together.]

Textual Amendments

- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).
- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate](#) (Text with EEA relevance).

Section 5

Large exposures

Article 106

1 ‘Exposures’, for the purposes of this Section, shall mean any asset or off-balance-sheet item referred to in Section 3, Subsection 1, without application of the risk weights or degrees of risk there provided for.

Exposures arising from the items referred to in Annex IV shall be calculated in accordance with one of the methods set out in Annex III. For the purposes of this Section, Annex III, Part 2, point 2 shall also apply.

All elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the determination of exposures, provided that such own funds are not included in the credit institution's own funds for the purposes of Article 75 or in the calculation of other monitoring ratios provided for in this Directive and in other Community acts.

[^{F62} Exposures shall not include any of the following:

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- a in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the two working days following payment;
- b in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during five working days following payment or delivery of the securities, whichever the earlier;
- c in the case of the provision of money transmission including the execution of payment services, clearing and settlement in any currency and correspondent banking or financial instruments clearing, settlement and custody services to clients, delayed receipts in funding and other exposures arising from client activity which do not last longer than the following business day; or
- d in the case of the provision of money transmission including the execution of payment services, clearing and settlement in any currency and correspondent banking, intra-day exposures to institutions providing those services.

[^{F3}In order to ensure consistent harmonisation of this paragraph, EBA shall develop draft regulatory technical standards in order to specify the exemptions in points (c) and (d) as well as to specify the conditions used to determine the existence of a group of connected clients, as stated in paragraph 3. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

[^{F13} In order to determine the existence of a group of connected clients, in respect of exposures referred to in points (m), (o) and (p) of Article 79(1), where there is an exposure to underlying assets, a credit institution shall assess the scheme, its underlying exposures, or both. For that purpose, a credit institution shall evaluate the economic substance and the risks inherent in the structure of the transaction.]

Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

[^{F6}Article 107

For the purposes of calculating the value of exposures in accordance with this Section, the term ‘credit institution’ also means any private or public undertaking, including its branches, which meets the definition of ‘credit institution’ and has been authorised in a third country.]

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Textual Amendments

- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 108

A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its own funds.

Article 109

The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purposes of identifying and recording all large exposures and subsequent changes to them, in accordance with this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

^{F6}Article 110

1 A credit institution shall report the following information about every large exposure to the competent authorities, including large exposures exempted from the application of Article 111(1):

- a the identification of the client or the group of connected clients to which a credit institution has a large exposure;
- b the exposure value before taking into account the effect of the credit risk mitigation, when applicable;
- c where used, the type of funded or unfunded credit protection;
- d the exposure value after taking into account the effect of the credit risk mitigation calculated for the purpose of Article 111(1).

If a credit institution is subject to Articles 84 to 89, its 20 largest exposures on a consolidated basis, excluding those exempted from the application of Article 111(1), shall be made available to the competent authorities.

^{F32} Member States shall provide that reporting shall be carried out at least twice a year. The competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to introduce, within the Union, uniform formats (with associated instructions), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

In order to ensure uniform conditions of application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.

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

3 Member States shall require credit institutions to analyse, to the extent possible, their exposures to collateral issuers, providers of unfunded credit protection and underlying assets

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pursuant to Article 106(3) for possible concentrations and where appropriate take action and report any significant findings to their competent authority.]

Textual Amendments

- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 111

[^{F61} A credit institution shall not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, to a client or group of connected clients the value of which exceeds 25 % of its own funds.

Where that client is an institution or where a group of connected clients includes one or more institutions, that value shall not exceed 25 % of the credit institution's own funds or EUR 150 million, whichever the higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 112 to 117, to all connected clients that are not institutions does not exceed 25 % of the credit institution's own funds.

Where the amount of EUR 150 million is higher than 25 % of the credit institution's own funds, the value of the exposure, after taking into account the effect of credit risk mitigation in accordance with Articles 112 to 117, shall not exceed a reasonable limit in terms of the credit institution's own funds. That limit shall be determined by credit institutions, consistently with the policies and procedures referred to in Annex V, point 7, to address and control concentration risk, and shall not be higher than 100 % of the credit institution's own funds.

[^{F3}Member States may set a lower limit than EUR 150 million and shall inform EBA and the Commission thereof.]]

^{F102}

^{F103}

[^{F64} A credit institution shall at all times comply with the relevant limit laid down in paragraph 1. If, in an exceptional case, exposures exceed this limit, the value of the exposure shall be reported without delay to the competent authorities which may, where the circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limit.

Where the amount of EUR 150 million referred to in paragraph 1 is applicable, the competent authorities may allow on a case-by-case basis the 100 % limit in terms of the credit institution's own funds to be exceeded.]

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Textual Amendments

- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F10** Deleted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 112

1 For the purposes of Articles 113 to 117, the term ‘guarantee’ shall include credit derivatives recognised under Articles 90 to 93 other than credit linked notes.

[^{F62} Subject to paragraph 3 of this Article, where, under Articles 113 to 117, the recognition of funded or unfunded credit protection is permitted, this shall be subject to compliance with the eligibility requirements and other minimum requirements, set out in Articles 90 to 93.]

3 Where a credit institution relies upon Article 114(2), the recognition of funded credit protection shall be subject to the relevant requirements under Articles 84 to 89.

[^{F14} For the purpose of this Section, a credit institution shall not take into account the collateral referred to in Annex VIII, Part 1, points 20 to 22, unless permitted under Article 115.]

Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 113

^{F10}1

^{F10}2

[^{F63} The following exposures shall be exempted from the application of Article 111(1):]
a asset items constituting claims on central governments or central banks which, unsecured, would be assigned a 0 % risk weight under Articles 78 to 83;

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- b asset items constituting claims on international organisations or multilateral development banks which, unsecured, would be assigned a 0 % risk weight under Articles 78 to 83;
- c asset items constituting claims carrying the explicit guarantees of central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity providing the guarantee would be assigned a 0 % risk weight under Articles 78 to 83;
- d other exposures attributable to, or guaranteed by, central governments, central banks, international organisations, multilateral development banks or public sector entities, where unsecured claims on the entity to which the exposure is attributable or by which it is guaranteed would be assigned a 0 % risk weight under Articles 78 to 83;
- [^{F6}e asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 0 % risk weight under Articles 78 to 83 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 0 % risk weight under Articles 78 to 83;
- f exposures to counterparties referred to in paragraph 7 or paragraph 8 of Article 80 if they would be assigned a 0 % risk weight under Articles 78 to 83; exposures that do not meet those criteria, whether or not exempted from Article 111(1), shall be treated as exposures to a third party;]
- g asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending credit institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution;
- h asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposit issued by the lending credit institution or by a credit institution which is the parent undertaking or a subsidiary of the lending credit institution and lodged with either of them;
- [^{F6}i exposures arising from undrawn credit facilities that are classified as low-risk off-balance sheet items in Annex II and provided that an agreement has been concluded with the client or group of connected clients under which the facility may be drawn only if it has been ascertained that it will not cause the limit applicable under Article 111(1) to be exceeded.]
- [^{F10}j asset items constituting claims on and other exposures to those institutions which are not credit institutions but which fulfil the conditions referred to in Annex VI, Part 1, point 85, with a maturity of one year or less, and secured in accordance with the same point;
- k bills of trade and other similar bills, with a maturity of one year or less, bearing the signatures of other credit institutions;
- l covered bonds falling within the terms of Annex VI, Part 1, points 68 to 70;
- m pending subsequent coordination, holdings in the insurance companies referred to in Article 122(1) up to 40 % of the own funds of the credit institution acquiring such a holding;
- n asset items constituting claims on regional or central credit institutions with which the lending credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;
- o exposures secured, to the satisfaction of the competent authorities, by collateral in the form of securities other than those referred to in point (f);
- p loans secured, to the satisfaction of the competent authorities, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent

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- legislation and leasing transactions under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase, in all cases up to 50 % of the value of the residential property concerned;
- q the following, where they would receive a 50 % risk weight under Articles 78 to 83, and only up to 50 % of the value of the property concerned:

- (i) [F10
- (ii)]

for the purposes of point (ii), until 31 December 2011, the competent authorities of each Member State may allow credit institutions to recognise 100 % of the value of the property concerned. At the end of this period, this treatment shall be reviewed. Member States shall inform the Commission of the use they make of this preferential treatment;

- r 50 % of the medium/low-risk off-balance-sheet items referred to in Annex II;
- s subject to the competent authorities' agreement, guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions, subject to a weighting of 20 % of their amount; and
- t the low-risk off-balance-sheet items referred to in Annex II, to the extent that an agreement has been concluded with the client or group of connected clients under which the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under Article 111(1) to (3) to be exceeded.]

Cash received under a credit linked note issued by the credit institution and loans and deposits of a counterparty to or with the credit institution which are subject to an on-balance sheet netting agreement recognised under Articles 90 to 93 shall be deemed to fall under point (g).

[F10 For the purposes of point (o), the securities used as collateral shall be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100 %. It shall, however, be 150 % in the case of shares and 50 % in the case of debt securities issued by institutions, Member State regional governments or local authorities other than those referred to in sub-point (f), and in the case of debt securities issued by multilateral development banks other than those assigned a 0 % risk weight under Articles 78 to 83. Where there is a mismatch between the maturity of the exposure and the maturity of the credit protection, the collateral shall not be recognised. Securities used as collateral may not constitute credit institutions' own funds.

For the purposes of point (p), the value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of point (p), residential property shall mean a residence to be occupied or let by the borrower.

Member States shall inform the Commission of any exemption granted under point (s) in order to ensure that it does not result in a distortion of competition.]

[F14 Member States may fully or partially exempt the following exposures from the application of Article 111(1):

- a covered bonds falling within the terms of Annex VI, Part 1, points 68, 69 and 70;

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- b asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20 % risk weight under Articles 78 to 83 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20 % risk weight under Articles 78 to 83;
- c notwithstanding paragraph 3(f) of this Article, exposures, including participations or other kinds of holdings, incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with this Directive or with equivalent standards in force in a third country; exposures that do not meet these criteria, whether or not exempted from Article 111(1), shall be treated as exposures to a third party;
- d asset items constituting claims on and other exposures, including participations or other kinds of holdings, to regional or central credit institutions with which the credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;
- e asset items constituting claims on and other exposures to credit institutions incurred by credit institutions operating on a non-competitive basis, providing loans under legislative programmes or their statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via other credit institutions;
- f asset items constituting claims on and other exposures to institutions, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency;
- g asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies;
- h asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated ECAI is investment grade;
- i 50 % of medium/low risk off-balance-sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annex II, and subject to the competent authorities' agreement, 80 % of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions;
- j legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided the guarantee is not used as reducing the risk in calculating the risk weighted assets.]

Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to

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central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

F10 Deleted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 114

[^{F6}1 Subject to paragraph 3 of this Article, for the purposes of calculating the value of exposures for the purposes of Article 111(1) a credit institution may use the ‘fully adjusted exposure value’ as calculated under Articles 90 to 93, taking into account the credit risk mitigation, volatility adjustments, and any maturity mismatch (E*).]

2 [^{F6}Subject to paragraph 3 of this Article, a credit institution permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 shall be permitted, where it is able to the satisfaction of the competent authorities to estimate the effects of financial collateral on their exposures separately from other LGD-relevant aspects, to recognise such effects in calculating the value of exposures for the purposes of Article 111(1).]

Competent authorities shall be satisfied as to the suitability of the estimates produced by the credit institution for use for the reduction of the exposure value for the purposes of compliance with the provisions of Article 111.

Where a credit institution is permitted to use its own estimates of the effects of financial collateral, it shall do so on a basis consistent with the approach adopted in the calculation of capital requirements.

[^{F6}Credit institutions permitted to use own estimates of LGDs and conversion factors for an exposure class under Articles 84 to 89 which do not calculate the value of their exposures using the method referred to in the first subparagraph of this paragraph may use the Financial Collateral Comprehensive Method or the approach set out in Article 117(1)(b) for calculating the value of exposures.]

3 [^{F6}A credit institution that makes use of the Financial Collateral Comprehensive Method or is permitted to use the method described in paragraph 2 of this Article in calculating the value of exposures for the purposes of Article 111(1), shall conduct periodic stress tests of their credit-risk concentrations, including in relation to the realisable value of any collateral taken.]

These periodic stress tests shall address risks arising from potential changes in market conditions that could adversely impact the credit institutions' adequacy of own funds and risks arising from the realisation of collateral in stressed situations.

The credit institution shall satisfy the competent authorities that the stress tests carried out are adequate and appropriate for the assessment of such risks.

[^{F6}In the event that such a stress test indicates a lower realisable value of collateral taken than would be permitted to be taken into account while making use of the Financial Collateral Comprehensive Method or the method described in paragraph 2 of this Article as appropriate, the value of collateral permitted to be recognised in calculating the value of exposures for the purposes of Article 111(1) shall be reduced accordingly.]

Such credit institutions shall include the following in their strategies to address concentration risk:

- a policies and procedures to address risks arising from maturity mismatches between exposures and any credit protection on those exposures;

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- [^{F6}b policies and procedures in the event that a stress test indicates a lower realisable value of collateral than taken into account while making use of the Financial Collateral Comprehensive Method or the method described in paragraph 2; and]
- c policies and procedures relating to concentration risk arising from the application of credit risk mitigation techniques, and in particular large indirect credit exposures, for example to a single issuer of securities taken as collateral.

^{F10}4

Textual Amendments

- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F10** Deleted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

[^{F6}Article 115

1 For the purpose of this Section, a credit institution may reduce the exposure value by up to 50 % of the value of the residential property concerned, if either of the following conditions is met:

- a the exposure is secured, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation;
- b the exposure relates to a leasing transaction under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase.

The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of prudent valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once every three years for residential property.

The requirements in Annex VIII, Part 2, point 8, and in Annex VIII Part 3, points 62 to 65 shall apply for the purpose of this paragraph.

‘Residential property’ shall mean a residence to be occupied or let by the owner.

2 For the purpose of this Section, a credit institution may reduce the exposure value by up to 50 % of the value of the commercial property concerned only if the competent authorities concerned in the Member State where the commercial property is situated allow the following exposures to receive a 50 % risk weight in accordance with Articles 78 to 83:

- a exposures secured by mortgages on offices or other commercial premises, or by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises; or
- b exposures related to property leasing transactions concerning offices or other commercial premises.

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The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of prudent valuation standards laid down by law, regulation or administrative provisions.

Commercial property shall be fully constructed, leased and produce appropriate rental income.]

Textual Amendments

- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

^{F10} Article 116

Textual Amendments

- F10** Deleted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 117

[^{F61} Where an exposure to a client is guaranteed by a third party, or secured by collateral issued by a third party, a credit institution may:

- a treat the portion of the exposure which is guaranteed as having been incurred to the guarantor rather than to the client provided that the unsecured exposure to the guarantor would be assigned an equal or lower risk weight than a risk weight of the unsecured exposure to the client under Articles 78 to 83;
- b treat the portion of the exposure collateralised by the market value of recognised collateral as having been incurred to the third party rather than to the client, if the exposure is secured by collateral and provided that the collateralised portion of the exposure would be assigned an equal or lower risk weight than a risk weight of the unsecured exposure to the client under Articles 78 to 83.

The approach referred to in point (b) of the first subparagraph shall not be used by a credit institution where there is a mismatch between the maturity of the exposure and the maturity of the protection.

For the purpose of this Section, a credit institution may use both the Financial Collateral Comprehensive Method and the treatment provided for in point (b) of the first subparagraph only where it is permitted to use both the Financial Collateral Comprehensive Method and the Financial Collateral Simple Method for the purposes of Article 75(a).]

[^{F62} Where a credit institution applies paragraph 1(a):]

- a where the guarantee is denominated in a currency different from that in which the exposure is denominated the amount of the exposure deemed to be covered will be calculated in accordance with the provisions on the treatment of currency mismatch for unfunded credit protection in Annex VIII;

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- b a mismatch between the maturity of the exposure and the maturity of the protection will be treated in accordance with the provisions on the treatment of maturity mismatch in Annex VIII; and
- c partial coverage may be recognised in accordance with the treatment set out in Annex VIII.

