

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Text with EEA relevance)

DIRECTIVE 2013/36/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank<sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(2)</sup> and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions<sup>(3)</sup> have been significantly amended on several occasions. Many provisions of Directives 2006/48/EC and 2006/49/EC are applicable to both credit institutions and investment firms. For the sake of clarity and in order to ensure a coherent application of those provisions, they should be merged into new legislative acts that are applicable to both credit institutions and investment firms, namely this Directive and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013<sup>(4)</sup>. For greater accessibility, the provisions of the Annexes to Directives 2006/48/EC and 2006/49/EC should be integrated into the enacting terms of this Directive and of that Regulation.
- (2) This Directive should, inter alia, contain the provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States in this regard and the provisions governing the initial capital and the supervisory review of credit institutions and investment firms. The main objective and subject-matter of this Directive is to

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coordinate national provisions concerning access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervisory framework. Directives 2006/48/EC and 2006/49/EC also contained prudential requirements for credit institutions and investment firms. Those requirements should be provided for in Regulation (EU) No 575/2013, which establishes uniform and directly applicable prudential requirements for credit institutions and investment firms, since such requirements are closely related to the functioning of financial markets in respect of a number of assets held by credit institutions and investment firms. This Directive should therefore be read together with Regulation (EU) No 575/2013 and should, together with that Regulation, form the legal framework governing banking activities, the supervisory framework and the prudential rules for credit institutions and investment firms.

- (3) The general prudential requirements laid down in Regulation (EU) No 575/2013 are supplemented by individual arrangements to be decided by the competent authorities as a result of their ongoing supervisory review of each individual credit institution and investment firm. The range of such supervisory arrangements should, inter alia, be set out in this Directive and the competent authorities should be able to exercise their judgment as to which arrangements should be imposed. With regard to such individual arrangements concerning liquidity, the competent authorities should, inter alia, take into account the principles set out in the Committee of European Banking Supervisors' Guidelines on Liquidity Cost Benefit Allocation of 27 October 2010.
- (4) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(5)</sup> allows investment firms authorised by the competent authorities of their home Member State and supervised by the same authorities to establish branches and provide services freely in other Member States. That Directive accordingly provides for the coordination of the rules governing the authorisation and pursuit of the business of investment firms. It does not, however, establish the amounts of the initial capital of such firms or a common framework for monitoring the risks incurred by them, which should be provided by this Directive.
- (5) This Directive should constitute the essential instrument for the achievement of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services in the field of credit institutions.
- (6) The smooth operation of the internal market requires not only legal rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States.
- (7) Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(6)</sup> established the European Supervisory Authority (European Banking Authority) ("EBA"). This Directive should take into account the role and function of EBA set out in that Regulation and the procedures to be followed when conferring tasks on EBA.
- (8) Given the increase of tasks conferred on EBA by this Directive and by Regulation (EU) No 575/2013, the European Parliament, the Council and the Commission should ensure that adequate human and financial resources are made available.

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- (9) As a first step towards a banking union, a single supervisory mechanism (SSM) should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. An SSM is the basis for the next steps towards a banking union. This reflects the principle that any introduction of common intervention mechanisms in the event of a crisis should be preceded by common controls to reduce the likelihood that such intervention mechanisms will have to be used. The European Council noted in its conclusions of 14 December 2012 that "the Commission will submit in the course of 2013 a proposal for a single resolution mechanism for Member States participating in the SSM, to be examined by co-legislators as a matter of priority with the intention of adopting it during the current parliamentary cycle.". The integration of the financial framework could be further enhanced through the setting up of a single resolution mechanism, including appropriate and effective backstop arrangements to ensure that bank resolution decisions are taken swiftly, impartially and in the best interests of all concerned.
- (10) The conferral of supervisory tasks on the European Central Bank (ECB) for some of the Member States should be consistent with the framework of the European System of Financial Supervision set up in 2010 and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the Union as a whole. The ECB should carry out its tasks subject to and in compliance with any relevant primary and secondary Union law, Commission decisions in the areas of State aid, competition rules and merger control and the single rulebook applying to all Member States. EBA is entrusted with developing draft technical standards and guidelines and recommendations to ensure supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not carry out those tasks, but should exercise powers to adopt regulations under Article 132 of the Treaty on the Functioning of the European Union (TFEU) in accordance with acts adopted by the Commission on the basis of drafts developed by EBA and with guidelines and recommendation under Article 16 of Regulation (EU) No 1093/2010.
- (11) EBA's legally binding mediation role is a key element of the promotion of coordination, supervisory consistency and convergence of supervisory practices. Mediation by EBA can be initiated either on its own initiative where specifically provided for, or upon request by one or more competent authorities in the event of a disagreement. This Directive and Regulation (EU) No 575/2013 should extend the range of situations in which EBA can initiate its legally binding mediation role with a view to contributing to consistency in supervisory practices. EBA has no own-initiative mediation role with regard to the designation of significant branches and the determination of institution-specific prudential requirements under this Directive. However, in order to promote coordination and enhance consistent supervisory practices in those sensitive areas, competent authorities should have recourse to EBA mediation at an early stage of the process in the event of a disagreement. Such early EBA mediation should facilitate finding a resolution to the disagreement.

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- (12) In order to protect savings and to create equal conditions of competition between credit institutions, measures to coordinate the supervision of credit institutions should apply to all of them. Due regard should, however, be had to the objective differences in their statutes and aims as laid down in national law.
- (13) In order to ensure a well-functioning internal market, transparent, predictable and harmonised supervisory practices and decisions are necessary for conducting business and steering cross-border groups of credit institutions. EBA should therefore enhance harmonisation of supervisory practices. Supervisory processes and decisions should not hamper the functioning of the internal market with regard to the free flow of capital. Supervisory colleges should ensure a common and aligned work programme and harmonised supervisory decisions. Cooperation between the competent authorities of the home and host Member States should be strengthened through a higher degree of transparency and information sharing.
- (14) The scope of measures should therefore be as broad as possible, covering all institutions whose business is to receive repayable funds from the public, whether in the form of deposits or in other forms such as the continuing issue of bonds and other comparable securities and to grant credits for their own account. Exceptions should be provided for in the case of certain credit institutions to which this Directive does not apply. This Directive should not affect the application of national laws which provide for special supplementary authorisations permitting credit institutions to carry out specific activities or undertake specific kinds of operations.
- (15) It is appropriate to effect harmonisation which is necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the granting of a single licence recognised throughout the Union and the application of the principle of home Member State prudential supervision.
- (16) The principles of mutual recognition and home Member State supervision require that Member States' competent authorities should refuse or withdraw authorisation where factors such as the content of the activities programme, the geographical distribution of activities or the activities actually carried out indicate clearly that a credit institution has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries out or intends to carry out the greater part of its activities. Where there is no such clear indication, but the majority of the total assets of the entities in a banking group is located in another Member State, the competent authorities of which are responsible for exercising supervision on a consolidated basis, responsibility for exercising supervision on a consolidated basis should be changed only with the agreement of those competent authorities.
- (17) The competent authorities should not authorise or continue to authorise a credit institution where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that institution and other natural or legal persons. Credit institutions already authorised should also satisfy the competent authorities in respect of such close links.

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- (18) The reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which should be exercised over a credit institution or investment firm where Union law so provides. In such cases, the authorities applied to for authorisation should be able to identify the authorities competent to exercise supervision on a consolidated basis over that credit institution or investment firm.
- (19) Credit institutions authorised in their home Member States should be allowed to carry out throughout the Union any or all of the activities referred to in the list of activities subject to mutual recognition by establishing branches or by providing services.
- (20) It is appropriate to extend mutual recognition to those activities where they are carried out by financial institutions which are subsidiaries of credit institutions, provided that such subsidiaries are covered by the consolidated supervision of their parent undertakings and meet certain strict conditions.
- (21) The host Member State should be able, in connection with the exercise of the right of establishment and the freedom to provide services, to require compliance with specific provisions of its own national laws or regulations on the part of entities not authorised as credit institutions in their home Member States and with regard to activities not referred to in the list of activities subject to mutual recognition, provided that, on the one hand, such provisions are not already provided for in Regulation (EU) No 575/2013, are compatible with Union law and are intended to protect the general good and that, on the other, such entities or such activities are not subject to equivalent rules under the laws or regulations of their home Member States.
- (22) In addition to Regulation (EU) No 575/2013 which establishes directly applicable prudential requirements for credit institutions and investment firms, Member States should ensure that there are no obstacles to carrying out activities receiving mutual recognition in the same manner as in the home Member State, provided that the latter do not conflict with legal provisions protecting the general good in the host Member State.
- (23) The rules governing branches of credit institutions having their head office in a third country should be analogous in all Member States. It is important to provide that such rules are not more favourable than those applicable to branches of credit institutions from another Member State. The Union should be able to conclude agreements with third countries providing for the application of rules which accord such branches the same treatment throughout its territory. Branches of credit institutions authorised in third countries should not enjoy the freedom to provide services or the freedom of establishment in Member States other than those in which they are established.
- (24) Agreement should be reached between the Union and third countries with a view to allowing the practical exercise of consolidated supervision over the largest possible geographical area.
- (25) Responsibility for supervising the financial soundness of a credit institution and in particular its solvency on a consolidated basis should lie with its home Member State. The supervision of Union banking groups should be the subject of close cooperation between the competent authorities of the home and host Member States.

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- (26) The competent authorities of host Member States should have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities of branches of institutions on their territory and require information from a branch about its activities and for statistical, informational, or supervisory purposes, where the host Member States consider it relevant for reasons of stability of the financial system.
- (27) The competent authorities of the host Member States should obtain information about activities carried out in their territories. Supervisory measures should be taken by the competent authorities of the home Member State unless the competent authorities of the host Member States have to take precautionary emergency measures.
- (28) The smooth operation of the internal banking market requires not only legal rules but also close and regular cooperation and significantly enhanced convergence of regulatory and supervisory practices between the competent authorities of the Member States. To that end, consideration of problems concerning individual credit institutions and the mutual exchange of information should take place through EBA. That mutual information procedure should not replace bilateral cooperation. Competent authorities of the host Member States should always be able, in an emergency, on their own initiative or on the initiative of the competent authorities of the home Member State, to check that the activities of a credit institution established within their territories comply with the relevant laws and with the principles of sound administrative and accounting procedures and adequate internal control.
- (29) It is appropriate to allow the exchange of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, the list of addressees should be strictly limited.
- (30) Certain behaviour, such as fraud or insider dealing, is liable to affect the stability and the integrity of the financial system. It is necessary to specify the conditions under which exchange of information in such cases is authorised.
- (31) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, the competent authorities should be able to make their agreement subject to compliance with strict conditions.
- (32) Exchanges of information should be authorised between the competent authorities and central banks and other bodies with a similar function in their capacity as monetary authorities and, where necessary for reasons of prudential supervision, prevention and resolution of failing institutions and in emergency situations, if relevant, other public authorities and departments of central government administrations responsible for drawing up legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies, and public authorities responsible for supervising payment systems.
- (33) For the purposes of strengthening the prudential supervision of institutions and the protection of clients of institutions, auditors should have a duty to report promptly to the competent authorities, wherever, during the performance of their tasks, they become aware of certain facts which are liable to have a serious effect on the financial situation

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

- (34) This Directive and Regulation (EU) No 575/2013 aim to ensure the solvency of institutions. If, notwithstanding the solvency requirements, a crisis occurs, it is necessary to ensure that institutions can be resolved in an orderly manner, limiting the negative impact on the real economy and avoiding the need for taxpayers to step in. For that purpose, pending further coordination at Union level, EBA should assess and coordinate initiatives, in accordance with Regulation (EU) No 1093/2010, on recovery and resolution plans with a view to promoting convergence in that area. To that end, EBA should be fully informed in advance of the organisation of meetings on recovery and resolution plans and should be entitled to participate in such meetings. Some Member States' authorities have already introduced obligations for institutions and authorities to prepare recovery and resolution plans. It is therefore appropriate that institutions be required to cooperate with authorities in that regard. Where a recovery or resolution plan is being drafted, EBA should contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans in accordance with Regulation (EU) No 1093/2010. Priority should be given where such plans involve systemically important institutions.
- (35) In order to ensure compliance with the obligations deriving from this Directive and from Regulation (EU) No 575/2013 by institutions, by those who effectively control the business of an institution and by the members of an institution's management body, and to ensure similar treatment across the Union, Member States should be required to provide for administrative penalties and other administrative measures which are effective, proportionate and dissuasive. Therefore, administrative penalties and other administrative measures laid down by Member States should satisfy certain essential requirements in relation to addressees, the criteria to be taken into account in their application, their publication, key powers to impose penalties and levels of administrative pecuniary penalties.
- (36) In particular, competent authorities should be empowered to impose administrative pecuniary penalties which are sufficiently high to offset the benefits that can be expected and to be dissuasive even to larger institutions and their managers.
- (37) In order to ensure a consistent application of administrative penalties or other administrative measures across Member States, when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties Member States should be required to ensure that the competent authorities take into account all relevant circumstances.

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- (38) In order to ensure that administrative penalties have a dissuasive effect, they should normally be published except in certain well-defined circumstances.
- (39) For the purposes of assessing the good repute of directors and members of a management body, an efficient system of exchange of information is required where EBA, subject to professional secrecy and data protection requirements, should be entitled to maintain a central database containing details of administrative penalties, including any appeals in relation thereto, which is accessible to competent authorities only. In any event, information about criminal convictions should be exchanged in accordance with Framework Decision 2009/315/JHA<sup>(7)</sup> and Decision 2009/316/JHA<sup>(8)</sup>, as transposed into national law, and with other relevant provisions of national law.
- (40) In order to detect potential breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013, competent authorities should have the necessary investigatory powers and should establish effective mechanisms to encourage reporting of potential or actual breaches. Those mechanisms should be without prejudice to the rights of the defence of anyone who has been charged.
- (41) This Directive should provide for administrative penalties and other administrative measures in order to ensure the greatest possible scope for action following a breach and to help prevent further breaches, irrespective of their qualification as an administrative penalty or other administrative measure under national law. Member States should be able to provide for additional penalties to, and higher level of administrative pecuniary penalties than, those provided for in this Directive.
- (42) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal penalties.
- (43) Member States should ensure that credit institutions and investment firms have internal capital that, having regard to the risks to which they are or may be exposed, is adequate in quantity, quality and distribution. Accordingly, Member States should ensure that credit institutions and investment firms have strategies and processes in place for assessing and maintaining the adequacy of their internal capital.
- (44) Competent authorities should be entrusted with ensuring that institutions have a good organisation and adequate own funds, having regard to the risks to which the institutions are or might be exposed.
- (45) To ensure that institutions which are active in several Member States are not disproportionately burdened as a result of the continued responsibilities of individual Member State competent authorities as regards authorisation and supervision, it is essential to significantly enhance the cooperation between competent authorities. EBA should facilitate and enhance such cooperation.
- (46) In order to ensure comprehensive market discipline across the Union, it is appropriate that competent authorities publish information concerning the carrying out of the business of credit institutions and investment firms. Such information should be sufficient to enable a comparison of the approaches adopted by the different competent



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authorities of the Member States and complement requirements found in Regulation (EU) No 575/2013 regarding disclosure of technical information by institutions.

- (47) Supervision of institutions on a consolidated basis aims to protect the interests of depositors and investors of institutions and to ensure the stability of the financial system. In order to be effective, supervision on a consolidated basis should therefore be applied to all banking groups, including those the parent undertakings of which are not credit institutions or investment firms. Member States should provide competent authorities with the necessary legal instruments to enable them to exercise such supervision.
- (48) In the case of groups with diversified activities where parent undertakings control at least one subsidiary, the competent authorities should be able to assess the financial situation of each credit institution or investment firm in such a group. The competent authorities should at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function. Cooperation between the authorities responsible for the supervision of different financial sectors should be established in the case of groups of undertakings carrying out a range of financial activities.
- (49) Member States should be able to refuse or withdraw a credit institution's authorisation in the case of certain group structures considered inappropriate for carrying out banking activities, because such structures cannot be supervised effectively. In that respect the competent authorities should have the necessary powers to ensure the sound and prudent management of credit institutions. In order to secure a sustainable and diverse Union banking culture which primarily serves the interest of the citizens of the Union, small-scale banking activities, such as those of credit unions and cooperative banks, should be encouraged.
- (50) The mandates of competent authorities should take into account, in an appropriate manner, the Union dimension. Competent authorities should therefore duly consider the effect of their decisions not only on the stability of the financial system in their jurisdiction but also in all other Member States concerned. Subject to national law, that principle should serve to promote financial stability across the Union and should not legally bind competent authorities to achieve a specific result.
- (51) The financial crisis demonstrated links between the banking sector and so-called 'shadow banking'. Some shadow banking usefully keeps risks separate from the banking sector and hence avoids potential negative effects on taxpayers and systemic impact. Nevertheless, a fuller understanding of shadow banking operations and their links to financial sector entities, and tighter regulation to provide transparency, a reduction of systemic risk and the elimination of any improper practices are necessary for the stability of the financial system. Additional reporting from institutions can establish some of this but specific new regulation is also necessary.
- (52) Increased transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received, is essential for regaining the trust of citizens of the Union in the financial sector. Mandatory reporting in that area can therefore be seen as an important element of the corporate responsibility of institutions towards stakeholders and society.

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- (53) Weaknesses in corporate governance in a number of institutions have contributed to excessive and imprudent risk-taking in the banking sector which has led to the failure of individual institutions and systemic problems in Member States and globally. The very general provisions on governance of institutions and the non-binding nature of a substantial part of the corporate governance framework, based essentially on voluntary codes of conduct, did not sufficiently facilitate the effective implementation of sound corporate governance practices by institutions. In some cases, the absence of effective checks and balances within institutions resulted in a lack of effective oversight of management decision-making, which exacerbated short-term and excessively risky management strategies. The unclear role of the competent authorities in overseeing corporate governance systems in institutions did not allow for sufficient supervision of the effectiveness of the internal governance processes.
- (54) In order to address the potentially detrimental effect of poorly designed corporate governance arrangements on the sound management of risk, Member States should introduce principles and standards to ensure effective oversight by the management body, promote a sound risk culture at all levels of credit institutions and investment firms and enable competent authorities to monitor the adequacy of internal governance arrangements. Those principles and standards should apply taking into account the nature, scale and complexity of institutions' activities. Member States should be able to impose corporate governance principles and standards additional to those required by this Directive.
- (55) Different governance structures are used across Member States. In most cases a unitary or a dual board structure is used. The definitions used in this Directive are intended to embrace all existing structures without advocating any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competences in accordance with national company law.
- (56) A management body should be understood to have executive and supervisory functions. The competence and structure of management bodies differ across Member States. In Member States where management bodies have a one-tier structure, a single board usually performs management and supervisory tasks. In Member States with a two-tier system, the supervisory function is performed by a separate supervisory board which has no executive functions and the executive function is performed by a separate management board which is responsible and accountable for the day-to-day management of the undertaking. Accordingly, separate tasks are assigned to the different entities within the management body.
- (57) The role of non-executive members of the management body within an institution should include constructively challenging the strategy of the institution and thereby contributing to its development, scrutinising the performance of management in achieving agreed objectives, satisfying themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible,

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- scrutinising the design and implementation of the institution's remuneration policy and providing objective views on resources, appointments and standards of conduct.
- (58) In order to monitor management actions and decisions effectively, the management body of an institution should commit sufficient time to allow it to perform its functions and to be able to understand the business of the institution, its main risk exposures and the implications of the business and the risk strategy. Combining too high a number of directorships would preclude a member of the management body from spending adequate time on the performance of that oversight role. Therefore, it is necessary to limit the number of directorships a member of the management body of an institution may hold at the same time in different entities. However, directorships in organisations which do not pursue predominantly commercial objectives, such as non-profit-making or charitable organisations, should not be taken into account for the purposes of applying such a limit.
- (59) When appointing members of the management body, the shareholders or members of an institution should consider whether the candidates have the knowledge, qualifications and skills necessary to safeguard proper and prudent management of the institution. Those principles should be exercised and manifested through transparent and open appointment procedures, with regard to members of the management body.
- (60) The lack of monitoring by management bodies of management decisions is partly due to the phenomenon of 'groupthink'. This phenomenon is, inter alia, caused by a lack of diversity in the composition of management bodies. To facilitate independent opinions and critical challenge, management bodies of institutions should therefore be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences. Gender balance is of particular importance to ensure adequate representation of population. In particular, institutions not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority. Employee representation in management bodies could also, by adding a key perspective and genuine knowledge of the internal workings of institutions, be seen as a positive way of enhancing diversity. More diverse management bodies should more effectively monitor management and therefore contribute to improved risk oversight and resilience of institutions. Therefore, diversity should be one of the criteria for the composition of management bodies. Diversity should also be addressed in institutions' recruitment policy more generally. Such a policy should, for instance, encourage institutions to select candidates from shortlists including both genders.
- (61) In order to strengthen legal compliance and corporate governance, Member States should establish effective and reliable mechanisms to encourage reporting to competent authorities of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013. Employees reporting breaches committed within their own institutions should be fully protected.
- (62) Remuneration policies which encourage excessive risk-taking behaviour can undermine sound and effective risk management of credit institutions and investment firms. Members of the G-20 committed themselves to implementing the Financial Stability

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

- (63) In order to ensure that institutions have in place sound remuneration policies, it is appropriate to specify clear principles on governance and on the structure of remuneration policies. In particular, remuneration policies should be aligned with the risk appetite, values and long-term interests of the credit institution or investment firm. For that purpose, the assessment of the performance-based component of remuneration should be based on long-term performance and take into account the current and future risks associated with that performance.
- (64) When considering the policy on variable remuneration a distinction should be made between fixed remuneration, which includes payments, proportionate regular pension contributions, or benefits (where such benefits are without consideration of any performance criteria), and variable remuneration, which includes additional payments, or benefits depending on performance or, in exceptional circumstances, other contractual elements but not those which form part of routine employment packages (such as healthcare, child care facilities or proportionate regular pension contributions). Both monetary and non-monetary benefits should be included.
- (65) In any event, in order to avoid excessive risk taking, a maximum ratio between the fixed and the variable component of the total remuneration should be set. It is appropriate to provide for a certain role for the shareholders, owners or members of institutions in that respect. Member States should be able to set stricter requirements as regards the relationship between the fixed and the variable components of the total remuneration. With a view to encouraging the use of equity or debt instruments which are payable under long-term deferral arrangements as a component of variable remuneration, Member States should be able, within certain limits, to allow institutions to apply a notional discount rate when calculating the value of such instruments for the purposes of applying the maximum ratio. However, Member States should not be obliged to provide for such a facility and should be able to provide for it to apply to a lower maximum percentage of total variable remuneration than set out in this Directive. With a view to ensuring a harmonised and coherent approach which guarantees a level playing field across the internal market, EBA should provide appropriate guidance on the applicable notional discount rate to be used.
- (66) In order to ensure that the design of remuneration policies is integrated in the risk management of the institution, the management body should adopt and periodically review the remuneration policies in place. The provisions of this Directive on remuneration should reflect differences between different types of institutions in

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a proportionate manner, taking into account their size, internal organisation and the nature, scope and complexity of their activities. In particular it would not be proportionate to require certain types of investment firms to comply with all of those principles.