Textual Amendments

- F6** Substituted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Article 118

Where compliance by a credit institution on an individual or sub-consolidated basis with the obligations imposed in this Section is disappplied under Article 69(1), or the provisions of Article 70 are applied in the case of parent credit institutions in a Member State, measures must be taken to ensure the satisfactory allocation of risks within the group.

F10 Article 119

Textual Amendments

- F10** Deleted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)

Section 6

Qualifying holdings outside the financial sector

Article 120

1 No credit institution may have a qualifying holding the amount of which exceeds 15 % of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking carrying on activities which are a direct extension of banking or concern services ancillary to banking, such as leasing, factoring, the management of unit trusts, the management of data processing services or any other similar activity.

2 The total amount of a credit institution's qualifying holdings in undertakings other than credit institutions, financial institutions or undertakings carrying on activities which are a direct extension of banking or concern services ancillary to banking, such as leasing, factoring, the management of unit trusts, the management of data processing services, or any other similar activity may not exceed 60 % of its own funds.

3 The limits laid down in paragraphs 1 and 2 may be exceeded only in exceptional circumstances. In such cases, however, the competent authorities shall require a credit institution either to increase its own funds or to take other equivalent measures.

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Article 121

Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in Articles 120(1) and (2). Shares which are not financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall not be included in the calculation.

Article 122

1 The Member States need not apply the limits laid down in Articles 120(1) and (2) to holdings in insurance companies as defined in Directives 73/239/EEC and 2002/83/EC, or in reinsurance companies as defined in Directive 98/78/EC.

2 The Member States may provide that the competent authorities are not to apply the limits laid down in Article 120(1) and (2) if they provide that 100 % of the amounts by which a credit institution's qualifying holdings exceed those limits shall be covered by own funds and that the latter shall not be included in the calculation required under Article 75. If both the limits laid down in Article 120(1) and (2) are exceeded, the amount to be covered by own funds shall be the greater of the excess amounts.

[^{F1}Section 7

Exposures to transferred credit risk

Article 122a

1 A credit institution, other than when acting as an originator, a sponsor or original lender, shall be exposed to the credit risk of a securitisation position in its trading book or non-trading book only if the originator, sponsor or original lender has explicitly disclosed to the credit institution that it will retain, on an ongoing basis, a material net economic interest which, in any event, shall not be less than 5 %.

For the purpose of this Article, 'retention of net economic interest' means:

- a retention of no less than 5 % of the nominal value of each of the tranches sold or transferred to the investors;
- b in the case of securitisations of revolving exposures, retention of the originator's interest of no less than 5 % of the nominal value of the securitised exposures;
- c retention of randomly selected exposures, equivalent to no less than 5 % of the nominal amount of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination; or
- d retention of the first loss tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no less than 5 % of the nominal value of the securitised exposures.

Net economic interest is measured at the origination and shall be maintained on an ongoing basis. It shall not be subject to any credit risk mitigation or any short positions or any other hedge. The net economic interest shall be determined by the notional value for off-balance sheet items.

For the purpose of this Article, 'ongoing basis' means that retained positions, interest or exposures are not hedged or sold.

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There shall be no multiple applications of the retention requirements for any given securitisation.

[^{F82} Where an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company, or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company. This paragraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures have committed themselves to adhere to the requirements set out in paragraph 6 and deliver, in a timely manner, to the originator or sponsor and to the EU parent credit institution, the EU parent financial holding company or the EU parent mixed financial holding company the information needed to satisfy the requirements referred to in paragraph 7.]

3 Paragraph 1 shall not apply where the securitised exposures are claims or contingent claims on or fully, unconditionally and irrevocably guaranteed by:

- a central governments or central banks;
- b regional governments, local authorities and public sector entities of Member States;
- c institutions to which a 50 % risk weight or less is assigned under Articles 78 to 83; or
- d multilateral development banks.

Paragraph 1 shall not apply to:

- a transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions; or
- b syndicated loans, purchased receivables or credit default swaps where these instruments are not used to package and/or hedge a securitisation that is covered by paragraph 1.

4 Before investing, and as appropriate thereafter, credit institutions, shall be able to demonstrate to the competent authorities for each of their individual securitisation positions, that they have a comprehensive and thorough understanding of and have implemented formal policies and procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions for analysing and recording:

- a information disclosed under paragraph 1, by originators or sponsors to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation;
- b the risk characteristics of the individual securitisation position;
- c the risk characteristics of the exposures underlying the securitisation position;
- d the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position;
- e the statements and disclosures made by the originators or sponsors, or their agents or advisors, about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures;
- f where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer; and
- g all the structural features of the securitisation that can materially impact the performance of the credit institution's securitisation position.

Credit institutions shall regularly perform their own stress tests appropriate to their securitisation positions. To this end, credit institutions may rely on financial models

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developed by an ECAI provided that credit institutions can demonstrate, when requested, that they took due care prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

5 Credit institutions, other than when acting as originators or sponsors or original lenders, shall establish formal procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying their securitisation positions. Where relevant, this shall include the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, credit institutions shall have the information set out in this subparagraph not only on the underlying securitisation tranches, such as the issuer name and credit quality, but also on the characteristics and performance of the pools underlying those securitisation tranches.

Credit institutions shall have a thorough understanding of all structural features of a securitisation transaction that would materially impact the performance of their exposures to the transaction such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default.