- (67) In order to protect and foster financial stability within the Union and to address any possible avoidance of the requirements laid down in this Directive, competent authorities should ensure compliance with the principles and rules on remuneration for institutions on a consolidated basis, that is at the level of the group, parent undertakings and subsidiaries, including the branches and subsidiaries established in third countries.
- (68) Since poorly designed remuneration policies and incentive schemes are capable of increasing to an unacceptable extent the risks to which credit institutions and investment firms are exposed, prompt remedial action and, if necessary, appropriate corrective measures should be taken. Consequently, it is appropriate to ensure that competent authorities have the power to impose qualitative or quantitative measures on the relevant institutions that are designed to address problems that have been identified in relation to remuneration policies in the supervisory review.
- (69) The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding shareholders' rights and involvement and the general responsibilities of the management bodies of the institution concerned, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.
- (70) Own funds requirements for credit risk and market risk should be based on external credit ratings only to the extent necessary. Where credit risk is material, institutions should therefore generally seek to implement internal ratings-based approaches or internal models. However, standardised approaches that rely on external credit ratings could be used where credit risk is less material, which is typically the case for less sophisticated institutions, for insignificant exposure classes, or in situations where using internal approaches would be overly burdensome.
- (71) Directives 2006/48/EC and 2006/49/EC are one of the pillars upon which the overreliance on external credit ratings was built. This Directive should take into account the G-20 conclusions and the FSB principles for Reducing Reliance on external credit ratings. Institutions should therefore be encouraged to use internal ratings rather than external credit ratings even for the purpose of calculating own funds requirements.
- (72) Overreliance on external credit ratings should be reduced and the automatic effects deriving from them should be gradually eliminated. Institutions should therefore be required to put in place sound credit-granting criteria and credit decision-making processes. Institutions should be able to use external credit ratings as one of several factors in that process but they should not rely solely or mechanistically on them.
- (73) The recognition of a credit rating agency as an external credit assessment institution (ECAI) should not increase the foreclosure of a market already dominated by three undertakings. EBA, the Member States' central banks and the ECB, without making

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the process easier or less demanding, should provide for the recognition of more credit rating agencies as ECAIs in order to open the market to other undertakings.

- (74) Given the wide range of approaches adopted by institutions using internal modelling approaches, it is important that competent authorities and EBA have a clear view of the range of values for risk-weighted assets and own funds requirements that arise for similar exposures under such approaches. To that end, institutions should be required to provide competent authorities with the results of internal models applied to EBA-developed benchmark portfolios covering a wide range of exposures. Based on the information received, competent authorities should take appropriate steps to ensure that similarities or differences in results for the same exposure are justifiable in terms of the risks incurred. More generally, the competent authorities and EBA should ensure that the choice between an internal modelling approach and a standardised approach does not result in the under-estimation of own funds requirements. While own funds requirements for operational risk are more difficult to allocate at individual exposure level and it is therefore appropriate to exclude this risk category from the benchmarking process, competent authorities should nevertheless keep abreast of developments in internal modelling approaches to operational risk, with the aim of monitoring the range of practices employed and improving supervisory approaches.
- (75) The development of relationship-based lending should be encouraged where information gleaned from a continuing business relationship with clients is used to get a better quality of due diligence and risk assessment than is available purely from standardised information and credit scores.
- (76) With respect to the supervision of liquidity, responsibility should lie with home Member States as soon as detailed criteria for the liquidity coverage requirement apply. It is therefore necessary to accomplish the coordination of supervision in this field in order to introduce supervision by the home Member State by that time. In order to ensure effective supervision, the competent authorities of the home and host Member States should further cooperate in the field of liquidity.
- (77) Where within a group liquid assets in one institution will under stress circumstances match liquidity needs of another member of that group, competent authorities should be able to exempt an institution from liquidity coverage requirements and apply those requirements on a consolidated basis instead.
- (78) Measures taken on the basis of this Directive should be without prejudice to measures taken in accordance with Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions<sup>(9)</sup>. Supervisory measures should not lead to discrimination among creditors from different Member States.
- (79) In the light of the financial crisis and the pro-cyclical mechanisms that contributed to its origin and aggravated its effect, the FSB, the Basel Committee on Banking Supervision (BCBS), and the G-20 made recommendations to mitigate the pro-cyclical effects of financial regulation. In December 2010, the BCBS issued new global regulatory standards on bank capital adequacy (the Basel III rules), including rules requiring the maintenance of capital conservation and countercyclical capital buffers.

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- (80) It is therefore appropriate to require credit institutions and relevant investment firms to hold, in addition to other own fund requirements, a capital conservation buffer and a countercyclical capital buffer to ensure that they accumulate, during periods of economic growth, a sufficient capital base to absorb losses in stressed periods. The countercyclical capital buffer should be built up when aggregate growth in credit and other asset classes with a significant impact on the risk profile of such credit institutions and investment firms are judged to be associated with a build-up of system-wide risk, and drawn down during stressed periods.
- (81) In order to ensure that countercyclical capital buffers properly reflect the risk to the banking sector of excessive credit growth, credit institutions and investment firms should calculate their institution-specific buffers as a weighted average of the countercyclical buffer rates that apply in the countries where their credit exposures are located. Every Member State should therefore designate an authority responsible for the quarterly setting of the countercyclical buffer rate for exposures located in that Member State. That buffer rate should take into account the growth of credit levels and changes to the ratio of credit to GDP in that Member State, and any other variables relevant to the risks to the stability of the financial system.
- (82) In order to promote international consistency in setting countercyclical buffer rates, the BCBS has developed a methodology on the basis of the ratio between credit and GDP. This should serve as a common starting point for decisions on buffer rates by the relevant national authorities, but should not give rise to an automatic buffer setting or bind the designated authority. The buffer rate should reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Member State and should duly take into account specificities of the national economy.
- (83) Restrictions on variable remuneration are an important element in ensuring that credit institutions and investment firms rebuild their capital levels when operating within the buffer range. Credit institutions and investment firms are already subject to the principle that awards and discretionary payments of variable remuneration to those categories of staff whose professional activities have a material impact on the risk profile of the institution have to be sustainable, having regard to the financial situation of the institution. In order to ensure that an institution restores its levels of own funds in a timely manner, it is appropriate to align the award of variable remuneration and discretionary pension benefits with the profit situation of the institution during any period in which the combined buffer requirement is not met, taking into account the long-term health of the institution.
- (84) Institutions should address and control all concentration risks by means of written policies and procedures. Given the nature of public sector exposures, controlling concentration risks is more effective than risk weighting those exposures, given their size and the difficulties in calibrating own funds requirements. The Commission should, at an appropriate time, submit a report to the European Parliament and the Council about any desirable changes to the prudential treatment of concentration risk.
- (85) Member States should be able to require certain institutions to hold, in addition to a capital conservation buffer and a countercyclical capital buffer, a systemic risk buffer

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in order to prevent and mitigate long-term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No 575/2013, where there is a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy in a specific Member State. The systemic risk buffer rate should apply to all institutions, or to one or more subsets of those institutions, where the institutions exhibit similar risk profiles in their business activities.

- (86) In order to ensure consistent macroprudential oversight across the Union, it is appropriate that the European Systemic Risk Board (ESRB) develop principles tailored to the Union economy and be responsible for monitoring their application. This Directive should not prevent the ESRB from taking any actions that it considers necessary under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macroprudential oversight of the financial system and establishing a European Systemic Risk Board<sup>(10)</sup>.
- (87) Member States should be able to recognise the systemic risk buffer rate set by another Member State and apply that buffer rate to domestically authorised institutions for the exposures located in the Member State setting the buffer rate. The Member State setting the buffer rate should also be able to ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010, addressed to one or more Member States which are in a position to recognise the systemic risk buffer rate recommending that they do so. Such a recommendation is subject to the "comply or explain" rule set out in Article 3(2) and Article 17 of that Regulation.
- (88) It is appropriate that decisions of Member States on countercyclical buffer rates are coordinated as far as possible. In that regard, the ESRB, if requested to do so by competent or designated authorities, could facilitate discussions between those authorities about setting proposed buffer rates, including relevant variables.
- (89) Where a credit institution or investment firm fails to meet in full the combined buffer requirement, it should be subject to measures designed to ensure that it restores its levels of own funds in a timely manner. In order to conserve capital, it is appropriate to impose proportionate restrictions on discretionary distributions of profits, including dividend payments and payments of variable remuneration. So as to ensure that such institutions or firms have a credible strategy to restore levels of own funds, they should be required to draw up and agree with the competent authorities a capital conservation plan that sets out how the restrictions on distributions will be applied and other measures that the institution or firm intends to take to ensure compliance with the full buffer requirements.
- (90) Authorities are expected to impose higher own funds requirements on global systemically important institutions (G-SIIs) in order to compensate for the higher risk that G-SIIs represent for the financial system and the potential impact of their failure on taxpayers. Where an authority imposes the systemic risk buffer and the G-SII buffer is applicable, the higher of the two should apply. Where the systemic risk buffer only applies to domestic exposures, it should be cumulative with the G-SII buffer or the buffer relating to other systemically important institutions (O-SIIs) which is applied in accordance with this Directive.



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- (91) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust EBA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. EBA should ensure efficient administrative and reporting processes when drafting technical standards.
- (92) The Commission should adopt regulatory technical standards developed by EBA in the areas of authorisations and acquisitions of significant holdings in credit institutions, information exchanges between competent authorities, the exercise of the freedom of establishment and the freedom to provide services, supervisory collaboration, remuneration policies of credit institutions and investment firms and the supervision of mixed financial holding companies by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The Commission and EBA should ensure that those standards can be applied by all institutions concerned in a manner that is proportionate to the nature, scale and complexity of those institutions and their activities.
- (93) Given the detail and number of regulatory technical standards that are to be adopted pursuant to this Directive, where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by EBA, the period within which the European Parliament or the Council may object to a regulatory technical standard should, where appropriate, be further extended by one month. Moreover, the Commission should aim to adopt the regulatory technical standards in good time to permit the European Parliament and the Council to exercise full scrutiny, taking account of the volume and complexity of regulatory technical standards and the details of the European Parliament's and the Council's rules of procedure, calendar of work and composition.
- (94) The Commission should also be empowered to adopt implementing technical standards developed by EBA in the areas of authorisation of and acquisitions of significant holdings in credit institutions, information exchange between competent authorities, supervisory collaboration, specific prudential requirements and disclosure of information by supervisory authorities by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010.
- (95) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 on laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>(11)</sup>.
- (96) In order to specify the requirements set out in this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of clarifying the definitions and the terminology used in this Directive, expanding the list of activities subject to mutual recognition and improving the exchange of information concerning branches of credit institutions. It is of particular importance

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that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (97) References to Directives 2006/48/EC and 2006/49/EC should be construed as references to this Directive and to Regulation (EU) No 575/2013.
- (98) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>(12)</sup>, Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market<sup>(13)</sup>, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)<sup>(14)</sup>, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>(15)</sup> and Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers<sup>(16)</sup> refer to provisions of Directives 2006/48/EC and 2006/49/EC concerning own funds requirements which should be set out in this Directive and in Regulation (EU) No 575/2013. Consequently, references in those Directives to Directives 2006/48/EC and 2006/49/EC should be construed as references to the provisions governing own funds requirements in this Directive and in Regulation (EU) No 575/2013.
- (99) In order to allow for technical standards to be developed so that institutions that are part of a financial conglomerate apply the appropriate calculation methods for the determination of required capital on a consolidated basis, Directive 2002/87/EC should be amended accordingly.
- (100) In order for the internal banking market to operate with increasing effectiveness and for citizens of the Union to be afforded adequate levels of transparency, it is necessary that competent authorities publish, in a manner which allows for meaningful comparison, information on the manner in which this Directive is implemented.
- (101) With respect to the supervision of liquidity, there should be a period of time within which Member States effect transition towards the regulatory regime under which detailed criteria for the liquidity coverage requirement apply.
- (102) In order to ensure a stable, smooth and progressive transition by institutions to new liquidity and stable funding requirements at Union level, competent authorities should make full use of their supervisory powers under this Directive and under any applicable national law. In particular, competent authorities should assess whether there is a need to apply administrative penalties or other administrative measures, including prudential charges, the level of which should broadly relate to the disparity between the actual liquidity position of an institution and the liquidity and stable funding requirements. In making this assessment, competent authorities should have due regard to market conditions. Such administrative penalties or other administrative measures should apply

until detailed legal acts on liquidity and stable funding requirements are implemented at Union level.

- (103) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(17)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(18)</sup>, should be fully applicable to the processing of personal data for the purposes of this Directive.
- (104) Since the objectives of this Directive, namely the introduction of rules concerning access to the activity of institutions, and the prudential supervision of institutions, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (105) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (106) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and has adopted an opinion<sup>(19)</sup>.
- (107) Directive 2002/87/EC should be amended accordingly and Directives 2006/48/EC and 2006/49/EC should be repealed,

HAVE ADOPTED THIS DIRECTIVE:

## TITLE I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### *Article 1*

#### **Subject matter**

This Directive lays down rules concerning:

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

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- (b) supervisory powers and tools for the prudential supervision of institutions by competent authorities;
- (c) the prudential supervision of institutions by competent authorities in a manner that is consistent with the rules set out in Regulation (EU) No 575/2013;
- (d) publication requirements for competent authorities in the field of prudential regulation and supervision of institutions.

## *Article 2*

### **Scope**

- 1 This Directive shall apply to institutions.
- 2 Article 30 shall apply to local firms.
- 3 Article 31 shall apply to the firms referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013.
- 4 Article 34 and Title VII, Chapter 3 shall apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head offices in the Union;
- 5 This Directive shall not apply to the following:
  - (1) access to the activity of investment firms in so far as it is regulated by Directive 2004/39/EC;
  - (2) central banks;
  - (3) post office giro institutions;
  - (4) in Belgium, the 'Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut';
  - (5) in Denmark, the 'Eksport Kredit Fonden', the 'Eksport Kredit Fonden A/S', the 'Danmarks Skibskredit A/S' and the 'KommuneKredit';
  - (6) in Germany, the 'Kreditanstalt für Wiederaufbau', undertakings which are recognised under the 'Wohnungsgemeinnützigkeitsgesetz' as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings;
  - (7) in Estonia, the 'hoiu-laenuühistud', as cooperative undertakings that are recognised under the 'hoiu-laenuühistu seadus';
  - (8) in Ireland, credit unions and the friendly societies;
  - (9) in Greece, the 'Ταμείο Παρακαταθηκών και Δανείων' (Tamio Parakatathikon kai Danion);
  - (10) in Spain, the 'Instituto de Crédito Oficial';
  - (11) in France, the 'Caisse des dépôts et consignations';
  - (12) in Italy, the 'Cassa depositi e prestiti';

- (13) in Latvia, the 'krājaizdevu sabiedrības', undertakings that are recognised under the 'krājaizdevu sabiedrību likums' as cooperative undertakings rendering financial services solely to their members;
- (14) in Lithuania, the 'kredito unijos' other than the 'Centrinė kredito unija';
- (15) in Hungary, the 'MFB Magyar Fejlesztési Bank Zártkörűen Működő Részvénytársaság' and the 'Magyar Export-Import Bank Zártkörűen Működő Részvénytársaság';
- (16) in the Netherlands, the 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'NV Noordelijke Ontwikkelingsmaatschappij', the 'NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering' and the 'Overijsselse Ontwikkelingsmaatschappij NV';
- (17) in Austria, undertakings recognised as housing associations in the public interest and the 'Österreichische Kontrollbank AG';
- (18) in Poland, the 'Spółdzielcze Kasy Oszczędnościowo — Kredytowe' and the 'Bank Gospodarstwa Krajowego';
- (19) in Portugal, the 'Caixas Económicas' existing on 1 January 1986 with the exception of those incorporated as limited companies and of the 'Caixa Económica Montepio Geral';
- (20) in Slovenia, the 'SID-Slovenska izvozna in razvojna banka, d.d. Ljubljana';
- (21) in Finland, the 'Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB', and the 'Finnvera Oyj/Finnvera Abp';
- (22) in Sweden, the 'Svenska Skeppshypotekskassan';
- (23) in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks.

6 The entities referred to in point (1) and points (3) to (23) of paragraph 5 of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3.

### *Article 3*

#### **Definitions**

- 1 For the purposes of this Directive, the following definitions shall apply:
  - (1) 'credit institution' means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
  - (2) 'investment firm' means investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013;
  - (3) 'institution' means institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013;
  - (4) 'local firm' means local firm as defined in point (4) of Article 4(1) of Regulation (EU) No 575/2013;

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- (5) 'insurance undertaking' means insurance undertaking as defined in point (5) of Article 4(1) of Regulation (EU) No 575/2013;
- (6) 'reinsurance undertaking' means reinsurance undertaking as defined in point (6) of Article 4(1) of Regulation (EU) No 575/2013;
- (7) 'management body' means an institution's body or bodies, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution;
- (8) 'management body in its supervisory function' means the management body acting in its role of overseeing and monitoring management decision-making;
- (9) 'senior management' means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;
- (10) 'systemic risk' means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;
- (11) 'model risk' means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;
- (12) 'originator' means originator as defined in point (13) of Article 4(1) of Regulation (EU) No 575/2013;
- (13) 'sponsor' means sponsor as defined in point (14) of Article 4(1) of Regulation (EU) No 575/2013;
- (14) 'parent undertaking' means parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;
- (15) 'subsidiary' means subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
- (16) 'branch' means branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;
- (17) 'ancillary services undertaking' means ancillary services undertaking as defined in point (18) of Article 4(1) of Regulation (EU) No 575/2013;
- (18) 'asset management company' means asset management company as defined in point (19) of Article 4(1) of Regulation (EU) No 575/2013;
- (19) 'financial holding company' means financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;
- (20) 'mixed financial holding company' means mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;
- (21) 'mixed activity holding company' means mixed activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;
- (22) 'financial institution' means financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

- (23) 'financial sector entity' means financial sector entity as defined in point (27) of Article 4(1) of Regulation (EU) No 575/2013;
- (24) 'parent institution in a Member State' means parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;
- (25) 'EU parent institution' means EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;
- (26) 'parent financial holding company in a Member State' means parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;
- (27) 'EU parent financial holding company' means EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;
- (28) 'parent mixed financial holding company in a Member State' means parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of Regulation (EU) No 575/2013;
- (29) 'EU parent mixed financial holding company' means EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;
- (30) 'systemically important institution' means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;
- (31) 'central counterparty' means central counterparty as defined in point (34) of Article 4(1) of Regulation (EU) No 575/2013;
- (32) 'participation' means participation as defined in point (35) of Article 4(1) of Regulation (EU) No 575/2013;
- (33) 'qualifying holding' means qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;
- (34) 'control' means control as defined in point (37) of Article 4(1) of Regulation (EU) No 575/2013;
- (35) 'close links' means close links as defined in point (38) of Article 4(1) of Regulation (EU) No 575/2013;
- (36) 'competent authority' means competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013;
- (37) 'consolidating supervisor' means consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;
- (38) 'authorisation' means authorisation as defined in point (42) of Article 4(1) of Regulation (EU) No 575/2013;
- (39) 'home Member State' means home Member State as defined in point (43) of Article 4(1) of Regulation (EU) No 575/2013;
- (40) 'host Member State' means host Member State as defined in point (44) of Article 4(1) of Regulation (EU) No 575/2013;

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- (41) 'ESCB central banks' means ESCB central banks as defined in point (45) of Article 4(1) of Regulation (EU) No 575/2013;
- (42) 'central banks' means central banks as defined in point (46) of Article 4(1) of Regulation (EU) No 575/2013;
- (43) 'consolidated situation' means consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;
- (44) 'consolidated basis' means consolidated basis as defined in point (48) of Article 4(1) of Regulation (EU) No 575/2013;
- (45) 'sub-consolidated basis' means sub-consolidated basis as defined in point (49) of Article 4(1) of Regulation (EU) No 575/2013;
- (46) 'financial instrument' means financial instrument as defined in point (50) of Article 4(1) of Regulation (EU) No 575/2013;
- (47) 'own funds' means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;
- (48) 'operational risk' means operational risk as defined in point (52) of Article 4(1) of Regulation (EU) No 575/2013;
- (49) 'credit risk mitigation' means credit risk mitigation as defined in point (57) of Article 4(1) of Regulation (EU) No 575/2013;
- (50) 'securitisation' means securitisation as defined in point (61) of Article 4(1) of Regulation (EU) No 575/2013;
- (51) 'securitisation position' means securitisation position as defined in point (62) of Article 4(1) of Regulation (EU) No 575/2013;
- (52) 'securitisation special purpose entity' means securitisation special purpose entity as defined in point (66) of Article 4(1) of Regulation (EU) No 575/2013;
- (53) 'discretionary pension benefits' means discretionary pension benefits as defined in point (73) of Article 4(1) of Regulation (EU) No 575/2013;
- (54) 'trading book' means trading as defined in point (86) of Article 4(1) of Regulation (EU) No 575/2013;
- (55) 'regulated market' means regulated market as defined in point (92) of Article 4(1) of Regulation (EU) No 575/2013;
- (56) 'leverage' means leverage as defined in point (93) of Article 4(1) of Regulation (EU) No 575/2013;
- (57) 'risk of excessive leverage' means risk of excessive leverage as defined in point (94) of Article 4(1) of Regulation (EU) No 575/2013;
- (58) 'external credit assessment institution' means external credit assessment institution as defined in point (98) of Article 4(1) of Regulation (EU) No 575/2013;
- (59) 'internal approaches' means the internal ratings based approach referred to in Article 143(1), the internal models approach referred to in Article 221, the own estimates approach referred to in Article 225, the advanced measurement approaches referred to in Article 312(2), the internal models method referred to in Articles 283 and 363,



and the internal assessment approach referred to in Article 259(3) of Regulation (EU) No 575/2013.

2 Where this Directive refers to the management body and, pursuant to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive.

## TITLE II

### COMPETENT AUTHORITIES

#### *Article 4*

#### **Designation and powers of the competent authorities**

1 Member States shall designate competent authorities that carry out the functions and duties provided for in this Directive and in Regulation (EU) No 575/2013. They shall inform the Commission and EBA thereof, indicating any division of functions and duties.

2 Member States shall ensure that the competent authorities monitor the activities of institutions, and where applicable, of financial holding companies and mixed financial holding companies, so as to assess compliance with the requirements of this Directive and Regulation (EU) No 575/2013.

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

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

5 Member States shall require that institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive and Regulation (EU) No 575/2013. Member States shall also ensure that internal control mechanisms and administrative and accounting procedures of the institutions permit the checking of their compliance with such rules at all times.

6 Member States shall ensure that institutions register all their transactions and document systems and processes, which are subject to this Directive and Regulation (EU) No 575/2013 in such a manner that the competent authorities are able to check compliance with this Directive and Regulation (EU) No 575/2013 at all times.

7 Member States shall ensure that the functions of supervision pursuant to this Directive and to Regulation (EU) No 575/2013 and any other functions of the competent authorities are separate and independent from the functions relating to resolution. Member States shall inform the Commission and EBA thereof, indicating any division of duties.

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8 Member States shall ensure that where authorities other than the competent authorities have the power of resolution, those other authorities cooperate closely and consult the competent authorities with regard to the preparation of resolution plans.

#### *Article 5*

### **Coordination within Member States**

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

#### *Article 6*

### **Cooperation within the European System of Financial Supervision**

In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive and to Regulation (EU) No 575/2013. For that purpose, Member States shall ensure that:

- (a) the competent authorities, as parties to the European System of Financial Supervision (ESFS), cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS, in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union;
- (b) the competent authorities participate in the activities of EBA and, as appropriate, in the colleges of supervisors;
- (c) the competent authorities make every effort to comply with those guidelines and recommendations issued by EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010;
- (d) the competent authorities cooperate closely with the ESRB;
- (e) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA, of the ESRB, where appropriate, or under this Directive and under Regulation (EU) No 575/2013.

#### *Article 7*

### **Union dimension of supervision**

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

## TITLE III

**REQUIREMENTS FOR ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS**

## CHAPTER 1

***General requirements for access to the activity of credit institutions****Article 8***Authorisation**

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

- 2 EBA shall develop draft regulatory technical standards to specify:
- a the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10;
  - b the requirements applicable to shareholders and members with qualifying holdings pursuant to Article 14; and
  - c obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as referred to in Article 14.

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

3 EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in point (a) of the first subparagraph of paragraph 2.

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

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

*Article 9***Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public**

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

2 Paragraph 1 shall not apply to the taking of deposits or other funds repayable by a Member State, or by a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, or to cases expressly covered by

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national or Union law, provided that those activities are subject to regulations and controls intended to protect depositors and investors.

#### *Article 10*

### **Programme of operations and structural organisation**

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

#### *Article 11*

### **Economic needs**

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

#### *Article 12*

### **Initial capital**

1 Without prejudice to other general conditions laid down in national law, the competent authorities shall refuse authorisation to commence the activity of a credit institution where a credit institution does not hold separate own funds or where its initial capital is less than EUR 5 million.

2 Initial capital shall comprise only one or more of the items referred to in Article 26(1) (a) to (e) of Regulation (EU) No 575/2013.

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

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

- a the initial capital is no less than EUR 1 million;
- b the Member States concerned notify the Commission and EBA of their reasons for exercising that option.

#### *Article 13*

### **Effective direction of the business and place of the head office**

1 The competent authorities shall grant authorisation to commence the activity of a credit institution only where at least two persons effectively direct the business of the applicant credit institution.

They shall refuse such authorisation if the members of the management body do not meet the requirements referred to in Article 91(1).

- 2 Each Member State shall require that:
- a a credit institution which is a legal person and which, under its national law, has a registered office, has its head office in the same Member State as its registered office;
  - b a credit institution other than that referred to in point (a) has its head office in the Member State which granted it authorisation and in which it actually carries out its business.

#### *Article 14*

### **Shareholders and members**

1 The competent authorities shall refuse authorisation to commence the activity of a credit institution unless a credit institution has informed them of the identities of its shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings or, where there are no qualifying holdings, of the 20 largest shareholders or members.

In determining whether the criteria for a qualifying holding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(20)</sup> and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

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

2 The competent authorities shall refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members, in particular where the criteria set out in Article 23(1) are not met. Article 23(2) and (3) and Article 24 shall apply.

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

The competent authorities shall refuse authorisation to commence the activity of a credit institution where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

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

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### Article 15

#### **Refusal of authorisation**

Where a competent authority refuses authorisation to commence the activity of a credit institution, it shall notify the applicant of the decision and the reasons therefor within six months of receipt of the application or, where the application is incomplete, within six months of receipt of the complete information required for the decision.

A decision to grant or refuse authorisation shall, in any event, be taken within 12 months of the receipt of the application.

### Article 16

#### **Prior consultation of the competent authorities of other Member States**

1 The competent authority shall, before granting authorisation to a credit institution, consult the competent authorities of another Member State where the credit institution is:

- a a subsidiary of a credit institution authorised in that other Member State;
- b a subsidiary of the parent undertaking of a credit institution authorised in that other Member State;
- c controlled by the same natural or legal persons as those who control a credit institution authorised in that other Member State.

2 The competent authority shall, before granting authorisation to a credit institution, consult the competent authority that is responsible for the supervision of insurance undertakings or investment firms in the Member State concerned where the credit institution is:

- a a subsidiary of an insurance undertaking or investment firm authorised in the Union;
- b a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Union;
- c controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the Union.

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

### Article 17

#### **Branches of credit institutions authorised in another Member State**

Host Member States shall not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with Article 35, Article 36(1), (2) and (3), Article 37, Articles 40 to 46, Article 49 and Articles 74 and 75.

## Article 18

### Withdrawal of authorisation

The competent authorities may only withdraw the authorisation granted to a credit institution where such a credit institution:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;
- (b) has obtained the authorisation through false statements or any other irregular means;
- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) no longer meets the prudential requirements set out in Parts Three, Four or Six of Regulation (EU) No 575/2013 or imposed under Article 104(1)(a) or Article 105 of this Directive or can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;
- (e) falls within one of the other cases where national law provides for withdrawal of authorisation; or
- (f) commits one of the breaches referred to in Article 67(1).

## Article 19

### Name of credit institutions

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

## Article 20

### Notification of authorisation and withdrawal of authorisation

- 1 Competent authorities shall notify EBA of every authorisation granted under Article 8.
- 2 EBA shall publish on its website, and shall update regularly, a list of the names of all credit institutions that have been granted authorisation.
- 3 The consolidating supervisor shall provide the competent authorities concerned and EBA with all information regarding the group of credit institutions in accordance with Article 14(3), Article 74(1) and Article 109(2), in particular regarding the legal and organisational structure of the group and its governance.

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4 The list referred to in paragraph 2 of this Article shall include the names of credit institutions that do not have the capital specified in Article 12(1) and shall identify those credit institutions as such.

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

#### *Article 21*

### **Waiver for credit institutions permanently affiliated to a central body**

1 The competent authorities may waive the requirements set out in Articles 10 and 12 and Article 13(1) of this Directive with regard to a credit institution referred to in Article 10 of Regulation (EU) No 575/2013 in accordance with the conditions set out therein.

Member States may maintain and make use of existing national law regarding the application of such a waiver provided that it does not conflict with this Directive or with Regulation (EU) No 575/2013.

2 Where the competent authorities exercise a waiver referred to in paragraph 1, Articles 17, 33, 34 and 35, Article 36(1) to (3), Articles 39 to 46, Section II of Chapter 2 of Title VII and Chapter 4 of Title VII shall apply to the whole as constituted by the central body together with its affiliated institutions.

## *CHAPTER 2*

### ***Qualifying holding in a credit institution***

#### *Article 22*

### **Notification and assessment of proposed acquisitions**

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

2 The competent authorities shall acknowledge receipt of notification under paragraph 1 or of further information under paragraph 3 promptly and in any event within two working days following receipt in writing to the proposed acquirer.

The competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred



to in Article 23(4) (the "assessment period"), to carry out the assessment provided for in Article 23(1) (the "assessment").

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

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

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

4 The competent authorities may extend the suspension referred to in the second subparagraph of paragraph 3 up to 30 working days if the proposed acquirer is situated or regulated in a third country or is a natural or legal person [<sup>X1</sup>not subject to supervision under this Directive or under Directive 2009/65/EC, 2009/138/EC, or 2004/39/EC.]

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

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

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

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

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

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2015.

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

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#### **Editorial Information**

**X1** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit](#)

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institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Official Journal of the European Union L 176 of 27 June 2013).

### Article 23

#### Assessment criteria

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

- a the reputation of the proposed acquirer;
- b the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body and any member of senior management who will direct the business of the credit institution as a result of the proposed acquisition;
- c the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
- d whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and Regulation (EU) No 575/2013, and where applicable, other Union law, in particular Directives 2002/87/EC and 2009/110/EC, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
- e whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>(21)</sup> is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

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

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

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

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

## Article 24

### Cooperation between competent authorities

1 The relevant competent authorities shall fully consult each other when carrying out the assessment if the proposed acquirer is one of the following:

- a a credit institution, insurance undertaking, reinsurance undertaking, investment firm, or a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;
- b the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;
- c a natural or legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

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

## Article 25

### Notification in the case of a divestiture

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

## Article 26

### Information obligations and penalties

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

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Credit institutions admitted to trading on a regulated market shall, at least annually, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market.

2 Member States shall require that, where the influence exercised by the persons referred to in Article 22(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, penalties, subject to Articles 65 to 72, against members of the management body and managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the credit institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information as set out in Article 22(1) and subject to Articles 65 to 72.

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

#### *Article 27*

### **Criteria for qualifying holdings**

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

In determining whether the criteria for a qualifying holding as referred to in Article 26 are fulfilled, Member States shall not take into account voting rights or shares which institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

#### TITLE IV

### **INITIAL CAPITAL OF INVESTMENT FIRMS**

#### *Article 28*

### **Initial capital of investment firms**

1 The initial capital of investment firms shall comprise only one or more of the items referred to in points (a) to (e) of Article 26(1) of Regulation (EU) No 575/2013.

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

#### *Article 29*

##### **Initial capital of particular types of investment firms**

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

- a the reception and transmission of investors' orders for financial instruments;
- b the execution of investors' orders for financial instruments;
- c the management of individual portfolios of investments in financial instruments.

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

- a such positions arise only as a result of the firm's failure to match investors' orders precisely;
- b the total market value of all such positions is subject to a ceiling of 15 % of the firm's initial capital;
- c the firm meets the requirements set out in Articles 92 to 95 and Part Four of Regulation (EU) No 575/2013;
- d such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

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

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

#### *Article 30*

##### **Initial capital of local firms**

Local firms shall have initial capital of EUR 50 000 insofar as they benefit from the freedom of establishment or to provide services specified in Articles 31 and 32 of Directive 2004/39/EC.

#### *Article 31*

##### **Coverage for firms not authorised to hold client money or securities**

1 Coverage for the firms referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 shall take one of the following forms:

- a initial capital of EUR 50 000;

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- b professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per annum for all claims;
- c a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

The Commission shall periodically review the amounts referred to in the first subparagraph.

2 If a firm referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 is also registered under Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation<sup>(22)</sup>, it shall comply with Article 4(3) of that Directive and have coverage in one of the following forms:

- a initial capital of EUR 25 000;
- b professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 500 000 applying to each claim and in aggregate EUR 750 000 per annum for all claims;
- c a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

#### *Article 32*

#### **Grandfathering provision**

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

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

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

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

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

5 Where competent authorities consider it necessary, in order to ensure the solvency of such investment firms and firms, that the requirements set out in paragraph 4 are met, paragraphs 1, 2 and 3 shall not apply.

## TITLE V

### PROVISIONS CONCERNING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

#### CHAPTER 1

##### *General Principles*

##### *Article 33*

##### **Credit institutions**

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

##### *Article 34*

##### **Financial institutions**

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

- a the parent undertaking or undertakings are authorised as credit institutions in the Member State by the law of which the financial institution is governed;
- b the activities in question are actually carried out within the territory of the same Member State;
- c the parent undertaking or undertakings holds 90 % or more of the voting rights attaching to shares in the capital of the financial institution;
- d the parent undertaking or undertakings satisfies the competent authorities regarding the prudent management of the financial institution and has declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;
- e the financial institution is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title VII, Chapter 3 of this Directive and Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of that Regulation, for the control of

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large exposures provided for in Part Four of that Regulation and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that Regulation.

The competent authorities of the home Member State shall check compliance with the conditions set out in the first subparagraph and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in Articles 35 and 39.

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

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

## CHAPTER 2

### *The right of establishment of credit institutions*

#### *Article 35*

#### **Notification requirement and interaction between competent authorities**

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

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

- a the Member State within the territory of which it plans to establish a branch;
- b a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;
- c the address in the host Member State from which documents may be obtained;
- d the names of those to be responsible for the management of the branch.

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

The home Member State's competent authorities shall also communicate the amount and composition of own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 of the credit institution.

By way of derogation from the second subparagraph, in the case referred to in Article 34 the home Member State's competent authorities shall communicate the amount and composition of own funds of the financial institution and the total risk exposure amounts calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013 of the credit institution which is its parent undertaking.



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

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

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

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.

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

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

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

### *Article 36*

#### **Commencement of activities**

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

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

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

4 Branches which have commenced their activities, in accordance with the provisions in force in their host Member States, before 1 January 1993, shall be presumed to have been subject to the procedures set out in Article 35 and in paragraphs 1 and 2 of this Article. They shall be governed, from 1 January 1993, by paragraph 3 of this Article and by Articles 33 and 52 and Chapter 4.

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

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

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

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

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

#### *Article 37*

### **Information about refusals**

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

#### *Article 38*

### **Aggregation of branches**

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

## *CHAPTER 3*

### ***Exercise of the freedom to provide services***

#### *Article 39*

### **Notification procedure**

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

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

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

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

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

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

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

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

## CHAPTER 4

### ***Powers of the competent authorities of the host Member State***

#### *Article 40*

#### **Reporting requirements**

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

Such reports shall only be required for information or statistical purposes, for the application of Article 51(1), or for supervisory purposes in accordance with this Chapter. They shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

The competent authorities of the host Member States may in particular require information from the credit institutions referred to in the first subparagraph in order to allow those competent authorities to assess whether a branch is significant in accordance with Article 51(1).

#### *Article 41*

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

1 Where the competent authorities of the host Member State on the basis of information received from the competent authorities of the home Member State under Article 50 ascertain that a credit institution having a branch or providing services within its territory fulfils one of the following conditions in relation to the activities carried out in that host Member State, they shall inform the competent authorities of the home Member State:

- a the credit institution does not comply with the national provisions transposing this Directive or with Regulation (EU) No 575/2013;
- b there is a material risk that the credit institution will not comply with the national provisions transposing this Directive or with Regulation (EU) No 575/2013.

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The competent authorities of the home Member State shall, without delay, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance or takes measures to avert the risk of non-compliance. The competent authorities of the home Member State shall communicate those measures to the competent authorities of the host Member State without delay.

2 Where the competent authorities of the host Member State consider that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to the second subparagraph of paragraph 1, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision under Article 19(3) of that Regulation within 24 hours. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

#### *Article 42*

### **Reasons and communication**

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

#### *Article 43*

### **Precautionary measures**

1 Before following the procedure set out in Article 41, the competent authorities of the host Member State may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in the host Member State.

2 Any precautionary measures under paragraph 1 shall be proportionate to their purpose to protect against financial instability that would seriously threaten collective interests of depositors, investors and clients in the host Member State. Such precautionary measures may include a suspension of payment. They shall not result in a preference for the creditors of the credit institution in the host Member State over creditors in other Member States.

3 Any precautionary measure under paragraph 1 shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 3 of Directive 2001/24/EC.

4 The competent authorities of the host Member State shall terminate precautionary measures where they consider those measures to have become obsolete under Article 41, unless they cease to have effect in accordance with paragraph 3 of this Article.

5 The Commission, EBA and the competent authorities of the other Member States concerned shall be informed of precautionary measures taken under paragraph 1 without undue delay.

Where the competent authorities of the home Member State or of any other affected Member State object to measures taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision under Article 19(3) of that Regulation within 24 hours. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

#### *Article 44*

### **Powers of host Member States**

Host Member States may, notwithstanding Articles 40 and 41, exercise the powers conferred on them under this Directive to take appropriate measures to prevent or to punish breaches committed within their territories of the rules they have adopted pursuant to this Directive or in the interests of the general good. This shall include the possibility of preventing offending credit institutions from initiating further transactions within their territories.

#### *Article 45*

### **Measures following withdrawal of authorisation**

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

#### *Article 46*

### **Advertising**

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

## TITLE VI

### **RELATIONS WITH THIRD COUNTRIES**

#### *Article 47*

### **Notification in relation to third-country branches and conditions of access for credit institutions with such branches**

1 Member States shall not apply to branches of credit institutions having their head office in a third country, when commencing or continuing to carry out their business, provisions

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which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Union.

2 The competent authorities shall notify the Commission, EBA and the European Banking Committee established by Commission Decision 2004/10/EC<sup>(23)</sup> of all authorisations for branches granted to credit institutions having their head office in a third country.

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

#### *Article 48*

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

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

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

2 The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:

- a the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of institutions, financial holding companies and mixed financial holding companies situated in the Union which have as subsidiaries institutions or financial institutions situated in a third country, or holding participation therein;
- b the supervisory authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries institutions or financial institutions situated in one or more Member States or holding participation therein; and
- c EBA is able to obtain from the competent authorities of the Member States the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

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

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

## TITLE VII

### PRUDENTIAL SUPERVISION

#### CHAPTER 1

#### *Principles of prudential supervision*

##### *Section 1*

#### *Competence and duties of home and host Member States*

##### *Article 49*

#### **Competence of the competent authorities of the home and host Member States**

- 1 The prudential supervision of an institution, including that of the activities it carries out in accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.
- 2 Paragraph 1 shall not prevent supervision on a consolidated basis.
- 3 Measures taken by the host Member State shall not allow discriminatory or restrictive treatment on the basis that an institution is authorised in another Member State.