Where the requirements in paragraphs 4, 7 and in this paragraph are not met in any material respect by reason of the negligence or omission of the credit institution, Member States shall ensure that the competent authorities impose a proportionate additional risk weight of no less than 250 % of the risk weight (capped at 1 250 %) which would, but for this paragraph, apply to the relevant securitisation positions under Annex IX, Part 4, and shall progressively increase the risk weight with each subsequent infringement of the due diligence provisions. The competent authorities shall take into account the exemptions for certain securitisations provided in paragraph 3 by reducing the risk weight it would otherwise impose under this Article in respect of a securitisation to which paragraph 3 applies.

6 Sponsor and originator credit institutions shall apply the same sound and well-defined criteria for credit-granting in accordance with the requirements of Annex V, point 3 to exposures to be securitised as they apply to exposures to be held on their book. To this end the same processes for approving and, where relevant, amending, renewing and re-financing credits shall be applied by the originator and sponsor credit institutions. Credit institutions shall also apply the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties whether such participations or underwritings are to be held on their trading or non-trading book.

Where the requirements referred to in the first subparagraph of this paragraph are not met, Article 95(1) shall not be applied by an originator credit institution and that originator credit institution shall not be allowed to exclude the securitised exposures from the calculation of its capital requirements under this Directive.

7 Sponsor and originator credit institutions shall disclose to investors the level of their commitment under paragraph 1 to maintain a net economic interest in the securitisation. Sponsor and originator credit institutions shall ensure that prospective investors have readily available access to all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure as well

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as such information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. For that purpose, materially relevant data shall be determined as at the date of the securitisation and where appropriate due to the nature of the securitisation thereafter.

8 Paragraphs 1 to 7 shall apply to new securitisations issued on or after 1 January 2011. Paragraphs 1 to 7 shall, after 31 December 2014, apply to existing securitisations where new underlying exposures are added or substituted after that date. Competent authorities may decide to suspend temporarily the requirements referred to in paragraphs 1 and 2 during periods of general market liquidity stress.

9 Competent authorities shall disclose the following information:

- a by 31 December 2010, the general criteria and methodologies adopted to review the compliance with paragraphs 1 to 7;
- b without prejudice to the provisions laid down in Chapter 1, Section 2, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with paragraphs 1 to 7 identified on an annual basis from 31 December 2011.

The requirement set out in this paragraph is subject to the second subparagraph of Article 144.

[^{F3}10 EBA shall report to the Commission annually on the compliance with this Article by the competent authorities.

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards for the convergence of supervisory practices with regard to this Article, including the measures taken in case of breach of the due diligence and risk management obligations. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

Textual Amendments

- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F8** Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

CHAPTER 3

Credit institutions' assessment process

Article 123

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

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

CHAPTER 4

Supervision and disclosure by competent authorities

Section 1

Supervision

Article 124

1 Taking into account the technical criteria set out in Annex XI, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the credit institutions to comply with this Directive and evaluate the risks to which the credit institutions are or might be exposed.

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

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

4 Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the credit institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis.

5 The review and evaluation performed by competent authorities shall include the exposure of credit institutions to the interest rate risk arising from non-trading activities. Measures shall be required in the case of institutions whose economic value declines by more than 20 % of their own funds as a result of a sudden and unexpected change in interest rates the size of which shall be prescribed by the competent authorities and shall not differ between credit institutions.

[^{F26} In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify this Article and a common risk assessment procedure and methodology.

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

Textual Amendments

- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

Article 125

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 authorities that authorised it under Article 6.

[^{F8}2 Where the parent of a credit institution 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 authorities that authorised that credit institution under Article 6.]

Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

[^{F8}Article 126

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

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

2 Where more than one credit institution authorised in the Union has as its parent the same financial holding company or the same mixed financial holding company and none of those credit institutions has been authorised in the Member State in which the financial holding company or the mixed financial holding company is established, supervision on a consolidated basis shall be exercised by the competent authority that authorised the credit institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the

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credit institution controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

3 In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 1 and 2 if their application would be inappropriate, taking into account the credit institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. Before agreeing on such a waiver, the competent authorities shall give the EU parent credit institution the EU parent financial holding company, the EU parent mixed financial holding company, or the credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion.

4 The competent authorities shall notify the Commission and EBA of any waiver under paragraph 3.]

Textual Amendments

F8 Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 127

[^{F81} Member States shall adopt any measures necessary, where appropriate, to include financial holding companies or mixed financial holding companies in consolidated supervision. Without prejudice to Article 135, the consolidation of the financial situation of the financial holding company or the mixed financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company or mixed financial holding company on a stand alone basis.]

2 When the competent authorities of a Member State do not include a credit institution subsidiary in supervision on a consolidated basis under one of the cases provided for in points (b) and (c) of Article 73(1), the competent authorities of the Member State in which that credit institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that credit institution.

[^{F83} Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution, a financial holding company or a mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 137. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.]

Textual Amendments

F8 Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 128

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

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Article 129

[^{F81} In addition to the obligations provided for in this Directive, the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall carry out the following tasks:]

- a coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations; and
- [^{F6b} planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Articles 123, 124, 136, in Chapter 5 and in Annex V, in cooperation with the competent authorities involved;
- c planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.]

[^{F2}Where the consolidating supervisor fails to carry out the tasks referred to in the first subparagraph or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in the first subparagraph, any of the competent authorities concerned may refer the matter to EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.]

[^{F1}The planning and coordination of supervisory activities referred to in point (c) includes exceptional measures referred to in Article 132(3)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.]

[^{F82} In the case of applications for the permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Part 6 of Annex III respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.]

An application as referred to in the first subparagraph shall be submitted only to the competent authority referred to in paragraph 1.