##### *Article 50*

#### **Collaboration concerning supervision**

- 1 The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the institution, administrative and accounting procedures and internal control mechanisms.
- 2 The competent authorities of the home Member State shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of Regulation (EU) No 575/2013 and Title VII, Chapter 3 of this Directive of the activities performed by the institution through its branches, to the extent that such information and findings are relevant to the protection of depositors or investors in the host Member State.
- 3 The competent authorities of the home Member State shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning

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and implementation of a recovery plan and about any prudential supervision measures taken in that context.

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

Where the competent authorities of the home Member State disagree with the measures to be taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision within one month.

5 The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 TFEU, EBA may, in those situations, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010. EBA may also assist the competent authorities in reaching an agreement on the exchange of information under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

6 EBA shall develop draft regulatory technical standards to specify the information referred to in this Article.

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

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

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

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

#### *Article 51*

### **Significant branches**

1 The competent authorities of a host Member State may make a request to the consolidating supervisor, where Article 112(1) applies, or to the competent authorities of the home Member State for a branch of an institution other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 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 in terms of deposits exceeds 2 % in the host Member State;
- b the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the host Member State;
- c the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and, where Article 112(1) applies, the consolidating supervisor, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

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

The decisions referred to in the third and fourth subparagraphs shall be set out in a document containing full reasons, shall be 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 117(1)(c) and (d) and carry out the tasks referred to in Article 112(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 as referred to in Article 114(1), it shall alert without delay the authorities referred to in Article 58(4) and Article 59(1).

The competent authorities of the home Member State shall communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments of institutions with such branches referred to in Article 97 and, where applicable, Article 113(2). They shall also communicate decisions under Articles 104 and 105 in so far as those assessments and decisions are relevant to those branches.

The competent authorities of the home Member States shall consult the competent authorities of the host Member States where significant branches are established about operational steps required by Article 86(11), where relevant for liquidity risks in the host Member State's currency.

Where the competent authorities of the home Member State have not consulted the competent authorities of the host Member State, or where, following such consultation, the competent authorities of the host Member State maintain that operational steps required by Article 86(11) are not adequate, the competent authorities of the host

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Member State may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

3 Where Article 116 does not apply, the competent authorities supervising an institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and under Article 50. The establishment and functioning of the college shall be based on written arrangements to be determined, after consulting the competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 7 and the obligations referred to in paragraph 2 of this Article.

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

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

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

5 EBA shall develop draft implementing technical standards 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 first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

6 EBA shall submit the draft technical standards referred to in paragraphs 4 and 5 to the Commission by 31 December 2014.

#### *Article 52*

#### **On-the-spot checking and inspection of branches established in another Member State**

1 Host Member States shall provide that, where an institution authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot checks of the information referred to in Article 50 and inspections of such branches.

2 The competent authorities of the home Member State may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in Article 118.

3 The competent authorities of the host Member State shall have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions on their territory and require information from a branch about its

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activities and for supervisory purposes, where they consider it relevant for reasons of stability of the financial system in the host Member State. Before carrying out such checks and inspections, the competent authorities of the host Member State shall consult the competent authorities of the home Member State. After such checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the institution or the stability of the financial system in the host Member State. The competent authorities of the home Member State shall duly take into account that information and those findings in determining their supervisory examination programme referred to in Article 99, also having regard to the stability of the financial system in the host Member State.

4 The on-the-spot checks and inspections of branches shall be conducted in accordance with the law of the Member State where the check or inspection is carried out.

## *Section II*

### *Exchange of information and professional secrecy*

#### *Article 53*

#### **Professional secrecy**

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

Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate 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 disclosed in civil or commercial proceedings.

2 Paragraph 1 shall not prevent the competent authorities from exchanging information with each other or transmitting information to the ESRB, EBA, or the European Supervisory Authority (European Securities and Markets Authority) ("ESMA") established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(24)</sup> in accordance with this Directive, with Regulation (EU) No 575/2013, with other Directives applicable to credit institutions, with Article 15 of Regulation (EU) No 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010. That information shall be subject to paragraph 1.

3 Paragraph 1 shall not prevent the competent authorities from publishing the outcome of stress tests carried out in accordance with Article 100 of this Directive or Article 32 of Regulation (EU) No 1093/2010 or from transmitting the outcome of stress tests to EBA for the purpose of the publication by EBA of the results of Union-wide stress tests.

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## Article 54

### Use of confidential information

Competent authorities receiving confidential information under Article 53 shall use it only in the course of their duties and only for any of the following purposes:

- (a) to check that the conditions governing access to the activity of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;
- (b) to impose penalties;
- (c) in an appeal against a decision of the competent authority including court proceedings pursuant to Article 72;
- (d) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of credit institutions.

### *[<sup>F1</sup>Article 54a*

Articles 53 and 54 shall be without prejudice to the powers of investigation conferred on the European Parliament pursuant to Article 226 TFEU.]

#### Textual Amendments

- F1** Inserted by [Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation \(EU\) No 1093/2010 \(Text with EEA relevance\)](#).

## Article 55

### Cooperation agreements

Member States and EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, may conclude cooperation agreements, providing for exchanges of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Article 56 and Article 57(1) of this Directive only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive are complied with. 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 only be disclosed with the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

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## Article 56

### Exchange of information between authorities

Article 53(1) and Article 54 shall not preclude the exchange of information between competent authorities within a Member State, between competent authorities in different Member States or between competent authorities and the following, in the discharge of their supervisory functions:

- (a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;
- (b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macroprudential rules;
- (c) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
- (d) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- (e) bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;
- (f) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

Article 53(1) and Article 54 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions.

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

## Article 57

### Exchange of information with oversight bodies

1 Notwithstanding Articles 53, 54 and 55, Member States may authorise exchange of information between the competent authorities and the authorities responsible for overseeing:

- a the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;
- b contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- c persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

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

- a that the information is exchanged for the purpose of performing the tasks referred to in paragraph 1;
- b that the information received is subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1);

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

3 Notwithstanding Articles 53, 54 and 55, Member States may, with the aim of strengthening the stability and integrity of the financial system, authorise the exchange of information between competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

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

- a that the information is exchanged for the purpose of detecting and investigating breaches of company law;
- b that the information received is subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1);
- c where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

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

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

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

#### *Article 58*

#### **Transmission of information concerning monetary, deposit protection, systemic and payment aspects**

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

- a ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;
- b contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- c where appropriate, other public authorities responsible for overseeing payment systems;
- d the ESRB, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ("EIOPA"), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>(25)</sup> and ESMA, where that information is relevant for the exercise of their tasks under Regulations (EU) No 1092/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

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Member States shall take the appropriate measures to remove obstacles preventing competent authorities from transmitting information in accordance with the first subparagraph.

2 Nothing in this Chapter shall prevent the authorities or bodies referred to in paragraph 1 from communicating to the competent authorities such information as the competent authorities may need for the purposes of Article 54.

3 Information received in accordance with paragraphs 1 and 2 shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

4 Member States shall take the necessary measures to ensure that, in an emergency situation as referred to in Article 114(1), the competent authorities communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks.

#### *Article 59*

#### **Transmission of information to other entities**

1 Notwithstanding Article 53(1) and Article 54, Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other departments of their central government administrations responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential supervision, and prevention and resolution of failing institutions. Without prejudice to paragraph 2 of this Article, persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

In an emergency situation as referred to in Article 114(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first subparagraph of this paragraph in all Member States concerned.

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

- a that the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;
- b that the information is strictly necessary for fulfilling the mandate referred to in point (a);
- c the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 53(1);
- d where the information originates in another Member State that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement.

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To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the entities referred to in the first subparagraph shall comply with the applicable national laws transposing Directive 95/46/EC.

#### *Article 60*

##### **Disclosure of information obtained by on-the-spot checks and inspections**

Member States shall ensure that information received under Article 52(3), Article 53(2) and Article 56 and information obtained by means of an on-the-spot check or inspection referred to in Article 52(1) and (2) shall not be disclosed under Article 59 save with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which such an on-the-spot check or inspection was carried out.

#### *Article 61*

##### **Disclosure of information concerning clearing and settlement services**

1 Nothing in this Chapter shall prevent the competent authorities of a Member State from communicating the information referred to in Articles 53, 54 and 55 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

2 Member States shall, however, ensure that information received under Article 53(2) shall not be disclosed in the circumstances referred to in paragraph 1 without the express consent of the competent authorities, which have disclosed it.

#### *Article 62*

##### **Processing of personal data**

The processing of personal data for the purposes of this Directive shall be carried out in accordance with Directive 95/46/EC and, where relevant, with Regulation (EC) No 45/2001.

#### *Section III*

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

#### *Article 63*

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

1 Member States shall provide that any person authorised in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits



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of annual accounts and consolidated accounts<sup>(26)</sup> and performing in an institution the tasks described in Article 51 of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies<sup>(27)</sup>, Article 37 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts<sup>(28)</sup> Article 73 of Directive 2009/65/EC, or any other statutory task, shall at least have a duty to report promptly to the competent authorities any fact or decision concerning that institution of which that person has become aware while carrying out that task, which is liable to:

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

Member States shall provide at least that a person referred to in the first subparagraph shall also have a duty to report any fact or decision of which that person becomes aware in the course of carrying out a task as described in the first subparagraph in an undertaking having close links resulting from a control relationship with the 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 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in any liability. Such disclosure shall be made simultaneously to the management body of the institution unless there are compelling reasons not to do so.

#### *Section IV*

### ***Supervisory powers, powers to impose penalties and right of appeal***

#### *Article 64*

### **Supervisory powers and powers to impose penalties**

1 Competent authorities shall be given all supervisory powers to intervene in the activity of institutions that are necessary for the exercise of their function, including in particular the right to withdraw an authorisation in accordance with Article 18, the powers required in accordance with Article 102 and the powers set out in Articles 104 and 105.

2 Competent authorities shall exercise their supervisory powers and their powers to impose penalties in accordance with this Directive and with national law, in any of the following ways:

- a directly;
- b in collaboration with other authorities;
- c under their responsibility by delegation to such authorities;
- d by application to the competent judicial authorities.

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## Article 65

### Administrative penalties and other administrative measures

1 Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

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

3 Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013 those powers shall include:

- a the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:
  - (i) institutions established in the Member State concerned;
  - (ii) financial holding companies established in the Member State concerned;
  - (iii) mixed financial holding companies established in the Member State concerned;
  - (iv) mixed-activity holding companies established in the Member State concerned;
  - (v) persons belonging to the entities referred to in points (i) to (iv);
  - (vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities;
- b the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including:
  - (i) the right to require the submission of documents;
  - (ii) to examine the books and records of the persons referred to in points (a)(i) to (vi) and take copies or extracts from such books and records;
  - (iii) to obtain written or oral explanations from any person referred to in points (a)(i) to (vi) or their representatives or staff; and

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- (iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
- c the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a) (i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.

#### *Article 66*

### **Administrative penalties and other administrative measures for breaches of authorisation requirements and requirements for acquisitions of qualifying holdings**

1 Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties and other administrative measures at least in respect of:

- a carrying out the business of taking deposits or other repayable funds from the public without being a credit institution in breach of Article 9;
- b commencing activities as a credit institution without obtaining authorisation in breach of Article 9;
- c acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or so that the credit institution would become its subsidiary, without notifying in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of Article 22(1);
- d disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25 or so that the credit institution would cease to be a subsidiary, without notifying in writing the competent authorities.

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

- a a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
- b an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- c in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;
- d in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;
- e administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined;

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- f suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.

Where the undertaking referred to in point (c) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

#### *Article 67*

#### **Other provisions**

- 1 This Article shall apply at least in any of the following circumstances:
  - a an institution has obtained an authorisation through false statements or any other irregular means;
  - b an institution, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) or Article 25, fails to inform the competent authorities of those acquisitions or disposals in breach of the first subparagraph of Article 26(1);
  - c an institution listed on a regulated market as referred to in the list to be published by ESMA in accordance with Article 47 of Directive 2004/39/EC does not, at least annually, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of the second subparagraph of Article 26(1) of this Directive;
  - d an institution fails to have in place governance arrangements required by the competent authorities in accordance with the national provisions transposing Article 74;
  - e an institution fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the competent authorities in breach of Article 99(1) of that Regulation;
  - f an institution fails to report or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in Article 101 of Regulation (EU) No 575/2013;
  - g an institution fails to report information or provides incomplete or inaccurate information about a large exposure to the competent authorities in breach of Article 394(1) of Regulation (EU) No 575/2013;
  - h an institution fails to report information or provides incomplete or inaccurate information on liquidity to the competent authorities in breach of Article 415(1) and (2) of Regulation (EU) No 575/2013;
  - i an institution fails to report information or provides incomplete or inaccurate information on the leverage ratio to the competent authorities in breach of Article 430(1) of Regulation (EU) No 575/2013;
  - j an institution repeatedly or persistently fails to hold liquid assets in breach of Article 412 of Regulation (EU) No 575/2013;
  - k an institution incurs an exposure in excess of the limits set out in Article 395 of Regulation (EU) No 575/2013;
  - l an institution is exposed to the credit risk of a securitisation position without satisfying the conditions set out in Article 405 of Regulation (EU) No 575/2013;

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- m an institution fails to disclose information or provides incomplete or inaccurate information in breach of Article 431(1), (2) and (3) or Article 451(1) of Regulation (EU) No 575/2013;
  - n an institution makes payments to holders of instruments included in the own funds of the institution in breach of Article 141 of this Directive [<sup>X1</sup>or in cases where Article 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;]
  - o an institution is found liable for a serious breach of the national provisions adopted pursuant to Directive 2005/60/EC;
  - p an institution allows one or more persons not complying with Article 91 to become or remain a member of the management body.
- 2 Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:
- a a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
  - b an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
  - c in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;
  - d subject to Article 65(2), a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions;
  - e in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;
  - f in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;
  - g administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

Where an undertaking referred to in point (e) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

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## Article 68

### Publication of administrative penalties

1 Member States shall ensure that the competent authorities publish on their official website at least any administrative penalties against which there is no appeal and which are imposed for breach of the national provisions transposing this Directive or of Regulation (EU) No 575/2013, including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties.

Where Member States permit publication of penalties against which there is an appeal, competent authorities shall, without undue delay, also publish on their official website information on the appeal status and outcome thereof.

2 Competent authorities shall publish the penalties on an anonymous basis, in a manner in accordance with national law, in any of the following circumstances:

- a where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- b where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- c where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 may be postponed for such a period of time.

3 Competent authorities shall ensure that information published under paragraphs 1 or 2 remains on their official website at least five years. Personal data shall be retained on the official website of the competent authority only for the period necessary, in accordance with the applicable data protection rules.

4 By 18 July 2015 EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2, in particular where there have been significant divergences between Member States in this respect. In addition, EBA shall submit a report to the Commission on any significant divergences in the duration of publication of penalties under national law.

## Article 69

### Exchange of information on penalties and maintenance of a central database by EBA

1 Subject to the professional secrecy requirements referred to in Article 53(1), the competent authorities shall inform EBA of all administrative penalties, including all permanent prohibitions, imposed under Articles 65, 66 and 67 including any appeal in relation thereto and the outcome thereof. EBA shall maintain a central database of administrative penalties communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by competent authorities.

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2 Where a competent authority assesses good repute for the purposes of Article 13(1), Article 16(3), Article 91(1) and Article 121, it shall consult the EBA database of administrative penalties. In the event of a change of status or a successful appeal, EBA shall delete or update relevant entries in the database on request by the competent authorities.

3 The competent authorities shall check, in accordance with national law, the existence of a relevant conviction in the criminal record of the person concerned. For those purposes, information shall be exchanged in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.

4 EBA shall maintain a website with links to each competent authority's publication of administrative penalties under Article 68 and shall show the time period for which each Member State publishes administrative penalties.

#### *Article 70*

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

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

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the natural or legal person responsible for the breach;
- (c) the financial strength of the natural or legal person responsible for the breach, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;
- (e) the losses for third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority;
- (g) previous breaches by the natural or legal person responsible for the breach;
- (h) any potential systemic consequences of the breach.

#### *Article 71*

### **Reporting of breaches**

1 Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 to competent authorities.

- 2 The mechanisms referred to in paragraph 1 shall include at least:
- a specific procedures for the receipt of reports on breaches and their follow-up;

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- b appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
  - c protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC;
  - d clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the institution, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.
- 3 Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

Such a channel may also be provided through arrangements provided for by social partners. The same protection as referred to in points (b), (c) and (d) of paragraph 2 shall apply.

#### *Article 72*

### **Right of appeal**

Member States shall ensure that decisions and measures taken pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive or to Regulation (EU) No 575/2013 are subject to a right of appeal. Member States shall also ensure that failure to take a decision within six months of submission of an application for authorisation which contains all the information required under the national provisions transposing this Directive, is subject to a right of appeal.

## *CHAPTER 2*

### ***Review Processes***

#### *Section I*

### ***Internal capital adequacy assessment process***

#### *Article 73*

### **Internal Capital**

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

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



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## Section II

### **Arrangements, processes and mechanisms of institutions**

#### Sub-Section 1

#### **General principles**

##### Article 74

#### **Internal governance and recovery and resolution plans**

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

2 The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities. The technical criteria established in Articles 76 to 95 shall be taken into account.

3 EBA shall issue guidelines on the arrangements, processes and mechanisms referred to in paragraph 1, in accordance with paragraph 2.

F24 .....

#### **Textual Amendments**

**F2** Deleted by [Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations \(EU\) No 1093/2010 and \(EU\) No 648/2012, of the European Parliament and of the Council \(Text with EEA relevance\).](#)

##### Article 75

#### **Oversight of remuneration policies**

1 Competent authorities shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h) and (i) of Article 450(1) of Regulation (EU) No 575/2013 and shall use it to benchmark remuneration trends and practices. The competent authorities shall provide EBA with that information.

2 EBA shall issue guidelines on sound remuneration policies which comply with the principles set out in Articles 92 to 95. The guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector<sup>(29)</sup>.

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

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

3 Competent authorities shall collect information on the number of natural persons per institution that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution. That information shall be forwarded to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected.

#### *Sub-Section 2*

### ***Technical criteria concerning the organisation and treatment of risks***

#### *Article 76*

### **Treatment of risks**

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

2 Member States shall ensure that the management body devotes sufficient time to consideration of risk issues. The management body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Directive and in Regulation (EU) No 575/2013 as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks. The institution shall establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

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

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

The risk committee shall review whether prices of liabilities and assets offered to clients take fully into account the institution's business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee shall present a remedy plan to the management body.

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Competent authorities may allow an institution which is not considered significant as referred to in the first subparagraph to combine the risk committee with the audit committee as referred to in Article 41 of Directive 2006/43/EC. Members of the combined committee shall have the knowledge, skills and expertise required for the risk committee and for the audit committee.

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

The management body in its supervisory function and, where one has been established, the risk committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive. In order to assist in the establishment of sound remuneration policies and practices, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

5 Member States shall, in accordance with the proportionality requirement laid down in Article 7(2) of Commission Directive 2006/73/EC<sup>(30)</sup>, ensure that institutions have a risk management function independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body.

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

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

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

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

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

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## Article 77

### **Internal Approaches for calculating own funds requirements**

1 Competent authorities shall encourage institutions that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach for calculating own funds requirements for credit risk where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties. This Article shall be without prejudice to the fulfilment of criteria laid down in Part Three, Title I, Chapter 3, Section 1 of Regulation (EU) No 575/2013.

2 Competent authorities shall, taking into account the nature, scale and complexity of institutions' activities, monitor that they do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

3 Competent authorities shall encourage institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, to develop internal specific risk assessment capacity and to increase use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

This Article shall be without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5, of Regulation (EU) No 575/2013.

4 EBA shall develop draft regulatory technical standards to further define the notion 'exposures to specific risk which are material in absolute terms' referred to in the first subparagraph of paragraph 3 and the thresholds for large numbers of material counterparties and positions in debt instruments of different issuers.

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

## Article 78

### **Supervisory benchmarking of internal approaches for calculating own funds requirements**

1 Competent authorities shall ensure that institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own fund requirements except for operational risk report the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios. Institutions shall submit the results of their calculations, together with an explanation of the methodologies used to produce them, to the competent authorities at an appropriate frequency, and at least annually.

2 Competent authorities shall ensure that institutions submit the results of the calculations referred to in paragraph 1 in accordance with the template developed by EBA

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in accordance with paragraph 8 to the competent authorities and to EBA. Where competent authorities choose to develop specific portfolios, they shall do so in consultation with EBA and ensure that institutions report the results of the calculations separately from the results of the calculations for EBA portfolios.

3 Competent authorities shall, on the basis of the information submitted by institutions in accordance with paragraph 1, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions. At least annually, competent authorities shall make an assessment of the quality of those approaches paying particular attention to:

- a those approaches that exhibit significant differences in own fund requirements for the same exposure;
- b approaches where there is particularly high or low diversity, and also where there is a significant and systematic under-estimation of own funds requirements.

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

4 Where particular institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, competent authorities shall investigate the reasons therefor and, if it can be clearly identified that an institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, shall take corrective action.

5 The competent authorities shall ensure that their decisions on the appropriateness of corrective actions as referred to in paragraph 4 comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

- a lead to standardisation or preferred methods;
- b create wrong incentives; or
- c cause herd behaviour.

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

7 EBA shall develop draft regulatory technical standards to specify:

- a the procedures for sharing assessments made in accordance with paragraph 3 between the competent authorities and with EBA;
- b the standards for the assessment made by competent authorities referred to 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 in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

8 EBA shall develop draft implementing technical standards to specify:

- a the template, the definitions and the IT-solutions to be applied in the Union for the reporting referred to in paragraph 2;

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- b the benchmark portfolio or portfolios referred to in paragraph 1.

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

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

9 The Commission shall, by 1 April 2015 and after consulting EBA, submit a report to the European Parliament and to the Council on the functioning of the benchmarking of internal models including the scope of the model. Where appropriate, the report shall be followed by a legislative proposal.

#### *Article 79*

### **Credit and counterparty risk**

Competent authorities shall ensure that:

- (a) credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established;
- (b) institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital;
- (c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems;
- (d) diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.

#### *Article 80*

### **Residual risk**

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

#### *Article 81*

### **Concentration risk**

Competent authorities shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same

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activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures.

#### *Article 82*

### **Securitisation risk**

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

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

#### *Article 83*

### **Market risk**

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

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

3 The internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

Institutions, which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities. Institutions shall also have such adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

Where using the treatment in Article 345 of Regulation (EU) No 575/2013, institutions shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

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#### *Article 84*

### **Interest risk arising from non-trading book activities**

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

#### *Article 85*

### **Operational risk**

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

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

#### *Article 86*

### **Liquidity risk**

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

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

3 Competent authorities shall ensure that institutions, taking into account the nature, scale and complexity of their activities, have liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.

Competent authorities shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.

Competent authorities shall take effective action where developments referred to in the second subparagraph may lead to individual institution or systemic instability.

Competent authorities shall inform EBA about any actions carried out pursuant to the third subparagraph.



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EBA shall make recommendations where appropriate in accordance with Regulation (EU) No 1093/2010.

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

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

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

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

8 Competent authorities shall ensure that institutions consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. For those purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation (EU) No 575/2013, in relation to which the institution acts as sponsor or provides material liquidity support.

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

10 Competent authorities shall ensure that institutions adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraph 8.

11 Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 8, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. For credit institutions, such operational steps shall include holding collateral immediately available for central bank funding. This includes holding collateral where necessary in the currency of another Member State, or the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

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### *Article 87*

#### **Risk of excessive leverage**

1 Competent authorities shall ensure that institutions have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 and mismatches between assets and obligations.

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

### *Sub-Section 3*

#### **Governance**

### *Article 88*

#### **Governance arrangements**

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

Those arrangements shall comply with the following principles:

- a the management body must have the overall responsibility for the institution and approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance;
- b the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;
- c the management body must oversee the process of disclosure and communications;
- d the management body must be responsible for providing effective oversight of senior management;
- e the chairman of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by competent authorities.

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

2 Member States shall ensure that institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a

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nomination committee composed of members of the management body who do not perform any executive function in the institution concerned.

The nomination committee shall:

- a identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected.

Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013;

- b periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes;
- c periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
- d periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole.

The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect.

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

#### *Article 89*

### **Country-by-country reporting**

1 From 1 January 2015 Member States shall require each institution to disclose annually, specifying, by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year:

- a name(s), nature of activities and geographical location;
- b turnover;
- c number of employees on a full time equivalent basis;
- d profit or loss before tax;
- e tax on profit or loss;
- f public subsidies received.

2 Notwithstanding paragraph 1, Member States shall require institutions to disclose the information referred to in paragraph 1(a), (b) and (c) for the first time on 1 July 2014.

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3 By 1 July 2014, all global systemically important institutions authorised within the Union, as identified internationally, shall submit to the Commission the information referred to in paragraph 1(d), (e) and (f) on a confidential basis. The Commission, after consulting EBA, EIOPA and ESMA, as appropriate, shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of such information, including the impact on competitiveness, investment and credit availability and the stability of the financial system. The Commission shall submit its report to the European Parliament and to the Council by 31 December 2014.

In the event that the Commission report identifies significant negative effects, the Commission shall consider making an appropriate legislative proposal for an amendment of the disclosure obligations set out in paragraph 1 and may, in accordance with point (h) of Article 145, decide to defer those obligations. The Commission shall review the necessity to extend deferral annually.

4 The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

5 To the extent that future Union legislative acts for disclosure obligations go beyond those laid down in this Article, this Article shall cease to apply and shall be deleted accordingly.

#### *Article 90*

### **Public disclosure of return on assets**

Institutions shall disclose in their annual report among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet.

#### *Article 91*

### **Management body**

1 Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experiences. Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8.

2 All members of the management body shall commit sufficient time to perform their functions in the institution.

3 The number of directorships which may be held by a member of the management body at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Unless representing the Member State, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time:

- a one executive directorship with two non-executive directorships;
- b four non-executive directorships.

4 For the purposes of paragraph 3, the following shall count as a single directorship:

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- a executive or non-executive directorships held within the same group;
- b executive or non-executive directorships held within:
  - (i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled; or
  - (ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding.

5 Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 3.

6 Competent authorities may authorise members of the management body to hold one additional non-executive directorship. Competent authorities shall regularly inform EBA of such authorisations.

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

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

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

10 Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.

11 Competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.

12 EBA shall issue guidelines on the following:

- a the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution;
- b the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 7;
- c the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 8;
- d the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 9;
- e the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 10.

EBA shall issue those guidelines by 31 December 2015.

13 This Article shall be without prejudice to provisions on the representation of employees in the management body as provided for by national law.

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## Article 92

### Remuneration policies

1 The application of paragraph 2 of this Article and of Articles 93, 94 and 95 shall be ensured by competent authorities for institutions at group, parent company and subsidiary levels, including those established in offshore financial centres.

2 Competent authorities shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, institutions comply with the following principles in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- a the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution;
- b the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest;
- c the institution's management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation;
- d the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- e staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- f the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 95 or, if such a committee has not been established, by the management body in its supervisory function;
- g the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting:
  - (i) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and
  - (ii) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

### Article 93

#### **Institutions that benefit from government intervention**

In the case of institutions that benefit from exceptional government intervention, the following principles shall apply in addition to those set out in Article 92(2):

- (a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;
- (b) the relevant competent authorities require institutions to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the institution;
- (c) no variable remuneration is paid to members of the management body of the institution unless justified.

### Article 94

#### **Variable elements of remuneration**

1 For variable elements of remuneration, the following principles shall apply in addition to, and under the same conditions as, those set out in Article 92(2):

- a where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the institution and when assessing individual performance, financial and non-financial criteria are taken into account;
- b the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;
- c the total variable remuneration does not limit the ability of the institution to strengthen its capital base;
- d guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective remuneration plans;
- e guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the institution has a sound and strong capital base and is limited to the first year of employment;
- f fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- g institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply:
  - (i) the variable component shall not exceed 100 % of the fixed component of the total remuneration for each individual. Member States may set a lower maximum percentage;

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- (ii) Member States may allow shareholders or owners or members of the institution to approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200 % of the fixed component of the total remuneration for each individual. Member States may set a lower maximum percentage.

Any approval of a higher ratio in accordance with the first subparagraph of this point shall be carried out in accordance with the following procedure:

- the shareholders or owners or members of the institution shall act upon a detailed recommendation by the institution giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;
- shareholders or owners or members of the institution shall act by a majority of at least 66 % provided that at least 50 % of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75 % of the ownership rights represented;
- the institution shall notify all shareholders or owners or members of the institution, providing a reasonable notice period in advance, that an approval under the first subparagraph of this point will be sought;
- the institution shall, without delay, inform the competent authority of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the competent authority that the proposed higher ratio does not conflict with the institution's obligations under this Directive and under Regulation (EU) No 575/2013, having regard in particular to the institution's own funds obligations;
- the institution shall, without delay, inform the competent authority of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the competent authorities shall use the information received to benchmark the practices of institutions in that regard. The competent authorities shall provide EBA with that information and EBA shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this indent and to ensure the consistency of the information collected;
- staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this point shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the institution;

- (iii) Member States may allow institutions to apply the discount rate referred to in the second subparagraph of this point to a maximum of 25 % of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years. Member States may set a lower maximum percentage.

EBA shall prepare and publish, by 31 March 2014, guidelines on the applicable notional discount rate taking into account all relevant factors



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including inflation rate and risk, which includes length of deferral. The EBA guidelines on the discount rate shall specifically consider how to incentivise the use of instruments which are deferred for a period of not less than five years;

- h payments relating to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct;
- i remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the institution including retention, deferral, performance and clawback arrangements;
- j the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required;
- k the allocation of the variable remuneration components within the institution shall also take into account all types of current and future risks;
- l a substantial portion, and in any event at least 50 %, of any variable remuneration shall consist of a balance of the following:
  - (i) shares or equivalent ownership interests, subject to the legal structure of the institution concerned or share-linked instruments or equivalent non-cash instruments, in the case of a non-listed institution;
  - (ii) where possible, other instruments within the meaning of Article 52 or 63 of Regulation (EU) No 575/2013 or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in accordance with point (m) and the portion of the variable remuneration component not deferred;

- m a substantial portion, and in any event at least 40 %, of the variable remuneration component is deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question.

Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question;

- n the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the institution as a whole, and justified on the basis of the performance of the institution, the business unit and the individual concerned.

Without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the institution occurs, taking into account both

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current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

Up to 100 % of the total variable remuneration shall be subject to malus or clawback arrangements. Institutions shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member:

- (i) participated in or was responsible for conduct which resulted in significant losses to the institution;
- (ii) failed to meet appropriate standards of fitness and propriety;
- o the pension policy is in line with the business strategy, objectives, values and long-term interests of the institution.

If the employee leaves the institution before retirement, discretionary pension benefits shall be held by the institution for a period of five years in the form of instruments referred to in point (l). Where an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (l) subject to a five-year retention period;

- p staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;
- q variable remuneration is not paid through vehicles or methods that facilitate the non-compliance with this Directive or Regulation (EU) No 575/2013.

2 EBA shall develop draft regulatory technical standards with respect to specifying the classes of instruments that satisfy the conditions set out in point (l)(ii) of paragraph 1 and with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on the institution's risk profile as referred to in Article 92(2).

EBA shall submit those draft regulatory technical standards to the Commission by 31 March 2014.

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

### *Article 95*

#### **Remuneration Committee**

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

2 Competent authorities shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the institution concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the institution concerned. If employee representation on the management body is provided for by national

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law, the remuneration committee shall include one or more employee representatives. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the institution and the public interest.

#### *Article 96*

### **Maintenance of a website on corporate governance and remuneration**

Institutions that maintain a website shall explain there how they comply with the requirements of Articles 88 to 95.

#### *Section III*

### ***Supervisory review and evaluation process***

#### *Article 97*

### **Supervisory review and evaluation**

- 1 Taking into account the technical criteria set out in Article 98, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation (EU) No 575/2013 and evaluate:
  - a risks to which the institutions are or might be exposed;
  - b risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010, or recommendations of the ESRB, where appropriate; and
  - c risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.
- 2 The scope of the review and evaluation referred to in paragraph 1 shall cover all requirements of this Directive and of Regulation (EU) No 575/2013.
- 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 institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.
- 4 Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 99(2).
- 5 Member States shall ensure that where a review shows that an institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 the competent authorities inform EBA without delay about the results of the review.

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## Article 98

### Technical criteria for the supervisory review and evaluation

1 In addition to credit, market and operational risks, the review and evaluation performed by competent authorities pursuant to Article 97 shall include at least:

- a the results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by institutions applying an internal ratings based approach;
- b the exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of Regulation (EU) No 575/2013 and Article 81 of this Directive;
- c the robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
- d the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;
- e the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;
- f the impact of diversification effects and how such effects are factored into the risk measurement system;
- g the results of stress tests carried out by institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;
- h the geographical location of institutions' exposures;
- i the business model of the institution;
- j the assessment of systemic risk, in accordance with the criteria set out in Article 97.

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

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

4 For the purposes of the determination to be made under Article 97(3) of this Directive, competent authorities shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of Regulation (EU) No 575/2013, enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

5 The review and evaluation performed by competent authorities shall include the exposure of institutions to the interest rate risk arising from non-trading activities. Measures

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shall be required at least in the case of institutions whose economic value declines by more than 20 % of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

6 The review and evaluation performed by competent authorities shall include the exposure of institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, competent authorities shall take into account the business model of those institutions.

7 The review and evaluation conducted by competent authorities shall include governance arrangements of institutions, their corporate culture and values, and the ability of members of the management body to perform their duties. In conducting that review and evaluation, competent authorities shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

#### *Article 99*

### **Supervisory examination programme**

1 The competent authorities shall, at least annually, adopt a supervisory examination programme for the institutions they supervise. Such programme shall take into account the supervisory review and evaluation process under Article 97. It shall contain the following:

- a an indication of how competent authorities intend to carry out their tasks and allocate their resources;
- b an identification of which institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3;
- c a plan for inspections at the premises used by an institution, including its branches and subsidiaries established in other Member States in accordance with Articles 52, 119 and 122.

2 Supervisory examination programmes shall include the following institutions:

- a institutions for which the results of the stress tests referred to in points (a) and (g) of Article 98(1) and Article 100, or the outcome of the supervisory review and evaluation process under Article 97, indicate significant risks to their ongoing financial soundness or indicate breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013;
- b institutions that pose systemic risk to the financial system;
- c any other institution for which the competent authorities deem it to be necessary.

3 Where appropriate under Article 97 the following measures shall, in particular, be taken if necessary:

- a an increase in the number or frequency of on-site inspections of the institution;
- b a permanent presence of the competent authority at the institution;
- c additional or more frequent reporting by the institution;
- d additional or more frequent review of the operational, strategic or business plans of the institution;
- e thematic examinations monitoring specific risks that are likely to materialise.

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4 Adoption of a supervisory examination programme by the competent authority of the home Member State shall not prevent the competent authorities of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions on their territory in accordance with Article 52(3).

#### *Article 100*

### **Supervisory stress testing**

1 The competent authorities shall carry out as appropriate but at least annually supervisory stress tests on institutions they supervise, to facilitate the review and evaluation process under Article 97.

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

#### *Article 101*

### **Ongoing review of the permission to use internal approaches**

1 Competent authorities shall review on a regular basis, and at least every 3 years, institutions' compliance with the requirements regarding approaches that require permission by the competent authorities before using such approaches for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013. They shall have particular regard to changes in an institution's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by an institution's internal approach, competent authorities shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

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

3 If for an internal market risk model numerous overshootings referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the model is not or is no longer sufficiently accurate, the competent authorities shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

4 If an institution has received permission to apply an approach that requires permission by the competent authorities before using such an approach for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013 but does not meet the requirements for applying that approach anymore, the competent authorities shall require the institution to either demonstrate to the satisfaction of the competent authorities that the effect of non-compliance is immaterial where applicable in accordance with Regulation (EU) No 575/2013 or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authorities shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

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

EBA shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, which contain benchmarks on the basis of that analysis.

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

#### *Section IV*

### ***Supervisory measures and powers***

#### *Article 102*

### **Supervisory measures**

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

- a the institution does not meet the requirements of this Directive or of Regulation (EU) No 575/2013;
- b the competent authorities have evidence that the institution is likely to breach the requirements of this Directive or of Regulation (EU) No 575/2013 within the following 12 months.

2 For the purposes of paragraph 1, the powers of competent authorities shall include those referred to in Article 104.

#### *Article 103*

### **Application of supervisory measures to institutions with similar risk profiles**

1 Where the competent authorities determine under Article 97 that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, they may apply the supervisory review and evaluation process referred to in Article 97 to those institutions in a similar or identical manner. For those purposes, Member States shall ensure that competent authorities have the necessary legal powers to impose requirements under this Directive and under Regulation (EU) No 575/2013 on those institutions in a similar or identical manner, including in particular the exercise of supervisory powers under Articles 104, 105 and 106.

The types of institution referred to in the first subparagraph may in particular be determined in accordance with the criteria referred to in Article 98(1)(j).

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

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## Article 104

### Supervisory powers

1 For the purposes of Article 97, Article 98(4), Article 101(4) and Articles 102 and 103 and the application of Regulation (EU) No 575/2013, competent authorities shall have at least the following powers:

- a to require institutions to hold own funds in excess of the requirements set out in Chapter 4 of this Title and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
- b to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 73 and 74;
- c to require institutions to present a plan to restore compliance with supervisory requirements pursuant to this Directive and to Regulation (EU) No 575/2013 and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- d to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- e to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- f to require the reduction of the risk inherent in the activities, products and systems of institutions;
- g to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- h to require institutions to use net profits to strengthen own funds;
- i to restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
- j to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- k to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- l to require additional disclosures.

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

- a an institution does not meet the requirement set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013;
- b risks or elements of risks are not covered by the own funds requirements set out in Chapter 4 of this Title or in Regulation (EU) No 575/2013;
- c the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;
- d the review referred to in Article 98(4) or Article 101(4) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;
- e the risks are likely to be underestimated despite compliance with the applicable requirements of this Directive and of Regulation (EU) No 575/2013; or



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- f an institution reports to the competent authority in accordance with Article 377(5) of Regulation (EU) No 575/2013 that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.
- 3 For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following:
- a the quantitative and qualitative aspects of an institution's assessment process referred to in Article 73;
  - b an institution's arrangements, processes and mechanisms referred to in Article 74;
  - c the outcome of the review and evaluation carried out in accordance with Article 97 or 101;
  - d the assessment of systemic risk.

#### *Article 105*

### **Specific liquidity requirements**

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

- (a) the particular business model of the institution;
- (b) the institution's arrangements, processes and mechanisms referred to in Section II and in particular in Article 86;
- (c) the outcome of the review and evaluation carried out in accordance with Article 97;
- (d) systemic liquidity risk that threatens the integrity of the financial markets of the Member State concerned.

In particular, without prejudice to Article 67, competent authorities should consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at national or Union level.

#### *Article 106*

### **Specific publication requirements**

- 1 Member States shall empower the competent authorities to require institutions:
- a to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for publication;
  - b to use specific media and locations for publications other than the financial statements.
- 2 Member States shall empower competent authorities to require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description

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of their legal structure and governance and organisational structure of the group of institutions in accordance with Article 14(3), Article 74(1) and Article 109(2).

#### *Article 107*

##### **Consistency of supervisory reviews, evaluations and supervisory measures**

- 1 Competent authorities shall inform EBA of:
  - a the functioning of their review and evaluation process referred to in Article 97;
  - b the methodology used to base decisions referred to in Articles 98, 100, 101, 102, 104 and 105 on the process referred to in point (a).

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

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

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

- 3 EBA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 to further specify, in a manner that is appropriate to the size, the structure and the internal organisation of institutions and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraph 1 of this Article and in Article 97 and for the assessment of the organisation and treatment of the risks referred to in Articles 76 to 87, in particular relating to concentration risk in accordance with Article 81.

#### *Section V*

##### ***Level of application***

#### *Article 108*

##### **Internal capital adequacy assessment process**

- 1 Competent authorities shall require every institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every institution not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013, to meet the obligations set out in Article 73 of this Directive on an individual basis.

Competent authorities may waive the requirements set out in Article 73 of this Directive in regard to a credit institution in accordance with Article 10 of Regulation (EU) No 575/2013.

Where the competent authorities waive the application of own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013, the requirements of Article 73 of this Directive shall apply on an individual basis.

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2 Competent authorities shall require parent institutions in a Member State, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013 to meet the obligations set out in Article 73 of this Directive on a consolidated basis.

3 Competent authorities shall require institutions controlled by a parent financial holding company or a parent mixed financial holding company in a Member State, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013 to meet the obligations set out in Article 73 of this Directive on the basis of the consolidated situation of that financial holding company or mixed financial holding company.

Where more than one institution is controlled by a parent financial holding company or a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the institution to which supervision on a consolidated basis applies in accordance with Article 111.

4 Competent authorities shall require subsidiary institutions to apply the requirements set out in Article 73 on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in such an undertaking.

#### *Article 109*

### **Institutions' arrangements, processes and mechanisms**

1 Competent authorities shall require institutions to meet the obligations set out in Section II of this Chapter on an individual basis, unless competent authorities make use of the derogation provided for in Article 7 of Regulation (EU) No 575/2013.

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

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

#### *Article 110*

### **Review and evaluation and supervisory measures**

1 Competent authorities shall apply the review and evaluation process referred to in Section III of this Chapter and the supervisory measures referred to in Section IV of this Chapter

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in accordance with the level of application of the requirements of Regulation (EU) No 575/2013 set out in Part One, Title II of that Regulation.