The competent authorities shall do everything within their power to reach a joint decision on the application within six months. This joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in paragraph 1.

The period referred to in subparagraph 3 shall begin on the date of receipt of the complete application by the competent authority referred to in paragraph 1. The competent authority referred to in paragraph 1 shall forward the complete application to the other competent authorities without delay.

In the absence of a joint decision between the competent authorities within six months, the competent authority referred to in paragraph 1 shall make its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six months period. The decision shall be provided to the applicant and the other competent authorities by the competent authority referred to in paragraph 1. [^{F2} If, at the end of the six month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation

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(EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the six month period or after a joint decision has been reached.]

The decisions referred to in the third and fifth subparagraphs shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

[^{F2}EBA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this paragraph, with regard to the applications for permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Annex III part 6, with a view to facilitating joint decisions.

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

[^{F1}[^{F83} The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company shall do everything within their power to reach a joint decision on the application of Articles 123 and 124 to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 136(2) to each entity within the banking group and on a consolidated basis.]

The joint decision shall be reached within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Articles 123 and 124 to the other relevant competent authorities. The joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 123 and 124.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent credit institution by the consolidating supervisor. In the event of disagreement, the consolidating supervisor shall at the request of any of the other competent authorities concerned consult the [^{F3}EBA]. The consolidating supervisor may consult the [^{F3}EBA] on its own initiative.

[^{F3}In the absence of such a joint decision between the competent authorities within 4 months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the four month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month period shall be deemed the conciliation period within the meaning of the Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four month period or after a joint decision has been reached.]

[^{F8}The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an

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EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.]

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

[^{F3}Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.]

The joint decision referred to in the first subparagraph and the decisions taken by the competent authorities in the absence of a joint decision shall be recognised as determinative and shall be applied by the competent authorities in the Member State concerned.

[^{F8}The joint decision referred to in the first subparagraph and any decision taken in the absence of a joint decision in accordance with the fourth and fifth subparagraphs, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 136(2). In the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.]

[^{F3}EBA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this paragraph, with regard to the application of Articles 123 and 124 and Article 136(2) with a view to facilitating joint decisions.

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

Textual Amendments

- F1** Inserted by [Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management \(Text with EEA relevance\).](#)
- F2** Inserted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority](#)

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- (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F8** Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 130

[^{F6}]^{F3}1 Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, EBA, ESRB and the authorities referred to in the fourth subparagraph of Article 49 and in Article 50 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 125 and 126 and to the competent authority identified under Article 129(1).

If the authority referred to in the fourth paragraph of Article 49 becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126, and EBA.]

Where possible, the competent authority and the authority referred to in the fourth paragraph of Article 49 shall use existing defined channels of communication.]

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

Textual Amendments

- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

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Article 131

In order to facilitate and establish effective supervision, the competent authority responsible for supervision on a consolidated basis and the other competent authorities shall have written coordination and cooperation arrangements in place.

Under these arrangements additional tasks may be entrusted to the competent authority responsible for supervision on a consolidated basis and procedures for the decision-making process and for cooperation with other competent authorities, may be specified.

[^{F3}The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. EBA shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.]

Textual Amendments

- F3** Substituted by [Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority \(European Banking Authority\), the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#) (Text with EEA relevance).

[^{F1}Article 131a

[^{F31} The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 129 and Article 130(1) and subject to the confidentiality requirements of paragraph 2 of this Article and compatibility with Union law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

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

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

- a exchanging information among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;
- b agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- c determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 124;
- d increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 130(2) and Article 132(2);

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- e consistently applying the prudential requirements under this Directive across all entities within a banking group without prejudice to the options and discretions available in Union legislation;
- f applying Article 129(1)(c) taking into account the work of other forums that may be established in that area.

The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Chapter 1, Section 2 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.]

2 The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 131, determined after consultation with competent authorities concerned by the consolidating supervisor.

[^{F3}In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions of functioning of the colleges of supervisors.

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

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of the colleges of supervisors.

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

[^{F8}The following may participate in colleges of supervisors:

- a the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company;
- b the competent authorities of a host country where significant branches as referred to in Article 42a are established;
- c central banks as appropriate; and
- d third-country competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities, to Articles 44 to 52.]

The consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college. The consolidating supervisor shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The consolidating supervisor shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

The decision of the consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 40(3) and the obligations referred to in Article 42a(2).

[^{F3}The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section 2, shall inform EBA of the activities of the college of supervisors,

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including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.]]

Textual Amendments

- F1** Inserted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F8** Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 132

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

[^{F2}The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010.

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

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

[^{F8}In particular, competent authorities responsible for consolidated supervision of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or by EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of those parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.]

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

- [^{F8a} identification of the legal structure and the governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 12(3), Article 22(1) and Article 73(3), as well as identification of the competent authorities of the regulated entities in the group;]
- b procedures for the collection of information from the credit institutions in a group, and the verification of that information;

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- c adverse developments in credit institutions or in other entities of a group, which could seriously affect the credit institutions; and
- d major sanctions and exceptional measures taken by competent authorities in accordance with this Directive, including the imposition of an additional capital charge under [F6Article 136(1)] and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 105.

The competent authorities may refer to EBA situations where:

- [F2a a competent authority has not communicated essential information, or]
- b a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

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

2 The competent authorities responsible for the supervision of credit institutions controlled by an EU parent credit institution shall whenever possible contact the competent authority referred to in Article 129(1) when they need information regarding the implementation of approaches and methodologies set out in this Directive that may already be available to that competent authority.