2 Where the competent authorities waive the application of own funds requirements on a consolidated basis as provided for in Article 15 of Regulation (EU) No 575/2013, the requirements of Article 97 of this Directive shall apply to the supervision of investment firms on an individual basis.

## CHAPTER 3

### *Supervision on a consolidated basis*

#### *Section I*

#### *Principles for conducting supervision on a consolidated basis*

#### *Article 111*

#### **Determination of the consolidating supervisor**

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

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

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

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

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

5 In particular cases, the competent authorities may, by common agreement, waive the criteria referred to in paragraphs 3 and 4 if their application would be inappropriate, taking

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into account the institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. In such cases, before taking their decision, the competent authorities shall give the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company, or institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

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

### *Article 112*

#### **Coordination of supervisory activities by the consolidating supervisor**

1 In addition to the obligations imposed by this Directive and by Regulation (EU) No 575/2013, the consolidating supervisor shall carry out the following tasks:

- a coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;
- b planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Title VII, Chapter 3, in cooperation with the competent authorities involved;
- c planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management.

2 Where the consolidating supervisor fails to carry out the tasks referred to in paragraph 1 or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in paragraph 1, any of the competent authorities concerned may refer the matter to EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

3 The planning and coordination of supervisory activities referred to in paragraph 1(c) of this Article includes exceptional measures referred to in Article 117(1)(d) and Article 117(4)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

### *Article 113*

#### **Joint decisions on institution-specific prudential requirements**

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

- a on the application of Articles 73 and 97 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation

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- and risk profile and the required level of own funds for the application of Article 104(1) (a) to each entity within the group of institutions and on a consolidated basis;
- b on measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of this Directive.
- 2 The joint decisions referred to in paragraph 1 shall be reached:
- a for the purpose of paragraph 1(a), within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Articles 73 and 97 and Article 104(1)(a) to the other relevant competent authorities;
  - b for the purposes of paragraph 1(b), within one month after submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Articles 86 and 105.

The joint decisions shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 73 and 97.

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

3 In the absence of such a joint decision between the competent authorities within the time periods referred to in paragraph 2, a decision on the application of Articles 73, 86 and 97, Article 104(1)(a) and Article 105 shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the time periods referred to in paragraph 2, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The time periods referred to in paragraph 2 shall be deemed the conciliation periods within the meaning of Regulation (EU) No 1093/2010. 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 one-month period, as applicable, or after a joint decision has been reached.

The decision on the application of Articles 73, 86 and 97, Article 104(1)(a) and Article 105 shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or a EU parent financial holding company or EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of any of the time periods referred to in paragraph 2, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take their decision in conformity with the decision of EBA. The time periods referred to in paragraph 2 shall be deemed the conciliation periods 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 four-month or one-month period, as applicable, or after a joint decision has been reached.

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

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

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

The joint decisions referred to in the paragraph 1 and any decision taken in the absence of a joint decision in accordance with paragraph 3, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent institution or, an EU parent financial holding company or EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 104(1)(a) and Article 105. In the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.

5 EBA shall develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this Article, with regard to the application of Articles 73, 86 and 97, Article 104(1)(a) and Article 105 with a view to facilitating joint decisions.

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

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

#### *Article 114*

### **Information requirements in emergency situations**

1 Where an emergency situation, including a situation as described 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 51 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Articles 54 and 58 of Directive 2004/39/EC, alert as soon as is practicable, EBA and the authorities referred to in Article 58(4) and Article 59 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities.

If an ESCB central bank becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Article 112, and EBA.

Where possible, the competent authority and the authority referred to in Article 58(4) shall use existing channels of communication.

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

### *Article 115*

#### **Coordination and cooperation arrangements**

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

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

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

### *Article 116*

#### **Colleges of supervisors**

1 The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 112 and 113 and Article 114(1) and subject to the confidentiality requirements of paragraph 2 of this Article and to Union law, ensure appropriate coordination and cooperation with relevant third-country supervisory 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 appropriate and shall be considered to be 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 between each other and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;
- b agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- c determining supervisory examination programmes referred to in Article 99 based on a risk assessment of the group in accordance with Article 97;
- d increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 114 and Article 117(3);



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- e consistently applying the prudential requirements under this Directive and under Regulation (EU) No 575/2013 across all entities within a group of institutions without prejudice to the options and discretions available in Union law;
- f applying Article 112(1)(c) taking into account the work of other forums that may be established in that area.

2 The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Chapter 1, Section II of this Directive, and Articles 54 and 58 of Directive 2004/39/EC shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive and under Regulation (EU) No 575/2013.

3 The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 115, determined after consulting competent authorities concerned by the consolidating supervisor.

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

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

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

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

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

6 The competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company and the competent authorities of a host Member State where significant branches as referred to in Article 51 are established, ESCB central banks as appropriate, and third countries' supervisory authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Chapter 1, Section II of this Directive and where applicable, Articles 54 and 58 of Directive 2004/39/EC, may participate in colleges of supervisors.

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

8 The decision of the consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential

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impact on the stability of the financial system in the Member States concerned as referred to in Article 7 and the obligations referred to in Article 51(2).

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

In the event of a disagreement between competent authorities on the functioning of supervisory colleges, any of the competent authorities concerned may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the functioning of supervisory colleges under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

#### *Article 117*

### **Cooperation obligations**

1 The competent authorities shall cooperate closely with each other. They shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under this Directive and Regulation (EU) No 575/2013. In that regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

The competent authorities shall cooperate with EBA for the purposes of this Directive and Regulation (EU) No 575/2013, 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, under Regulation (EU) No 575/2013, and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

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

In particular, consolidating supervisors of EU parent institutions and institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of 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:

- a identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 14(3), Article 74(1) and Article 109(2), and of the competent authorities of the regulated entities in the group;

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- b procedures for the collection of information from the institutions in a group, and the checking of that information;
  - c adverse developments in institutions or in other entities of a group, which could seriously affect the institutions;
  - d significant penalties and exceptional measures taken by competent authorities in accordance with this Directive, including the imposition of a specific own fund requirement under Article 104 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.
- 2 The competent authorities may refer to EBA any of the following situations:
- a where a competent authority has not communicated essential information;
  - b where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

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

EBA may also assist the competent authorities in developing consistent cooperation practices on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

3 The competent authorities responsible for the supervision of institutions controlled by an EU parent institution shall where possible contact the consolidating supervisor when they need information regarding the implementation of approaches and methodologies set out in this Directive and in Regulation (EU) No 575/2013 that may already be available to the consolidating supervisor.

- 4 The competent authorities concerned shall, before taking a decision, consult each other with regard to the following items, [<sup>X1</sup>where such a decision is 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 significant penalties or exceptional measures taken by competent authorities, including the imposition of a specific own funds requirement under Article 104 and the imposition of any limitation on the use of the advanced measurement approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.

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

However, a competent authority may decide not to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the other competent authorities after taking its decision.

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#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

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## *Article 118*

### **Checking information concerning entities in other Member States**

Where, in applying this Directive and Regulation (EU) No 575/2013, the competent authorities of one Member State wish in specific cases to check the information concerning an institution, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary as referred to in Article 125 or a subsidiary as referred to in Article 119(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that check carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the check themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the check where it does not carry out the check itself.

## *Section II*

### ***Financial holding companies, mixed financial holding companies and mixed-activity holding companies***

## *Article 119*

### **Inclusion of holding companies in consolidated supervision**

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

2 Where a subsidiary that is an institution is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013, the competent authorities of the Member State in which that subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that subsidiary.

3 Member States shall enable their competent authorities responsible for exercising supervision on a consolidated basis to ask the subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 122. In such a case, the procedures for transmitting and checking the information set out in that Article shall apply.

## *Article 120*

### **Supervision of mixed financial holding companies**

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

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for the supervision of subsidiaries, apply only 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 provisions of this Directive relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC.

3 The consolidating supervisor shall inform EBA and EIOPA of the decisions taken under paragraphs 1 and 2.

4 EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines aiming to converge supervisory practices and shall, within three years of the adoption of those guidelines, develop draft regulatory technical standards for the same purpose.

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 Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

#### *Article 121*

### **Qualification of directors**

Member States shall require that the members of the management body of a financial holding company or mixed financial holding company be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

#### *Article 122*

### **Requests for information and inspections**

1 Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the authorisation and supervision of those institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are institutions, require them to supply any information which would be relevant for the purpose of supervising those 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 check 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 set out in Article 125 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 a subsidiary that is an institution is situated, on-the-spot check of information shall be carried out in accordance with the procedure set out in Article 118.

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### *Article 123*

#### **Supervision**

1 Without prejudice to Part Four of Regulation (EU) No 575/2013, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of those institutions shall exercise general supervision over transactions between the institution and the mixed-activity holding company and its subsidiaries.

2 Competent authorities shall require institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the institution of any significant transaction with those entities other than the one referred to in Article 394 of Regulation (EU) No 575/2013. Those procedures and significant transactions shall be subject to overview by the competent authorities.

### *Article 124*

#### **Exchange of information**

1 Member States shall 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 as referred to in Article 119(3), of any information which would be relevant for the purposes of supervision in accordance with Article 110 and Chapter 3.

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

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 111, 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 those authorities.

3 Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not 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 122 on the understanding that the collection or possession of information does not imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its

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subsidiaries which are not credit institutions, or to subsidiaries as referred to in Article 119(3).

#### *Article 125*

### **Cooperation**

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

2 Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive for credit institutions or under Directive 2004/39/EC for investment firms.

3 The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 11 of Regulation (EU) No 575/2013. Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.

#### *Article 126*

### **Penalties**

In accordance with Chapter 1, Section IV of this Title, Member States shall ensure that administrative penalties or other administrative measures aiming to end 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 breach laws, regulations or administrative provisions transposing this Chapter.

#### *Article 127*

### **Assessment of equivalence of third countries' consolidated supervision**

1 Where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under Articles 111, the competent authorities shall assess whether the institution is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by the principles set out in this Directive and the requirements of Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013.

The assessment 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

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its own initiative. That competent authority shall consult the other competent authorities involved.

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

The competent authority carrying out the assessment 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 this Directive and Regulation (EU) No 575/2013 to the institution *mutatis mutandis* or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of institutions.

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

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

The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as set out in this Chapter and shall be notified to the other competent authorities involved, to EBA and to the Commission.

## *CHAPTER 4*

### ***Capital Buffers***

#### *Section I*

#### ***Buffers***

#### *Article 128*

#### **Definitions**

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

- (1) 'capital conservation buffer' means the own funds that an institution is required to maintain in accordance with Article 129;



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- (2) 'institution-specific countercyclical capital buffer' means the own funds that an institution is required to maintain in accordance with Article 130;
- (3) 'G-SII buffer' means the own funds that are required to be maintained in accordance with Article 131(4);
- (4) 'O-SII buffer' means the own funds that may be required to be maintained in accordance with Article 131(5);
- (5) 'systemic risk buffer' means the own funds that an institution is or may be required to maintain in accordance with Article 133;
- (6) 'combined buffer requirement' means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:
  - (a) an institution-specific countercyclical capital buffer;
  - (b) a G-SII buffer;
  - (c) an O-SII buffer;
  - (d) a systemic risk buffer;
- (7) 'countercyclical buffer rate' means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Article 136, Article 137 or by a relevant third-country authority, as the case may be;
- (8) 'domestically authorised institution' means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting the countercyclical buffer rate;
- (9) 'buffer guide' means a benchmark buffer rate calculated in accordance with Article 135(1).

This Chapter shall not apply to investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to Directive 2004/39/EC.

#### *Article 129*

### **Requirement to maintain a capital conservation buffer**

1 Member States shall require institutions to maintain in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of Regulation (EU) No 575/2013, a capital conservation buffer of Common Equity Tier 1 capital equal to 2,5 % of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

2 By way of derogation from paragraph 1, a Member State may exempt small and medium-sized investment firms from the requirements set out in that paragraph if such an exemption does not threaten the stability of the financial system of that Member State.

The decision on the application of such an exemption shall be fully reasoned, shall include an explanation as to why the exemption does not threaten the stability of the

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financial system of the Member State and shall contain the exact definition of the small and medium-sized investment firms which are exempt.

Member States which decide to apply such an exemption shall notify the Commission, the ESRB, EBA and the competent authorities of the Member States concerned accordingly.

3 For the purpose of paragraph 2, the Member State shall designate the authority in charge of the application of this Article. That authority shall be the competent authority or the designated authority.

4 For the purpose of paragraph 2, investment firms shall be categorised as small or medium-sized in accordance with Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>(31)</sup>.

5 Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 1 of this Article to meet any requirements imposed under Article 104.

6 Where an institution fails to meet fully the requirement under paragraph 1 of this Article, it shall be subject to the restrictions on distributions set out in Article 141(2) and (3).

#### *Article 130*

#### **Requirement to maintain an institution-specific countercyclical capital buffer**

1 Member States shall require institutions to maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with Article 140 of this Directive on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

2 By way of derogation from paragraph 1, a Member State may exempt small and medium-sized investment firms from the requirements set out in that paragraph if such an exemption does not threaten the stability of the financial system of that Member State.

The decision on the application of such an exemption shall be fully reasoned, shall include an explanation as to why the exemption does not threaten the stability of the financial system of the Member State and shall contain the exact definition of small and medium-sized investment firms which are exempt.

Member States which decide to apply such an exemption shall notify the Commission, the ESRB, EBA and the competent authorities of the Member States concerned accordingly.

3 For the purpose of paragraph 2, the Member State shall designate the authority in charge of the application of this Article. That authority shall be the competent authority or the designated authority.

4 For the purpose of paragraph 2, investment firms shall be categorised as small and medium-sized in accordance with Recommendation 2003/361/EC.

5 Institutions shall meet the requirement imposed by paragraph 1 with Common Equity Tier 1 capital, which shall be additional to any Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of Regulation (EU) No 575/2013, the

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requirement to maintain a capital conservation buffer under Article 129 of this Directive and any requirement imposed under Article 104 of this Directive.

6 Where an institution fails to meet fully the requirement under paragraph 1 of this Article, it shall be subject to the restrictions on distributions set out in Article 141(2) and (3).

### *Article 131*

#### **Global and other systemically important institutions**

1 Member States shall designate the authority in charge of identifying, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within their jurisdiction. That authority shall be the competent authority or the designated authority. Member States may designate more than one authority. G-SIIs shall be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution. G-SIIs shall not be an institution that is a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company. O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution.

2 The identification methodology for G-SIIs shall be based on the following categories:

- a size of the group;
- b interconnectedness of the group with the financial system;
- c substitutability of the services or of the financial infrastructure provided by the group;
- d complexity of the group;
- e cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

Each category shall receive an equal weighting and shall consist of quantifiable indicators.

The methodology shall produce an overall score for each entity as referred to in paragraph 1 assessed, which allows G-SIIs to be identified and allocated into a sub-category as described in paragraph 9.

3 O-SIIs shall be identified in accordance with paragraph 1. Systemic importance shall be assessed on the basis of at least any of the following criteria:

- a size;
- b importance for the economy of the Union or of the relevant Member State;
- c significance of cross-border activities;
- d interconnectedness of the institution or group with the financial system.

EBA, after consulting the ESRB, shall publish guidelines by 1 January 2015 on the criteria to determine the conditions of application of this paragraph in relation to the assessment of O-SIIs. Those guidelines shall take into account international frameworks for domestic systemically important institutions and Union and national specificities.

4 Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

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5 The competent authority or designated authority may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 2 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, taking into account the criteria for the identification of the O-SII. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

6 When requiring an O-SII buffer to be maintained the competent authority or the designated authority shall comply with the following:

- a the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;
- b the O-SII buffer must be reviewed by the competent authority or the designated authority at least annually.

7 Before setting or resetting an O-SII buffer, the competent authority or the designated authority shall notify the Commission, the ESRB, EBA, and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in paragraph 5. That notification shall describe in detail:

- a the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;
- b an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the Member State;
- c the O-SII buffer rate that the Member State wishes to set.

8 Without prejudice to Article 133 and paragraph 5 of this Article, where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the O-SII shall not exceed the higher of:

- a 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
- b the G-SII or O-SII buffer rate applicable to the group at consolidated level.

9 There shall be at least five subcategories of G-SIIs. The lowest boundary and the boundaries between each subcategory shall be determined by the scores under the identification methodology. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category. For the purposes of this paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market. The lowest sub-category shall be assigned a G-SII buffer of 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the buffer assigned to each sub-category shall increase in gradients of 0,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 up to and including the fourth sub-category. The highest sub-category of the G-SII buffer shall be subject to a buffer of 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

10 Without prejudice to paragraphs 1 and 9, the competent authority or the designated authority may, in the exercise of sound supervisory judgment:

- a re-allocate a G-SII from a lower sub-category to a higher sub-category;
- b allocate an entity as referred to in paragraph 1 that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

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11 Where the competent authority or the designated authority takes a decision in accordance with paragraph 10(b), it shall notify EBA accordingly, providing reasons.

12 The competent authority or the designated authority shall notify the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, to the Commission, the ESRB and EBA, and shall disclose their names to the public. The competent authorities or designated authorities shall disclose to the public the sub-category to which each G-SII is allocated.

The competent authority or the designated authority shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the Commission, the ESRB and EBA and disclose the updated list of identified systemically important institutions to the public and shall disclose to the public the sub-category into which each identified G-SII is allocated.

13 Systemically important institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirements under paragraphs 4 and 5 to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013 and Articles 129 and 130 of this Directive and any requirements imposed under Articles 102 and 104 of this Directive.

14 Where a group, on a consolidated basis, is subject to the following, the higher buffer shall apply in each case:

- a a G-SII buffer and an O-SII buffer;
- b a G-SII buffer, an O-SII buffer and a systemic risk buffer in accordance with Article 133.

Where an institution, on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with Article 133, the higher of the two shall apply.

15 Notwithstanding paragraph 14, where the systemic risk buffer applies to all exposures located in the Member State that sets that buffer to address the macroprudential risk of that Member State, but does not apply to exposures outside the Member State, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with this Article.

16 Where paragraph 14 applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

17 Where paragraph 15 applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

18 EBA shall develop draft regulatory technical standards to specify, for the purposes of this Article, the methodology in accordance with which the competent authority or the designated authority shall identify an EU parent institution or EU parent financial holding company or EU parent mixed financial holding company as a G-SII and to specify the methodology for the definition of the sub-categories and the allocation of G-SIIs in sub-categories based on their systemic significance, taking into account any internationally agreed standards.

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

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

#### *Article 132*

### **Reporting**

1 The Commission shall, by 31 December 2015, submit a report to the European Parliament and to the Council on the basis of international developments and EBA opinion on the possibility of extending the framework for G-SIIs to additional types of systemically important institutions within the Union, accompanied by a legislative proposal where appropriate.

2 The Commission shall, by 31 December 2016, after consulting the ESRB and EBA, submit a report to the European Parliament and to the Council on whether the provisions relating to G-SIIs as set out in Article 131 should be amended, accompanied by a legislative proposal where appropriate. Any such proposal shall take due account of international regulatory developments and shall review, where appropriate, the process of allocating institution-specific O-SII buffers within a group taking into consideration any possible undue impact on the implementation of structural separation within Member States.

#### *Article 133*

### **Requirement to maintain a systemic risk buffer**

1 Each Member State may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector, in order to prevent and mitigate long term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No 575/2013, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State.

2 For the purpose of paragraph 1, the Member State shall designate the authority in charge of setting the systemic risk buffer and of identifying the sets of institutions to which it applies. This authority shall be the competent authority or the designated authority.

[<sup>X13</sup> For the purpose of paragraph 1 of this Article, institutions may be required to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirements imposed by Article 92 of Regulation (EU) No 575/2013, a systemic risk buffer of Common Equity Tier 1 capital of at least 1 % based on the exposures to which the systemic risk buffer applies in accordance with paragraph 8 of this Article, on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Part One, Title II of that Regulation. The relevant competent or designated authority may require institutions to maintain the systemic risk buffer on an individual and on a consolidated level.]

4 Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 3 to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013 and Articles 129 and 130 of this Directive and any requirements imposed under Articles 102 and 104 of this Directive. Where a group which has been identified

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as a systemically important institution which is subject to a G-SII buffer or an O-SII buffer on a consolidated basis in accordance with Article 131 is also subject to a systemic risk buffer on a consolidated basis in accordance with this Article, the higher of the buffers shall apply. Where an institution, on an individual or sub-consolidated basis, is subject to an O-SII buffer in accordance with Article 131 and a systemic risk buffer in accordance with this Article, the higher of the two shall apply.

5 Notwithstanding paragraph 4, where the systemic risk buffer applies to all exposures located in the Member State that sets that buffer to address the macroprudential risk of that Member State, but does not apply to exposures outside the Member State, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with Article 131.

6 Where paragraph 4 applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

7 Where paragraph 5 applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

8 The systemic risk buffer may apply to exposures located in the Member State that sets that buffer and may also apply to exposures in third countries. The systemic risk buffer may also apply to exposures located in other Member States, subject to paragraphs 15 and 18.

9 The systemic risk buffer shall apply to all institutions, or one or more subsets of those institutions, for which the authorities of the Member State concerned are competent in accordance with this Directive and shall be set in gradual or accelerated steps of adjustment of 0,5 percentage point. Different requirements may be introduced for different subsets of the sector.

10 When requiring a systemic risk buffer to be maintained the competent authority or the designated authority shall comply with the following:

- a the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;
- b the systemic risk buffer must be reviewed by the competent authority or the designated authority at least every second year.

11 Before setting or resetting a systemic risk buffer rate of up to 3 %, the competent authority or the designated authority shall notify the Commission, the ESRB, EBA and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in paragraph 16. If the buffer applies to exposures located in third countries the competent authority or the designated authority shall also notify the supervisory authorities of those third-countries. That notification shall describe in detail:

- a the systemic or macroprudential risk in the Member State;
- b the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
- c the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;

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- d an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Member State;
- e the justification for why none of the existing measures in this Directive or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;
- f the systemic risk buffer rate that the Member State wishes to require.

12 Before setting or resetting a systemic risk buffer rate of above 3 %, the competent authority or the designated authority shall notify the Commission, the ESRB, EBA and the competent and designated authorities of the Member States concerned. If the buffer applies to exposures located in third-countries the competent authority or the designated authority shall also notify the supervisory authorities of those third-countries. That notification shall describe in detail:

- a the systemic or macroprudential risk in the Member State;
- b the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
- c the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- d an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Member State;
- e the justification for why none of the existing measures in this Directive or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;
- f the systemic risk buffer rate that the Member State wishes to require.

13 The competent authority or the designated authority may from 1 January 2015 set or reset a systemic risk buffer rate that applies to exposures located in that Member State and may also apply to exposures in third countries of up to 5 % and follow the procedures set out in paragraph 11. When setting or resetting a systemic risk buffer rate above 5 % the procedures set out in paragraph 12 shall be complied with.

14 Where the systemic risk buffer rate is to be set between 3 % and 5 % in accordance with paragraph 13, the competent authority or the designated authority of the Member State that sets that buffer shall always notify the Commission thereof and shall await the opinion of the Commission before adopting the measures in question.

Where the opinion of the Commission is negative, the competent authority or the designated authority of the Member State that sets that buffer shall comply with that opinion or give reasons for not so doing.

Where one subset of the financial sector is a subsidiary whose parent is established in another Member State, the competent authority or the designated authority shall notify the authorities of that Member State, the Commission and the ESRB. Within one month of the notification, the Commission and the ESRB shall issue a recommendation on the measures taken in accordance with this paragraph. Where the authorities disagree and in the case of a negative recommendation of both the Commission and the ESRB, the competent authority or the designated authority may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the buffer for those exposures shall be suspended until EBA has taken a decision.



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15 Within one month of the notification referred to in paragraph 12, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

Within two months of notification, the Commission, taking into account the assessment of the ESRB and EBA, if relevant, and if it is satisfied that the systemic risk buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an implementing act authorising the competent authority or the designated authority to adopt the proposed measure.

16 Each competent authority or designated authority shall announce the setting of the systemic risk buffer by publication on an appropriate website. The announcement shall include at least the following information:

- a the systemic risk buffer rate;
- b the institutions to which the systemic risk buffer applies;
- c a justification for the systemic risk buffer;
- d the date from which the institutions must apply the setting or resetting of the systemic risk buffer; and
- e the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

If the publication referred to in point (c) could jeopardise the stability of the financial system, the information under point (c) shall not be included in the announcement.

17 Where an institution fails to meet fully the requirement under paragraph 1 of this Article, it shall be subject to the restrictions on distributions set out in Article 141(2) and (3).

Where the application of those restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution in the light of the relevant systemic risk, the competent authorities may take additional measures in accordance with Article 64.

18 Following notification as referred to in paragraph 11, Member States may apply the buffer to all exposures. Where the competent authority or the designated authority decides to set the buffer up to 3 % on the basis of exposures in other Member States, the buffer shall be set equally on all exposures located within the Union.

#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

### *Article 134*

#### **Recognition of a systemic risk buffer rate**

1 Other Member States may recognise the systemic risk buffer rate set in accordance with Article 133 and may apply that buffer rate to domestically authorised institutions for the exposures located in the Member State that sets that buffer rate.

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2 If Member States recognise the systemic risk buffer rate for domestically authorised institutions they shall notify the Commission, the ESRB, EBA and the Member State that sets that systemic risk buffer rate.

3 When deciding whether to recognise a systemic risk buffer rate, the Member State shall take into consideration the information presented by the Member State that sets that buffer rate in accordance with Article 133(11), (12) or (13).

4 A Member State that sets a systemic risk buffer rate in accordance with Article 133 may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which may recognise the systemic risk buffer rate.

## *Section II*

### ***Setting and calculating countercyclical capital buffers***

#### *Article 135*

#### **ESRB guidance on setting countercyclical buffer rates**

1 The ESRB may give, by way of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, guidance to authorities designated by Member States under Article 136(1) on setting countercyclical buffer rates, including the following:

- a principles to guide designated authorities when exercising their judgment as to the appropriate countercyclical buffer rate, ensure that authorities adopt a sound approach to relevant macro-economic cycles and promote sound and consistent decision-making across Member States;
- b general guidance on:
  - (i) the measurement and calculation of the deviation from long term trends of ratios of credit to gross domestic product (GDP);
  - (ii) the calculation of buffer guides required by Article 136(2);
- c guidance on variables that indicate the build-up of system-wide risk associated with periods of excessive credit growth in a financial system, in particular the relevant credit-to-GDP ratio and its deviation from the long-term trend, and on other relevant factors, including the treatment of economic developments within individual sectors of the economy, that should inform the decisions of designated authorities on the appropriate countercyclical buffer rate under Article 136;
- d guidance on variables, including qualitative criteria, that indicate that the buffer should be maintained, reduced or fully released.

2 Where it issues a recommendation under paragraph 1, the ESRB shall duly take into account the differences between Member States and in particular the specificities of Member States with small and open economies.

3 Where it has issued a recommendation under paragraph 1, the ESRB shall keep it under review and update it, where necessary, in the light of experience of setting buffers under this Directive or of developments in internationally agreed practices.

## Article 136

### Setting countercyclical buffer rates

1 Each Member State shall designate a public authority or body (a 'designated authority') that is responsible for setting the countercyclical buffer rate for that Member State.

2 Each designated authority shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgment in setting the countercyclical buffer rate in accordance with paragraph 3. The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Member State and shall duly take into account specificities of the national economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia:

- a an indicator of growth of levels of credit within that jurisdiction and, in particular, an indicator reflective of the changes in the ratio of credit granted in that Member State to GDP;
- b any current guidance maintained by the ESRB in accordance with Article 135(1)(b).

3 Each designated authority shall assess and set the appropriate countercyclical buffer rate for its Member State on a quarterly basis, and in so doing shall take into account:

- a the buffer guide calculated in accordance with paragraph 2;
- b any current guidance maintained by the ESRB in accordance with Article 135(1)(a), (c) and (d) and any recommendations issued by the ESRB on the setting of a buffer rate;
- c other variables that the designated authority considers relevant for addressing cyclical systemic risk.

4 The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in that Member State, shall be between 0 % and 2,5 %, calibrated in steps of 0,25 percentage points or multiples of 0,25 percentage points. Where justified on the basis of the considerations set out in paragraph 3, a designated authority may set a countercyclical buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 for the purpose set out in Article 140(2) of this Directive.

5 Where a designated authority sets the countercyclical buffer rate above zero for the first time, or where, thereafter, a designated authority increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 7. If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

6 If a designated authority reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the designated authority.

7 Each designated authority shall announce the quarterly setting of the countercyclical buffer rate by publication on its website. The announcement shall include at least the following information:

- a the applicable countercyclical buffer rate;

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- b the relevant credit-to-GDP-ratio and its deviation from the long-term trend;
- c the buffer guide calculated in accordance with paragraph 2;
- d a justification for that buffer rate;
- e where the buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- f where the date referred to in point (e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;
- g where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period;

Designated authorities shall take all reasonable steps to coordinate the timing of that announcement.

Designated authorities shall notify each quarterly setting of the countercyclical buffer rate and the information specified in points (a) to (g) to the ESRB. The ESRB shall publish on its website all such notified buffer rates and related information.

#### *Article 137*

#### **Recognition of countercyclical buffer rates in excess of 2,5 %**

1 Where a designated authority, in accordance with Article 136(4), or a relevant third-country authority has set a countercyclical buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the other designated authorities may recognise that buffer rate for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffers.

2 Where a designated authority in accordance with paragraph 1 of this Article recognises a buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

- a the applicable countercyclical buffer rate;
- b the Member State or third countries to which it applies;
- c where the buffer rate is increased, the date from which the institutions authorised in the Member State of the designated authority must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- d where the date referred to in point (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

#### *Article 138*

#### **ESRB recommendation on third country countercyclical buffer rates**

The ESRB may, in accordance with Article 16 of Regulation (EU) No 1092/2010, issue a recommendation to designated authorities on the appropriate countercyclical buffer rate for exposures to that third country where:

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- (a) a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country ('relevant third-country authority') to which one or more Union institutions have credit exposures;
- (b) the ESRB considers that a countercyclical buffer rate which has been set and published by the relevant third-country authority for a third country is not sufficient to protect Union institutions appropriately from the risks of excessive credit growth in that country, or a designated authority notifies the ESRB that it considers that buffer rate to be insufficient for that purpose.

### *Article 139*

#### **Decision by designated authorities on third country countercyclical buffer rates**

1 This Article applies irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in Article 138.

2 In the circumstances referred to in point (a) of Article 138, designated authorities may set the countercyclical buffer rate that domestically authorised institutions must apply for the purposes of the calculation of their institution-specific countercyclical capital buffer.

3 Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, a designated authority may set a different buffer rate for that third country for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffer if they reasonably consider that the buffer rate set by the relevant third-country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

When exercising the power under the first subparagraph, a designated authority shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2,5 %, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in that third country.

In order to achieve coherence for the buffer settings for third countries the ESRB may give recommendations for such settings.

4 Where a designated authority sets a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 which increases the existing applicable countercyclical buffer rate, the designated authority shall decide the date from which domestically authorised institutions must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months from the date when the buffer rate is announced in accordance with paragraph 5. If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

5 Designated authorities shall publish any setting of a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 on their websites, and shall include the following information:

- a the countercyclical buffer rate and the third country to which it applies;
- b a justification for that buffer rate;
- c where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

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- d where the date referred to in point (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

#### *Article 140*

##### **Calculation of institution-specific countercyclical capital buffer rates**

1 The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located or are applied for the purposes of this Article by virtue of Article 139(2) or (3).

Member States shall require institutions, in order to calculate the weighted average referred to in the first subparagraph, to apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

2 If, in accordance with Article 136(4), a designated authority sets a countercyclical buffer rate in excess of 2,5 % of total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, Member States shall ensure that the following buffer rates apply to relevant credit exposures located in the Member State of that designated authority ('Member State A') for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- a domestically authorised institutions shall apply that buffer rate in excess of 2,5 % of total risk exposure amount;
- b institutions that are authorised in another Member State shall apply a countercyclical buffer rate of 2,5 % of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2,5 % in accordance with Article 137(1);
- c institutions that are authorised in another Member State shall apply the countercyclical buffer rate set by the designated authority of Member State A if the designated authority in the Member State in which they have been authorised has recognised the buffer rate in accordance with Article 137.

3 If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2,5 % of total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, Member States shall ensure that the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- a institutions shall apply a countercyclical buffer rate of 2,5 % of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2,5 % in accordance with Article 137(1);
- b institutions shall apply the countercyclical buffer rate set by the relevant third-country authority if the designated authority in the Member State in which they have been authorised has recognised the buffer rate in accordance with Article 137.

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- 4 Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of Regulation (EU) No 575/2013, that are subject to:
- a the own funds requirements for credit risk under Part Three, Title II of that Regulation;
  - b where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;
  - c where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.
- 5 Institutions shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with paragraph 7.
- 6 For the purposes of the calculation required under paragraph 1:
- a a countercyclical buffer rate for a Member State shall apply from the date specified in the information published in accordance with Article 136(7)(e) or Article 137(2)(c) if the effect of that decision is to increase the buffer rate;
  - b subject to point (c), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;
  - c where the designated authority of the home Member State of the institution sets the countercyclical buffer rate for a third country pursuant to Article 139(2) or (3), or recognises the countercyclical buffer rate for a third country pursuant to Article 137, that buffer rate shall apply from the date specified in the information published in accordance with Article 139(5)(c) or Article 137(2)(c), if the effect of that decision is to increase the buffer rate;
  - d a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

For the purposes of point (b), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

7 EBA shall develop draft regulatory technical standards to specify the method for the identification of the geographical location of the relevant credit exposures referred to in paragraph 5.

EBA shall submit those draft regulatory 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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

### *Section III*

#### **Capital conservation measures**

#### *Article 141*

#### **Restrictions on distributions**

1 Member States shall prohibit any institution that meets the combined buffer requirement from making a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

2 Member States shall require institutions that fail to meet the combined buffer requirement to calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 4 and to notify the competent authority of that MDA.

Where the first subparagraph applies, Member States shall prohibit any such institution from undertaking any of the following actions before it has calculated the MDA:

- a make a distribution in connection with Common Equity Tier 1 capital;
- b create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;
- c make payments on Additional Tier 1 instruments.

3 While an institution fails to meet or exceed its combined buffer requirement, Member States shall prohibit it from distributing more than the MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of paragraph 2.

4 Member States shall require institutions to calculate the MDA by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The MDA shall be reduced by any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2.

5 The sum to be multiplied in accordance with paragraph 4 shall consist of:

- a interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

plus

- b year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

minus

- c amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

6 The factor shall be determined as follows:

- a where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in



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- accordance with Article 92(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;
- b where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;
  - c where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;
  - d where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$
$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

"Q<sub>n</sub>" indicates the ordinal number of the quartile concerned.

7 The restrictions imposed by this Article shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.

8 Where an institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2, it shall notify the competent authority and provide the following information:

- a the amount of capital maintained by the institution, subdivided as follows:
  - (i) Common Equity Tier 1 capital,
  - (ii) Additional Tier 1 capital,
  - (iii) Tier 2 capital;
- b the amount of its interim and year-end profits;
- c the MDA calculated in accordance with paragraph 4;
- d the amount of distributable profits it intends to allocate between the following:
  - (i) dividend payments,
  - (ii) share buybacks,
  - (iii) payments on Additional Tier 1 instruments,
  - (iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

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9 Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the competent authority on request.

10 For the purposes of paragraphs 1 and 2, a distribution in connection with Common Equity Tier 1 capital shall include the following:

- a a payment of cash dividends;
- b a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;
- c a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26(1)(a) of that Regulation;
- d a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of that Regulation;
- e a distribution of items referred to in points (b) to (e) of Article 26(1) of that Regulation.

#### *Article 142*

### **Capital Conservation Plan**

1 Where an institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the competent authority no later than five working days after it identified that it was failing to meet that requirement, unless the competent authority authorises a longer delay up to 10 days.

[<sup>X1</sup>Competent authorities shall grant such authorisations only on the basis of the individual situation of an institution] and taking into account the scale and complexity of the institution's activities.

2 The capital conservation plan shall include the following:

- a estimates of income and expenditure and a forecast balance sheet;
- b measures to increase the capital ratios of the institution;
- c a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;
- d any other information that the competent authority considers to be necessary to carry out the assessment required by paragraph 3.

3 The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the competent authority considers appropriate.

4 If the competent authority does not approve the capital conservation plan in accordance with paragraph 3, it shall impose one or both of the following:

- a require the institution to increase own funds to specified levels within specified periods;
- b exercise its powers under Article 102 to impose more stringent restrictions on distributions than those required by Article 141.

#### **Editorial Information**

- X1** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit](#)

institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Official Journal of the European Union L 176 of 27 June 2013).

## TITLE VIII

### DISCLOSURE BY COMPETENT AUTHORITIES

#### *Article 143*

##### **General disclosure requirements**

- 1 Competent authorities shall publish the following information:
  - a the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;
  - b the manner of exercise of the options and discretions available in Union law;
  - c the general criteria and methodologies they use in the review and evaluation referred to in Article 97;
  - d without prejudice to the provisions set out in Title VII, Chapter 1, Section II of this Directive and Articles 54 and 58 of Directive 2004/39/EC, aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with Article 102(1)(a) and of administrative penalties imposed in accordance with Article 65.
- 2 The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location.
- 3 EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the information listed in paragraph 1.

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

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

#### *Article 144*

##### **Specific disclosure requirements**

- 1 For the purpose of Part Five of Regulation (EU) No 575/2013, competent authorities shall publish the following information:
  - a the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of Regulation (EU) No 575/2013;
  - b without prejudice to the provisions laid down in Title VII, Chapter 1, Section II, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU) No 575/2013, identified on an annual basis.

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2 The competent authority of a Member State exercising the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 shall publish the following information:

- a the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- b the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 and the number of those which incorporate subsidiaries in a third country;
- c on an aggregate basis for the Member State:
  - (i) the total amount of own funds on the consolidated basis of the parent institution in a Member State, which benefits from the exercise of the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013, which are held in subsidiaries in a third country;
  - (ii) the percentage of total own funds on the consolidated basis of parent institutions in a Member State which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country;
  - (iii) the percentage of total own funds required under Article 92 of that Regulation on the consolidated basis of parent institutions in a Member State, which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country.

3 The competent authority which exercises the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 shall publish all the following:

- a the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;
- b the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 and the number of such parent institutions which incorporate subsidiaries in a third country;
- c on an aggregate basis for the Member State:
  - (i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 which are held in subsidiaries in a third country;
  - (ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 represented by own funds which are held in subsidiaries in a third country;
  - (iii) the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of that Regulation represented by own funds which are held in subsidiaries in a third country.

## TITLE IX

**DELEGATED AND IMPLEMENTING ACTS***Article 145***Delegated Acts**

The Commission shall be empowered to adopt delegated acts in accordance with Article 148 concerning the following:

- (a) clarification of the definitions set out in Article 3 and Article 128 to ensure uniform application of this Directive;
- (b) clarification of the definitions set out in Article 3 and Article 128 in order to take account, in the application of this Directive, of developments on financial markets;
- (c) alignment of terminology on, and the framing of, definitions set out in Article 3 in accordance with subsequent acts on institutions and related matters;
- (d) adjustment of the amounts referred to in Article 31(1) to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with, and at the same time as, the adjustments made under Article 4(7) of Directive 2002/92/EC;
- (e) expansion of the content of the list referred to in Articles 33 and 34 and set out in Annex I or adaptation of the terminology used in that list to take account of developments on financial markets;
- (f) identification of the areas in which the competent authorities must exchange information as set out in Article 50;
- (g) adjustment of the provisions set out in Articles 76 to 88 and Article 98 in order to take account of developments on financial markets (in particular new financial products) or in accounting standards or requirements which take account of Union law, or with regard to the convergence of supervisory practices;
- (h) deferral of the disclosure obligations in accordance with the second subparagraph of Article 89(3) where the Commission report submitted pursuant to the first subparagraph of that paragraph identifies significant negative effects;
- (i) adjustments of the criteria set out in Article 23(1), in order to take account of future developments and to ensure the uniform application of this Directive.

*Article 146***Implementing Acts**

The following measures shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 147(2):

- (a) technical adjustments to the list in Article 2;
- (b) alteration of the amount of initial capital prescribed in Article 12 and Title IV to take account of developments in the economic and monetary field.

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### Article 147

#### **European Banking Committee**

1 For the adoption of implementing acts, the Commission shall be assisted by the European Banking Committee. That committee shall be a committee within the meaning of Article 3(2) of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

### Article 148

#### **Exercise of the delegation**

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

2 The delegation of power referred to in Article 145 shall be conferred for an indeterminate period of time from 17 July 2013.

3 The delegation of powers referred to in Article 145 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5 A delegated act adopted pursuant to Article 145 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

### Article 149

#### **Objections to regulatory technical standards**

Where the Commission adopts a regulatory technical standard pursuant to this Directive which is the same as the draft regulatory technical standard submitted by EBA, the period during which the European Parliament and the Council may object to that regulatory technical standard shall be one month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month. By way of derogation from the second subparagraph of Article 13(1) of Regulation (EU) No 1093/2010, the period during which the European Parliament or the Council may object to that regulatory technical standard may, where appropriate, be further extended by one month.

## TITLE X

### AMENDMENTS OF DIRECTIVE 2002/87/EC

#### *Article 150*

#### **Amendments of Directive 2002/87/EC**

Article 21a of Directive 2002/87/EC is hereby amended as follows:

- (a) in paragraph 2, point (a) is deleted;
- (b) paragraph 3 is replaced by the following:

"3 In order to ensure consistent application of the calculation methods listed in Annex I, Part II, of this Directive, in conjunction with Article 49(1) of Regulation (EU) No 575/2013 and Article 228(1) of Directive 2009/138/EC, but without prejudice to Article 6(4) of this Directive, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards with regard to Article 6(2) of this Directive.