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

- a changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities; and
- b major sanctions or exceptional measures taken by competent authorities, including the imposition of an additional capital charge under [F6Article 136(1)] and the imposition of any limitation on the use of the Advances Measurement Approaches for the calculation of the own funds requirements under Article 105.

For the purposes of point (b), the competent authority responsible for supervision on a consolidated basis shall always be consulted.

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

Textual Amendments

- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F8** Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

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Article 133

1 The competent authorities responsible for supervision on a consolidated basis shall, for the purposes of supervision, require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

However, the competent authorities may require only proportional consolidation where, in their opinion, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital in view of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members shall be clearly established, if necessary by means of formal signed commitments.

In the case where undertakings are linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, the competent authorities shall determine how consolidation is to be carried out.

2 The competent authorities responsible for supervision on a consolidated basis shall require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

3 In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

Article 134

1 Without prejudice to Article 133, the competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

- a where, in the opinion of the competent authorities, a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in these institutions; and
- b where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or Articles of association.

In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

2 Where consolidated supervision is required pursuant to Articles 125 and 126, ancillary services undertakings and asset management companies as defined in Directive 2002/87/EC shall be included in consolidations in the cases, and in accordance with the methods, laid down in Article 133 and paragraph 1 of this Article.

[^{F8}Article 135

The Member States shall require that persons who effectively direct the business of a financial holding company or a mixed financial holding company be of sufficiently good repute and have sufficient experience to perform those duties.]

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Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 136

1 Competent authorities shall require any credit institution that does not meet the requirements of this Directive to take the necessary actions or steps at an early stage to address the situation.

For those purposes, the measures available to the competent authorities shall include the following:

- a obliging credit institutions to hold own funds in excess of the minimum level laid down in Article 75;
- b requiring the reinforcement of the arrangements, processes, mechanisms and strategies implemented to comply with Articles 22 and 123;
- c requiring credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- d restricting or limiting the business, operations or network of credit institutions;^[F11 and]
- e requiring the reduction of the risk inherent in the activities, products and systems of credit institutions^[F7;]
- ^[F5f] requiring credit institutions to limit variable remuneration as a percentage of total net revenues when it is inconsistent with the maintenance of a sound capital base;
- g requiring credit institutions to use net profits to strengthen the capital base.]

The adoption of these measures shall be subject to Chapter 1, Section 2.

2 A specific own funds requirement in excess of the minimum level laid down in Article 75 shall be imposed by the competent authorities at least on the credit institutions which do not meet the requirements laid down in Articles 22, 109 and 123, or in respect of which a negative determination has been made on the issue described in Article 124, paragraph 3, if the sole application of other measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe.

^[F5]For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Article 124, the competent authorities shall assess whether any imposition of a specific own funds requirement in excess of the minimum level is required to capture risks to which a credit institution is or might be exposed, taking into account the following:

- a the quantitative and qualitative aspects of the credit institutions' assessment process referred to in Article 123;
- b the credit institutions' arrangements, processes and mechanisms referred to in Article 22;
- c the outcome of the review and evaluation carried out in accordance with Article 124.]

Textual Amendments

- F5** Inserted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\).](#)

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- F7** Substituted by Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (Text with EEA relevance).
- F11** Deleted by Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (Text with EEA relevance).

Article 137

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

2 Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 140(1) may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 141.

Article 138

1 Without prejudice to Chapter 2, Section 5, Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of these credit institutions shall exercise general supervision over transactions between the credit institution and the mixed-activity holding company and its subsidiaries.

2 Competent authorities shall require credit institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the credit institution of any significant transaction with these entities other than the one referred to in Article 110. These procedures and significant transactions shall be subject to overview by the competent authorities.

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

Article 139

1 Member States shall take the necessary steps to ensure that there are no legal impediments preventing the exchange, as between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of the kind covered in Article 127(3), of any information which would be relevant for the purposes of supervision in accordance with Articles 124 to 138 and this Article.

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

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Articles 125 and 126, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to these authorities.

[^{F83} Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.]

Similarly, Member States shall authorise their competent authorities to exchange the information referred to in Article 137 on the understanding that the collection or possession of information does not in any way imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of the kind covered in Article 127(3).

Textual Amendments

F8 Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\)](#).

Article 140

[^{F81} Where a credit institution, financial holding company, mixed financial holding company or a mixed activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.]

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

[^{F83} The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.]

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Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

[^{F8} Article 141

Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a mixed financial holding company, a subsidiary as referred to in Article 137 or a subsidiary as referred to in Article 127(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may participate in the verification when it does not carry out the verification itself.

Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 142

Without prejudice to their criminal law provisions, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies, mixed financial holding companies and mixed activity holding companies, or their effective managers, that infringe laws, regulation or administrative provisions brought into force to transpose Articles 124 to 141 and this Article. The competent authorities shall cooperate closely to ensure that those penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed financial holding company or of a mixed activity holding company is not located in the same Member State as its registered office.]

Textual Amendments

- F8** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 143

[^{F81} Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, or a mixed financial holding company, which has its head office in a third country, is not subject to consolidated supervision under Articles 125 and 126, the competent authorities shall verify whether the credit institution is subject to consolidated

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supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in this Directive.

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

2 The Commission may request the European Banking Committee to give general guidance as to whether the consolidated supervision arrangements of competent authorities in third countries are likely to achieve the objectives of consolidated supervision as defined in this Chapter, in relation to credit institutions, the parent undertaking of which has its head office in a third country . The Committee shall keep any such guidance under review and take into account any changes to the consolidated supervision arrangements applied by such competent authorities.[^{F2} EBA shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to whether such guidance should be updated.]

[^{F3}The competent authority carrying out the verification referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For that purpose, the competent authority shall consult EBA before adopting a decision.]

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

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

[^{F8}Competent authorities may in particular require the establishment of a financial holding company or a mixed financial holding company which has its head office in the Union, and may apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.]

[^{F3}The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in this Chapter and shall be notified to the other competent authorities involved, EBA and the Commission.]

Textual Amendments

- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

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F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Section 2

Disclosure by competent authorities

Article 144

Competent authorities shall disclose the following information:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;
- (b) the manner of exercise of the options and discretions available in Community legislation;
- (c) the general criteria and methodologies they use in the review and evaluation referred to in Article 124; and
- (d) without prejudice to the provisions laid down in Chapter 1, Section 2, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State.

The disclosures provided for in the first subparagraph shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. The disclosures shall be published with a common format, and updated regularly. The disclosures shall be accessible at a single electronic location.

[^{F2}In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the disclosures provided for in this Article. EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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

Textual Amendments

F2 Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

CHAPTER 5

Disclosure by credit institutions

Article 145

1 For the purposes of this Directive, credit institutions shall publicly disclose the information laid down in Annex XII, Part 2, subject to the provisions laid down in Article 146.

2 Recognition by the competent authorities under Chapter 2, Section 3, Subsections 2 and 3 and Article 105 of the instruments and methodologies referred to in Annex XII, Part 3 shall be subject to the public disclosure by credit institutions of the information laid down therein.

[^{F73} Credit institutions shall adopt a formal policy to comply with the disclosure requirements laid down in paragraphs 1 and 2, and have policies for assessing the appropriateness of their disclosures, including their verification and frequency. Credit institutions shall also have policies for assessing whether their disclosures convey their risk profile comprehensively to market participants.

Where those disclosures do not convey the risk profile comprehensively to market participants, credit institutions shall publicly disclose the information necessary in addition to that required in accordance with paragraph 1. However, they shall only be required to disclose information which is material and not proprietary or confidential in accordance with the technical criteria set out in Part 1 of Annex XII.]

4 Credit institutions should, if requested, explain their rating decisions to SMEs and other corporate applicants for loans, providing an explanation in writing when asked. Should a voluntary undertaking by the sector in this regard prove inadequate, national measures shall be adopted. The administrative costs of the explanation have to be at an appropriate rate to the size of the loan.

Textual Amendments

- F7** Substituted by [Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \(Text with EEA relevance\)](#).

Article 146

1 Notwithstanding Article 145, credit institutions may omit one or more of the disclosures listed in Annex XII, Part 2 if the information provided by such disclosures is not, in the light of the criterion specified in Annex XII, Part 1, point 1, regarded as material.

2 Notwithstanding Article 145, credit institutions may omit one or more items of information included in the disclosures listed in Annex XII, Parts 2 and 3 if those items include information which, in the light of the criteria specified in Annex XII, Part 1, points 2 and 3, is regarded as proprietary or confidential.

3 In the exceptional cases referred to in paragraph 2, the credit institution concerned shall state in its disclosures the fact that the specific items of information are not disclosed, the reason for non-disclosure, and publish more general information about the subject matter of the disclosure requirement, except where these are to be classified as proprietary or confidential under the criteria set out in Annex XII, Part 1, points 2 and 3.

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[^{F9} Article 146a

The Member States shall require credit institutions to disclose publicly, at the level of the banking group, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure, and their governance and organisational structure.]

Textual Amendments

F9 Inserted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\)](#).

Article 147

- 1 Credit institutions shall publish the disclosures required under Article 145 on an annual basis at a minimum. Disclosures shall be published as soon as practicable.
- 2 Credit institutions shall also determine whether more frequent publication than is provided for in paragraph 1 is necessary in the light of the criteria set out in Annex XII, Part 1, point 4.

Article 148

- 1 Credit institutions may determine the appropriate medium, location and means of verification to comply effectively with the disclosure requirements laid down in Article 145. To the degree feasible, all disclosures shall be provided in one medium or location.
- 2 Equivalent disclosures made by credit institutions under accounting, listing or other requirements may be deemed to constitute compliance with Article 145. If disclosures are not included in the financial statements, credit institutions shall indicate where they can be found.

Article 149

Notwithstanding Articles 146 to 148, Member States shall empower the competent authorities to require credit institutions:

- (a) to make one or more of the disclosures referred to in Annex XII, Parts 2 and 3;
- (b) to publish one or more disclosures more frequently than annually, and to set deadlines for publication;
- (c) to use specific media and locations for disclosures other than the financial statements; and
- (d) to use specific means of verification for the disclosures not covered by statutory audit.

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- (1) [^{F3}OJ L 331, 15.12.2010, p. 1.]
- (2) Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents (OJ L 126, 12.5.1984, p. 20).
- (3) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3). Directive as last amended by Directive 2005/1/EC.
- (4) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3). Directive as last amended by Directive 2005/1/EC.
- (5) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1). Directive as last amended by Directive 2005/1/EC.
- (6) Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJ L 330, 5.12.1998, p. 1). Directive as last amended by Directive 2005/1/EC.
- (7) [^{F9}OJ L 331, 15.12.2010, p. 48.
- (8) OJ L 331, 15.12.2010, p. 84.]
- (9) [^{F6}OJ L 302, 17.11.2009, p. 1.
- (10) [^{F2}OJ L 331, 15.12.2010, p. 84.]]

Textual Amendments

- F2** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F6** Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).
- F9** Inserted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).