The ESA shall submit those draft regulatory technical standards to the Commission by five months before the date of application referred to in Article 309(1) of Directive 2009/138/EC.

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."

## TITLE XI

### TRANSITIONAL AND FINAL PROVISIONS

#### *CHAPTER 1*

#### ***Transitional provisions on the supervision of institutions exercising the freedom of establishment and the freedom to provide services***

#### *Article 151*

#### **Scope**

1 The provisions in this Chapter shall apply instead of Articles 40, 41, 43, 49, 50 and 51 until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted pursuant to Article 460 of Regulation (EU) No 575/2013.

2 In order to ensure that the phasing in of supervisory arrangements for liquidity is fully aligned with the development of uniform liquidity rules, the Commission shall be empowered to adopt delegated acts in accordance with Article 145 postponing the date referred to in paragraph 1 by up to two years, where uniform liquidity rules have not been introduced in the Union because international standards on liquidity supervision have not yet been agreed upon at the date referred to in paragraph 1 of this Article.

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### *Article 152*

#### **Reporting requirements**

Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 156 of this Directive, host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.

### *Article 153*

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

1 Where the competent authorities of a host Member State ascertain that a credit institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that Member State pursuant to this Directive involving powers of the host Member State's competent authorities, those authorities shall require the credit institution concerned to remedy its non-compliance.

2 If the credit institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly.

3 The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance. The nature of those measures shall be communicated to the competent authorities of the host Member State.

4 If, despite the measures taken by the home Member State or because such measures prove inadequate or are not provided for in the Member State in question, the credit institution persists in violating the legal rules referred to in paragraph 1 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further breaches and, in so far as is necessary, to prevent that credit institution from initiating further transactions within its territory. Member States shall ensure that it is possible to serve the legal documents necessary for those measures on credit institutions within their territories.

### *Article 154*

#### **Precautionary measures**

Before following the procedure provided for in Article 153, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.



The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question shall amend or abolish those measures.

#### *Article 155*

### **Responsibility**

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

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

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

#### *Article 156*

### **Liquidity supervision**

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

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

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

#### *Article 157*

### **Collaboration concerning supervision**

The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such institutions that is likely to facilitate 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.

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## Article 158

### Significant branches

1 The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 112(1) applies or to the competent authorities of the home Member State, for a branch of an institution other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.

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

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

The competent authorities of the home and host Member States, and the consolidating supervisor where Article 112(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

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

The decisions referred to in the second and third subparagraphs shall be set out in a document containing full reasons, shall be transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the competent authorities of the Member States concerned.

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

3 The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) and carry out the tasks referred to in Article 112(1)(c) in cooperation with the competent authorities of the host Member State.

4 If a competent authority of a home Member State becomes aware of an emergency situation as referred to in Article 114(1), it shall alert as soon as practicable the authorities referred to in Article 58(4) and in Article 59(1).

[<sup>X15</sup> Where Article 116 does not apply, the competent authorities supervising a institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the reaching of a joint decision on the designation of a branch as being significant under paragraph 2 of this Article and the exchange of information under Article 50. The establishment and functioning of the college shall be based on written arrangements determined, after consulting the competent authorities concerned, by the competent authority

of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.]

6 The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 155(3) and the obligations referred to in paragraph 2 of this Article.

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

#### **Editorial Information**

- XI** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

### *Article 159*

#### **On-the-spot checks**

1 Host Member States shall provide that, where an institution authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through an intermediary on-the-spot checks of the information referred to in Article 50.

2 The competent authorities of the home Member State may also, for the purposes of such on-the-spot checking of branches, have recourse to one of the other procedures set out in Article 118.

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 checks of branches established within their territory.

## *CHAPTER 2*

### ***Transitional provisions for capital buffers***

#### *Article 160*

#### **Transitional provisions for capital buffers**

1 This Article amends the requirements of Articles 129 and 130 for a transitional period between 1 January 2016 and 31 December 2018.

2 For the period from 1 January 2016 until 31 December 2016:

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- a the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0,625 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
  - b the institution-specific countercyclical capital buffer shall be no more than 0,625 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.
- 3 For the period from 1 January 2017 until 31 December 2017:
- a the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1,25 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
  - b the institution-specific countercyclical capital buffer shall be no more than 1,25 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.
- 4 For the period from 1 January 2018 until 31 December 2018:
- a the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1,875 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
  - b the institution-specific countercyclical capital buffer shall be no more than 1,875 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.
- 5 The requirement for a capital conservation plan and the restrictions on distributions referred to in Articles 141 and 142 shall apply during the transitional period between 1 January 2016 and 31 December 2018 where institutions fail to meet the combined buffer requirement taking into account the requirements set out in paragraphs 2 to 4 of this Article.
- 6 Member States may impose a shorter transitional period than that specified in paragraphs 1 to 4 and thereby implement the capital conservation buffer and the countercyclical capital buffer from 31 December 2013. Where a Member State imposes such a shorter transitional period, it shall inform the relevant parties, including the Commission, the ESRB, EBA and the relevant supervisory colleges, accordingly. Such a shorter transitional period may be recognised by other Member States. Where another Member State recognises such a shorter transitional period, it shall notify the Commission, the ESRB, EBA and the relevant supervisory college accordingly.
- 7 Where a Member State imposes a shorter transitional period for the countercyclical capital buffer the shorter period shall apply only for the purposes of the calculation of the institution-specific countercyclical capital buffer by institutions that are authorised in the Member State for which the designated authority is responsible.

## CHAPTER 3

### **Final provisions**

#### *Article 161*

#### **Review and report**

1 The Commission shall conduct periodic reviews of the implementation of this Directive in order to ensure that its implementation does not result in manifest discrimination between institutions on the basis of their legal structure or ownership model.

2 By 30 June 2016, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, together with a legislative proposal if appropriate, on the provisions on remuneration in this Directive and in Regulation (EU) No 575/2013, following a review thereof, taking into account international developments and with particular regard to:

- a their efficiency, implementation and enforcement, including the identification of any lacunae arising from the application of the principle of proportionality to those provisions;
- b the impact of compliance with the principle in Article 94(1)(g) in respect of:
  - (i) competitiveness and financial stability; and
  - (ii) any staff working effectively and physically in subsidiaries established outside the EEA of parent institutions established within the EEA.

That review shall consider, in particular, whether the principle set out in Article 94(1)(g) should continue to apply to any staff covered by point (b)(ii) of the first subparagraph.

3 From 2014, EBA shall, in cooperation with EIOPA and ESMA, publish a biannual report analysing the extent to which Member States' law refers to external credit ratings for regulatory purposes and the steps taken by Member States to reduce such references. Those reports shall outline how the competent authorities meet their obligations under Article 77(1) and (3) and Article 79(b). Those reports shall also outline the degree of supervisory convergence in that regard.

4 By 31 December 2014, the Commission shall review and report on the application of Articles 108 and 109 and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

5 By 31 December 2016, the Commission shall review and report on the results achieved under Article 91(11), including the appropriateness of benchmarking diversity practices, taking into account all relevant Union and international developments, and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

6 By 31 December 2015, the Commission shall consult the ESRB, EBA, EIOPA, ESMA and other relevant parties on the effectiveness of information-sharing arrangements under this Directive, both in normal times and during times of stress.

7 By 31 December 2015, EBA shall review and submit a report to the Commission on the application of this Directive and of Regulation (EU) No 575/2013 on the cooperation of the Union and Member States with third countries. That report shall identify any areas which require further development as regards cooperation and information sharing. EBA shall publish the report on its website.

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8 Upon receiving a mandate from the Commission, EBA shall explore whether financial sector entities which declare that they carry out their activities in accordance with Islamic banking principles are adequately covered by this Directive and by Regulation (EU) No 575/2013. The Commission shall review the report prepared by EBA and shall submit a legislative proposal to the European Parliament and to the Council if appropriate.

9 By 1 July 2014, EBA shall report to the Commission on credit institutions' use of and benefits from ESCB central banks longer-term refinancing operations and similar central bank funding support measures. Based on that report and after consulting the ECB, the Commission shall, by 31 December 2014, submit a report to the European Parliament and to the Council on the use of and benefits from those refinancing operations and funding support measures for credit institutions authorised in the Union, together with a legislative proposal on the use of such refinancing operations and funding support measures if appropriate.

#### *Article 162*

### **Transposition**

1 By 31 December 2013 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive.

[<sup>X2</sup>Member States shall apply those provisions from 1 January 2014.]

Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive. Where the documents accompanying notification of transposition measures provided by Member States are not sufficient to assess fully the compliance of the transposing provisions with certain provisions of this Directive, the Commission may, upon EBA's request with a view to carrying out its tasks under Regulation (EU) No 1093/2010, or on its own initiative, require Member States to provide more detailed information regarding the transposition and implementation of those provisions and this Directive.

2 By way of derogation from paragraph 1, Title VII, Chapter 4 shall apply from 1 January 2016.

3 The laws, regulations and administrative provisions necessary to comply with Article 94(1)(g) shall require institutions to apply the principles laid down therein to remuneration awarded [<sup>X2</sup>for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before or after 1 January 2014.]

4 When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

5 By way of derogation from paragraph 1 of this Article, Article 131 shall apply from 1 January 2016. Member States shall implement Article 131(4) from 1 January 2016 in the following manner:

- a 25 % of the G-SII buffer, set in accordance with Article 131(4), in 2016;
- b 50 % of the G-SII buffer, set in accordance with Article 131(4), in 2017;
- c 75 % of the G-SII buffer, set in accordance with Article 131(4), in 2018; and
- d 100 % of the G-SII buffer, set in accordance with Article 131(4), in 2019.

6        [<sup>X2</sup>By way of derogation from paragraph 2 of this Article, Article 133 shall apply from 1 January 2014.]

**Editorial Information**

**X2** Substituted by [Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

*Article 163*

**Repeal**

Directives 2006/48/EC and 2006/49/EC are repealed with effect from 1 January 2014.

References to the repealed Directives shall be construed as references to this Directive and to Regulation (EU) No 575/2013 and shall be read in accordance with the correlation table set out in Annex II to this Directive and in Annex IV to Regulation (EU) No 575/2013.

*Article 164*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 165*

**Addressees**

This Directive is addressed to the Member States.

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## ANNEX I

### LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.
2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. [<sup>F3</sup>Payment services as defined in point (3) of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>(32)</sup>.]
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.
6. Guarantees and commitments.
7. Trading for own account or for account of customers in any of the following:
  - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
  - (b) foreign exchange;
  - (c) financial futures and options;
  - (d) exchange and interest-rate instruments;
  - (e) transferable securities.
8. Participation in securities issues and the provision of services relating to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.
15. Issuing electronic money.

#### Textual Amendments

- F3** Substituted by [Directive \(EU\) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation \(EU\) No 1093/2010, and repealing Directive 2007/64/EC \(Text with EEA relevance\)](#).

The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with this Directive.



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## ANNEX II

### CORRELATION TABLE

<b>This Directive</b>	<b>Directive 2006/48/EC</b>	<b>Directive 2006/49/EC</b>
Article 1	Article 1(1)	
Article 2(1)		
Article 2(2)		
Article 2(3)		
Article 2(4)	Article 1(2)	
Article 2(5)	Article 2	
Article 2(6)	Article 1(3)	
Article 3	Article 4	
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Article 4(1)		
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Article 4(4)		
Article 4(5)		Article 35(1)
Article 4(6)		
Article 4(7)		
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Article 5	Article 128	
Article 6	Article 42b(1)	
Article 7	Article 40(3)	
Article 8(1)	Article 6(1)	
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Article 9	Article 5	
Article 10	Article 7	
Article 11	Article 8	
Article 12(1)	Article 9(1), first subparagraph	
Article 12(2)	Article 9(1), second subparagraph	

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Article 12(3)	Article 9(1), third subparagraph	
Article 12(4)	Article 9(2)	
Article 13(1)	Article 11(1)	
Article 13(2)	Article 11(2)	
Article 14(1)	Article 12(1)	
Article 14(2)	Article 12(2)	
Article 14(3)	Article 12(3)	
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Article 23(3)	Article 19a(3)	
Article 23(4)	Article 19a(4)	
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Article 24(1)	Article 19b(1)	
Article 24(2)	Article 19b(2)	
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Article 28(2)		Article 9
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Article 32(2)		Article 10(2)
Article 32(3)		Article 10(3)
Article 32(4)		Article 10(4)
Article 32(5)		Article 10(5)
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Article 35(1)	Article 25(1)	
Article 35(2)	Article 25(2)	
Article 35(3)	Article 25(3)	
Article 35(4)	Article 25(4)	
Article 35(5)	Article 25(5)	
Article 35(6)	Article 25(5)	
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Article 36(2)	Article 26(2)	
Article 36(3)	Article 26(3)	

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Article 36(4)	Article 26(4)	
Article 36(5)	Article 26(5)	
Article 36(6)	Article 26(5)	
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Article 47(3)	Article 38(3)	
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Article 48(4)	Article 39(4)	
Article 49(1)	Article 40(1)	

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Article 49(2)	Article 40(2)	
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Article 50(5)	Article 42, second paragraph	
Article 50(6)	Article 42, third and sixth paragraphs	
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Article 50(8)	Article 42, fifth paragraph	
Article 51(1)	Article 42a(1)	
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Article 52(3)		
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Article 57(4)	Article 48(2), third subparagraph	

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Article 57(5)	Article 48(2), fifth subparagraph	
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Article 79	Annex V, points 3, 4 and 5	
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Article 83(1)	Annex V, point 10	
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Article 83(3)		Annex I, points 38 and 41
Article 84	Annex V, point 11	
Article 85(1)	Annex V, point 12	
Article 85(2)	Annex V, point 13	
Article 86(1)	Annex V, point 14	
Article 86(2)	Annex V, point 14a	
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Article 86(4)	Annex V, point 15	
Article 86(5)	Annex V, point 16	
Article 86(6)	Annex V, point 17	
Article 86(7)	Annex V, point 18	
Article 86(8)	Annex V, point 19	
Article 86(9)	Annex V, point 20	
Article 86(10)	Annex V, point 21	
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Article 92(1)	Annex V, point 23, second paragraph	
Article 92(2), introductory sentence	Annex V, point 23, introductory sentence	
Article 92(2)(a)	Annex V, point 23(a)	
Article 92(2)(b)	Annex V, point 23(b)	
Article 92(2)(c)	Annex V, point 23(c)	
Article 92(2)(d)	Annex V, point 23(d)	
Article 92(2)(e)	Annex V, point 23(e)	
Article 92(2)(f)	Annex V, point 23(f)	
Article 92(2)(g)		
Article 93	Annex V, point 23(k)	
Article 94(1)(a)	Annex V, point 23(g)	
Article 94(1)(b)	Annex V, point 23(h)	
Article 94(1)(c)	Annex V, point 23(i)	
Article 94(1)(d)		
Article 94(1)(e)	Annex V, point 23(j)	
Article 94(1)(f)	Annex V, point 23(l)	
Article 94(1)(g)		
Article 94(1)(h)	Annex V, point 23(m)	
Article 94(1)(i)		
Article 94(1)(j)	Annex V, point 23(n)	
Article 94(1)(k)	Annex V, point 23(n)	
Article 94(1)(l)	Annex V, point 23(o)	
Article 94(1)(m)	Annex V, point 23(p)	
Article 94(1)(n)	Annex V, point 23(q)	
Article 94(1)(o)	Annex V, point 23(r)	
Article 94(1)(p)	Annex V, point 23(s)	
Article 94(1)(q)	Annex V, point 23(t)	
Article 94(2)	Article 150(3)b	
Article 95	Annex V, point 24	
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Article 97(1)	Article 124(1)	
Article 97(2)	Article 124(2)	
Article 97(3)	Article 124(3)	



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Article 97(4)	Article 124(4)	
Article 98(1)	Annex XI, point 1	
Article 98(2)	Annex XI, point 1a	
Article 98(3)	Annex XI, point 2	
Article 98(4)	Annex XI, point 3	
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Article 108(1), first subparagraph	Article 68(2)	
Article 108(1), second subparagraph	Article 3	
Article 108(1), third subparagraph		
Article 108(2)	Article 71(1)	
Article 108(3)	Article 71(2)	
Article 108(4)	Article 73(2)	
Article 109(1)	Article 68(1)	
Article 109(2)	Article 73(3)	
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Article 110(1)	Article 124(2)	
Article 110(2)	Article 23	
Article 111(1)	Article 125(1)	Article 2
Article 111(2)	Article 125(2)	Article 2

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Article 111(3)	Article 126(1)	
Article 111(4)	Article 126(2)	
Article 111(5)	Article 126(3)	
Article 111(6)	Article 126(4)	
Article 112(1)	Article 129(1), first subparagraph	
Article 112(2)	Article 129(1), second subparagraph	
Article 112(3)	Article 129(1), third subparagraph	
Article 113(1)(a)	Article 129(3), first subparagraph	
Article 113(1)(b)		
Article 113(2)(a), first subparagraph	Article 129(3), second subparagraph	
Article 113(2)(b), first subparagraph		
Article 113(2), second subparagraph	Article 129(3), second subparagraph	
Article 113(3), third subparagraph	Article 129(3), third subparagraph	
Article 113(3)	Article 129(3), fourth to seventh subparagraph	
Article 113(4)	Article 129(3), eighth and ninth subparagraph	
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Article 116(1)	Article 131a(1), first, second and third subparagraph	
Article 116(2)	Article 131a(1), fourth subparagraph	
Article 116(3)	Article 131a(2), first subparagraph	
Article 116(4)	Article 131a(2), second and third subparagraph	
Article 116(5)	Article 131a(2), fourth and fifth subparagraph	

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Article 116(6)	Article 131a(2), sixth subparagraph	
Article 116(7)	Article 131a(2), seventh subparagraph	
Article 116(8)	Article 131a(2), eighth subparagraph	
Article 116(9)	Article 131a(2), ninth subparagraph	
Article 117(1)	Article 132(1), first to sixth subparagraph	
Article 117(2)	Article 132(1), seventh and eighth subparagraph	
Article 117(3)	Article 132(2)	
Article 117(4)	Article 132(3)	
Article 118	Article 141	
Article 119(1)	Article 127(1)	
Article 119(2)	Article 127(2)	
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Article 120	Article 72a	
Article 121	Article 135	
Article 122	Article 137	
Article 123 (1)	Article 138(1)	
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Article 142		
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Article 145	Article 150(1)	
Article 146	Article 150(1a)	
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Article 147(2)	Article 151(2)	
Article 148(1)	Article 151a(3)	
Article 148(2)	Article 151a(1)	
Article 148(3)	Article 151b	
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Article 161(1)	Article 156, sixth paragraph	
Article 161(2)	Article 156, fourth paragraph	
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- (1) [OJ C 105, 11.4.2012, p. 1.](#)
- (2) [OJ L 177, 30.6.2006, p. 1.](#)
- (3) [OJ L 177, 30.6.2006, p. 201.](#)
- (4) See page 1 of this Official Journal.
- (5) [OJ L 145, 30.4.2004, p. 1.](#)
- (6) [OJ L 331, 15.12.2010, p. 12.](#)
- (7) Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States ([OJ L 93, 7.4.2009, p. 23](#)).
- (8) Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA ([OJ L 93, 7.4.2009, p. 33](#)).
- (9) [OJ L 125, 5.5.2001, p. 15.](#)
- (10) [OJ L 331, 15.12.2010, p. 1.](#)
- (11) [OJ L 55, 28.2.2011, p. 13.](#)
- (12) [OJ L 35, 11.2.2003, p. 1.](#)
- (13) [OJ L 319, 5.12.2007, p. 1](#)
- (14) [OJ L 302, 17.11.2009, p. 32.](#)
- (15) [OJ L 267, 10.10.2009, p. 7.](#)
- (16) [OJ L 174, 1.7.2011, p. 1.](#)
- (17) [OJ L 281, 23.11.1995, p. 31.](#)
- (18) [OJ L 8, 12.1.2001, p. 1.](#)
- (19) [OJ C 175, 19.6.2012, p. 1.](#)
- (20) [OJ L 390, 31.12.2004, p. 38.](#)
- (21) [OJ L 309, 25.11.2005, p. 15.](#)
- (22) [OJ L 9, 15.1.2003, p. 3.](#)
- (23) [OJ L 3, 7.1.2004, p. 36.](#)
- (24) [OJ L 331, 15.12.2010, p. 84.](#)
- (25) [OJ L 331, 15.12.2010, p. 48.](#)
- (26) [OJ L 157, 9.6.2006, p. 87.](#)
- (27) [OJ L 222, 14.8.1978, p. 11.](#)
- (28) [OJ L 193, 18.7.1983, p. 1.](#)
- (29) [OJ L 120, 15.5.2009, p. 22.](#)
- (30) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ([OJ L 241, 2.9.2006, p. 26](#)).
- (31) [OJ L 124, 20.5.2003, p. 36.](#)
- (32) [<sup>F3</sup>Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and amending Directives 2002/65/EC, 2009/110/EC, 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC ([OJ L 337, 23.12.2015, p. 35](#)).]

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### Textual Amendments

- F3** Substituted by Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance).