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**NOTE**

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From: General Secretariat of the Council

To: Delegations

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures

- *Presidency compromise*

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Delegations will find below a Presidency compromise text on the abovementioned proposal.

2016/0364 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures

(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>

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) Directive 2013/36/EU of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>4</sup> have been adopted in response to the financial crises that unfolded in 2007-2008. These legislative measures have substantially contributed to strengthening the financial system in the Union and rendered institutions more resilient to possible future shocks. Although extremely comprehensive, these measures did not address all identified weaknesses affecting institutions. Also, some of the initially proposed measures have been subjected to review clauses or have not been sufficiently specified to allow for their smooth implementation.
- (2) This Directive aims to address issues raised in relation to provisions that proved not to be sufficiently clear and have therefore been subject to divergent interpretations or that have been found to be overly burdensome for certain institutions. It also contains adjustments to Directive 2013/36/EU that are necessary following either the adoption of other relevant Union legislation, such as Directive 2014/59/EU of the European Parliament and of the Council<sup>5</sup> or the changes proposed in parallel to Regulation (EU) No 575/2013. Finally, the amendments proposed better align the current regulatory framework to international developments in order to promote consistency and comparability among jurisdictions.

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<sup>3</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p.338).

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>5</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- (3) Financial holding companies and mixed financial holding companies can be parent undertakings of banking groups and the application of prudential requirements is required on the basis of the consolidated situation of such holding companies. As the institution controlled by such holding companies is not always able to ensure compliance with the requirements on a consolidated basis throughout the group, it is necessary that certain financial holding companies and mixed financial holding companies be brought under the direct scope of supervisory powers pursuant to Directive 2013/36/EU and Regulation (EU) No 575/2013 to ensure such compliance on a consolidated basis. Therefore, a specific approval procedure and direct supervisory powers over certain financial holding companies and mixed financial holding companies should be provided for in order to ensure that such holding companies can be held directly responsible for compliance with consolidated prudential requirements, without subjecting them to additional prudential requirements on a solo level.
- (3a) The approval and supervision of certain holding companies should not prevent groups from deciding on the specific internal arrangements and distribution of tasks within the group as they see fit to ensure compliance with consolidated requirements, and should not prevent direct supervisory action on those institutions within the group that are engaged in ensuring compliance with prudential requirements on a consolidated basis. Under specific circumstances, a financial holding company or mixed financial holding company that was set up for the sole purpose of holding participations in subsidiaries may be exempted from approval.
- (4) The consolidating supervisor is entrusted with the main responsibilities as regards supervision on a consolidated basis. Therefore it is necessary that the consolidating supervisor be appropriately involved in the approval and supervision of the financial holding companies and mixed financial holding companies. Where the consolidating supervisor differs from the competent authority in the Member State where the financial holding company or mixed financial holding company is located, approval should be reflected in a joint decision. The European Central Bank, when performing its task to carry out supervision on a consolidated basis over credit institutions' parents pursuant to Article 4(1)(g) of Council Regulation (EU) No 1024/2013<sup>11</sup>, should also exercise its duties in relation to the approval and supervision of financial holding companies and mixed financial holding companies.

- (5) Commission report COM(2016) 510 of 28 July 2016 showed that, when applied to small and non-complex institutions, some of the principles, namely the requirements on deferral and pay-out in instruments set out in points (l) and (m) of Article 94(1) of Directive 2013/36/EU, are too burdensome and not commensurate with their prudential benefits. Similarly, it was found that the cost of applying these requirements exceeds their prudential benefits in the case of staff with low levels of variable remuneration, since such levels of variable remuneration produce little or no incentive for staff to take excessive risk. Whilst as a general principle Member States should allow competent authorities to tailor remuneration requirements where appropriate to suit the prevailing remuneration practices in their national markets and the job profile and responsibilities of the relevant staff members, they should be allowed to exempt at a minimum small and non-complex institutions and staff members with low levels of remuneration from, at least, deferral and pay out in instruments requirements entirely.
- (6) Clear, consistent and harmonised criteria for identifying those small and non-complex institutions as well as low levels of variable remuneration are necessary to ensure supervisory convergence and to foster a level-playing field for institutions and an adequate protection of depositors, investors and consumers across the Union. At the same time, it is appropriate to offer some flexibility to competent authorities to modify those criteria where they consider this necessary.
- (7) Directive 2013/36/EU requires that a substantial portion, and in any event at least 50%, of any variable remuneration, consist of a balance of 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; and, where possible, of alternative tier 1 or tier 2 instruments which meet certain conditions. This principle limits the use of share-linked instruments to non-listed institutions and requires listed institutions to use shares. Commission report COM(2016) 510 of 28 July 2016 found that the use of shares can lead to considerable administrative burdens and costs for listed institutions. At the same time, equivalent prudential benefits can be achieved by allowing listed institutions to use share-linked instruments that track the value of shares. The possibility of using share-linked instruments should therefore be extended to listed institutions.

- (8) Own funds add-ons imposed by competent authorities are an important driver of an institution's overall level of own funds and are relevant for market participants since the level of additional own funds imposed impacts the trigger point for restrictions on dividend payments, bonus pay-outs and the payments on Additional Tier 1 instruments. A clear definition of the conditions under which capital add-ons should be imposed should be provided to ensure that rules are consistently applied across Member States and to ensure the proper functioning of the market.
- (9) Additional own funds requirements imposed by competent authorities should be set in relation to the specific situation of an institution and should be duly justified. Additional own funds requirements can be imposed to address risks or elements of risk explicitly excluded or not explicitly covered by the own funds requirements in Regulation (EU) No 575/2013 only to the extent that this is considered necessary in light of the specific situation of an institution. These requirements should be positioned, in the stacking order of own funds requirements, above the minimum own funds requirements and below the combined buffer requirement. The institution-specific nature of additional own funds requirements should prevent its use as a tool to address macro-prudential or systemic risks. However this should not preclude the competent authorities from addressing, including by means of additional own funds requirements, the risks incurred by individual institutions due to their activities, including those reflecting the impact of certain economic factors or market developments on the risk profile of an individual institution.
- (9a) The supervisory review and evaluation shall take into account the size, the structure and the internal organisation of institutions and the nature, scope and complexity of their activities. Where different institutions have similar risk profiles, for instance because they have similar business models or geographical location of exposures or they are affiliated to the same institutional protection scheme, competent authorities should be able to tailor the methodology for the review and evaluation process to capture the common characteristics and risks of institutions with such same risk profile. Such adjustments should, however, not prevent competent authorities from duly taking into account the specific risks affecting each institution and from adopting supervisory measures tailored to each institution.

- (10) The leverage ratio requirement is a parallel requirement to the risk-based own funds requirements. Therefore, any own funds add-ons imposed by competent authorities to address the risk of excessive leverage should be added to the minimum leverage ratio requirement and not to the minimum risk-based own funds requirement. Furthermore, any CET1 capital that institutions use to meet their leverage-related requirements can be used to meet their risk-based own funds requirements as well, including the combined buffer requirements.
- (11) Competent authorities should be allowed to communicate to an institution any adjustment to the amount of capital in excess of minimum own funds requirements, additional own funds requirements and the combined buffers requirement that they expect such institution to hold in order to deal with forward looking stress scenarios. Since this guidance constitutes a capital target, it should be regarded as positioned above the own funds requirements and combined buffer requirement and the failure to meet such target should not trigger the restrictions on distributions provided for in Article 141 of this Directive. Given that the guidance on additional own funds reflects supervisory expectations, this Directive and Regulation (EU) No 575/2013 should neither set out mandatory disclosure obligations for the guidance nor prohibit competent authorities from requesting disclosure of the guidance. Where an institution repeatedly fails to meet the capital target, the competent authority should be entitled to take supervisory measures and, where appropriate, to impose additional own funds requirements.
- (12) Respondents to the Commission's Call for Evidence on the EU regulatory framework for financial services pointed out that reporting burden is increased by systematic reporting required by competent authorities over and above the requirements set out in Regulation (EU) No 575/2013. The Commission should prepare a report identifying those additional systematic reporting requirements and assess whether they are in line with the single rulebook on supervisory reporting.

- (13) The provisions of this Directive 2013/36/EU on interest rate risk arising from non-trading book activities are linked to the relevant provisions in [Regulation XX amending Regulation (EU) No 575/2013, which require a longer implementation period for institutions. In order to align the application of rules on interest rate risk arising from non-trading book activities, the provisions necessary to comply with the relevant provisions of this Directive should apply from the same date as the relevant provisions in Regulation (EU) No [XX].
- (14) In order to harmonise the calculation of the interest rate risk of non-trading book activities when the institutions' internal systems for measuring this risk are not satisfactory, the Commission should be empowered to adopt regulatory technical standards in respect of developing the details of a standardised approach via the regulatory technical standards set out in Article 84(4) of this Directive by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
- (15) In order to improve the competent authorities' identification of those institutions which may be subject to excessive losses in their non-trading book activities as a result of potential changes in interest rates, the Commission should be empowered to adopt regulatory technical standards in respect of specifying the six supervisory shock scenarios that all institutions have to apply in order to calculate changes in the economic value of equity as referred to in Article 98(5), the common assumptions that institutions have to implement in their internal systems for the purpose of the same calculation and in respect of determining the potential need for specific criteria to identify the institutions for which supervisory measures may be warranted following a decrease in the net interest income attributed to changes in interest rates by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010



- (16)(17) (18) Before the adoption of acts in accordance with Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (19) Since the objectives of this Directive, namely to reinforce and refine already existing Union legislation ensuring uniform prudential requirements that apply to credit institutions and investment firms throughout the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (20) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, 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.
- (21) 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 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.

- (22) 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 in order to prevent and mitigate systemic or macroprudential risks not covered by Regulation (EU) No 575/2013 and by Article 131 of this Directive, 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 exposures or to a subset of exposures [and to all institutions, or to one or more subsets of those institutions, where the institutions exhibit similar risk profiles in their business activities].
- (23) The ESRB is expected to play a key role in the coordination of macro-prudential measures, as well as the transmission of information on planned macro-prudential measures in Member States, notably through the publication of adopted macro-prudential measures on its website and through information sharing across authorities following the notifications of planned macro-prudential measures.

In order to ensure appropriate policy responses among Member States, the ESRB is expected to monitor the sufficiency and consistency of the macro-prudential policies of the Member States, including by monitoring whether tools are used in a consistent and non-overlapping way.

- (24) Directive 2013/36/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Amendments to Directive 2013/36/EU*

Directive 2013/36/EU is amended as follows:

(1) Article 2 is amended as follows:

(a) In paragraph 5 point (4) is deleted:

(aa) In paragraph 5 points (14) and (16) are replaced by the following:

"(14) in Lithuania, the 'kredito unijos' other than the 'centrinės kredito unijos';"

"(16) in the Netherlands, the 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'NV Noordelijke Ontwikkelingsmaatschappij', the 'NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering', the 'Overijsselse Ontwikkelingsmaatschappij Oost NV' and kredietunies;"

(b) in paragraph 5 the following point (24) is added:

"(24) in Croatia, the “kreditne unije” and the “Hrvatska banka za obnovu i razvitak”,”;

(c)

(d) paragraph 6 is replaced by the following:

"6. The entities referred to in point (1) and points (3) to (24) of paragraph 5 of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3."

(e) (f) in paragraph 5 point (6) is replaced by the following:

“(6) in Germany, the 'Kreditanstalt für Wiederaufbau', ‘, ,Bremer Aufbau-Bank GmbH’, , ,Investitionsbank Berlin’, ,Hamburgische Investitions- und Förderbank’, ,Investitions- und Förderbank Niedersachsen’, ,Saarländische Investitionskreditbank Aktiengesellschaft’, ,Investitionsbank Schleswig-Holstein’, ,Investitionsbank des Landes Brandenburg’, ,Sächsische Aufbaubank – Förderbank’, ,Thüringer Aufbaubank’,-, , , 'LfA Förderbank Bayern' 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;”;

(g) in paragraph 5 the following point (25) is added:

“(25) in Malta, “The Malta Development Bank““”;;

(h) in paragraph 5 the following point (26) is added:

“(26) in Ireland, “the Strategic Banking Corporation of Ireland”;;”

(2) Article 3 is amended as follows:

(a) in paragraph 1, the following points are added:

"(60) 'resolution authority' means a resolution authority as defined in point (18) of Article 2(1) of Directive 2014/59/EU;

(61) "global systemically important institution" (G-SII) means a G-SII as defined in point (132) of Article 4(1) of Regulation (EU) No 575/2013;

(62) "non-EU global systemically important institution" (non-EU G-SII) means a non-EU G-SII as defined in point (133) of Article 4(1) of Regulation (EU) No 575/2013

(63) "group" means a group as defined in point (137) of Article 4(1) of Regulation (EU) No 575/2013.

(64) "third country group" means a group of which the parent undertaking is established in a third country.

(b) the following paragraph 3 is added:

"3. Where a requirement or a supervisory power in this Directive or in Regulation (EU) No 575/2013 applies at consolidated or sub-consolidated level, the terms "institution", "parent institution in a Member State", "EU parent institution" and "parent undertaking" shall also include:

(a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with Article 21a; and

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is not subject to approval in accordance with paragraph 3a of Article 21a,

for the purposes of applying those requirements and carrying out supervision on a consolidated or sub-consolidated basis in accordance with this Directive and Regulation (EU) 575/2013."

(3) In Article 4, paragraph 8 is replaced by the following:

"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 and in all other instances where this is required in this Directive, Directive 2014/59/EU of the European Parliament and of the Council<sup>6</sup> or in Regulation (EU) No 575/2013."

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<sup>6</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p.190).

(4) In Article 8(2)

(a)

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

"(b) the requirements applicable to shareholders and members with qualifying holdings, or, where there are no qualifying holdings, of the 20 largest shareholders or members, pursuant to Article 14; and".

(5) In Article 9, the following new paragraphs are added:

"2.

"3. Member States shall notify to the Commission and the EBA the national laws that expressly allow undertakings other than credit institutions to carry out the business of taking deposits and other repayable funds from the public.

4. Pursuant to this Article Member States may not exempt credit institutions from this Directive and Regulation (EU) No 575/2013."

- (6) Article 10 is replaced by the following:

*"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, including indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group."

- (7) In Article 14, paragraph 2 is replaced by the following:

"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 accordance with the criteria set out in Article 23(1). Article 23(2) and (3) and Article 24 shall apply."

- (8) In Article 18, point (d) is replaced by the following:

"(d) no longer meets the prudential requirements set out in Parts Three, Four or Six, except for the requirements laid down in Articles 92a and 92b, 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."

- (9) The following Articles 21a and 21b are inserted:

*"Article 21a*

*Approval of financial holding companies and mixed financial holding companies*

1. Parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies shall seek approval in accordance with this Article. Other financial holding companies or mixed financial holding companies shall seek approval in accordance with this Article where they are required to comply with this Directive or Regulation (EU) No 575/2013 on a sub-consolidated basis.  
.
  
2. For the purposes of paragraph 1, financial holding companies and mixed financial holding companies referred to in that paragraph shall provide the consolidating supervisor and, where different, the competent authority in the Member State where they are established with the following information :
  - (a) the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;
  - (b) information regarding the nomination of at least two persons effectively directing the financial holding company or the mixed financial holding company and compliance with the requirements set out in Article 121 on qualification of directors;
  - (c) information regarding compliance with the criteria set out in Article 14 concerning shareholders and members, where the financial holding company or mixed financial holding company has a credit institution as its subsidiary;
  - (d) the internal organisation and distribution of tasks within the group;



- (e) any other information that may be necessary to carry out the assessments referred to in paragraphs 3 and 3a.

Where the approval of a financial holding company or mixed financial holding company takes place concurrently with the assessment referred to in Article 22, the competent authority for the purposes of that Article shall coordinate as appropriate with the consolidating supervisor determined in accordance with Article 111 and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In this case the assessment period referred to in the second sub-paragraph of Article 22(3) shall be suspended for a period exceeding 20 working days until the procedure set out in this Article 21a is complete.

- 3. Approval may be granted to a financial holding company or mixed financial holding company pursuant to this Article only where all of the following conditions are fulfilled:
  - (a) the internal arrangements and distribution of tasks within the group are adequate for the purposes of complying with the requirements imposed by this Directive and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis and, in particular, are effective to:
    - (i) coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;
    - (ii) prevent or manage intra-group conflicts; and
    - (iii) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group.

- (b) the structural organisation of the group of which the financial holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject. The assessment of this criterion shall take into account, in particular, the position of the financial holding company or mixed financial holding company in a multi-layered group, the shareholding structure and the role of the financial holding company or mixed financial holding company within the group;
  - (c) the criteria in Article 14 and the requirements in Article 121 are complied with.
- 3a. Approval of the financial holding company or mixed financial holding company under this Article shall not be required where all of the following conditions are met:
- (a) the financial holding company's only purpose is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its only purpose with respect to institutions or financial institutions is to acquire holding sin subsidiaries;
  - (b) the financial holding company or mixed financial holding company has not been designated as resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to Directive 2014/59/EU;
  - (c) a subsidiary credit institution is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;
  - (d) the governance arrangements of the group preclude the financial holding company or mixed financial holding company from taking management, operational or financial decisions affecting the group and its subsidiaries that are institutions or financial institutions;

- (e) there is no impediment to the effective supervision of the group on a consolidated basis.

Financial holding companies or mixed financial holding companies exempted from approval in accordance with this paragraph shall not be excluded from the perimeter of consolidation as laid down in this Directive and in Regulation (EU) No 575/2013.

4. The consolidating supervisor determined in accordance with Article 111 shall monitor compliance with the conditions referred to in paragraph 3 or, where applicable, paragraph 3a on an on-going basis. Financial holding companies and mixed financial holding companies shall provide the consolidating supervisor determined in accordance with Article 111 with the information they require to monitor on an ongoing basis the structural organisation of the group and compliance with the conditions referred to in paragraph 3 or, where applicable, paragraph 3a . The consolidating supervisor shall share this information with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established.
5. Where the consolidating supervisor has established that the conditions laid down in paragraph 3 are not met or have ceased to be met, the financial holding company or mixed financial holding company shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and compliance with the requirements of this Directive and Regulation (EU) No 575/2013 on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate.

The supervisory measures may consist in:

- (a) suspending the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;
- (b) issuing injunctions or penalties against the financial holding company, the mixed financial holding company or the members of the management body and managers, subject to Articles 65 to 72;

- (c) giving instructions or directions to the financial holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiaries that are institutions;
  - (d) designating on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for compliance with the requirements of this Directive and Regulation (EU) No 575/2013 on a consolidated basis;
  - (e) restricting or prohibiting distributions or interest payments to shareholders;
  - (f) requiring financial holding companies or mixed financial holding companies to divest from or reduce holdings in institutions or financial sector entities;
  - (g) requiring financial holding companies or mixed financial holding companies to present a plan on immediate return to compliance.
6. Where the consolidating supervisor has established that the conditions in Article 3a are no longer met, the financial holding company or mixed financial holding company shall seek approval in accordance with this Article.
7. For the purposes of taking decisions on the approval and exemption from approval referred to in paragraphs 3 and 3a, respectively, and the supervisory measures referred to in paragraphs 5 and 6, where the consolidating supervisor is different from the competent authority in the Member State where the financial holding company or the mixed financial holding company is established , the two authorities shall work together in full consultation. The consolidating supervisor shall prepare an assessment on the matters referred to in paragraphs 3, 3a, 5 and 6, as applicable, and shall forward this assessment to the competent authority in the Member State where the financial holding company or the mixed financial holding company is established. The two authorities shall do everything within their power to reach a joint decision within two months from the date of receipt of the above-referred assessment. .

The joint decision shall be duly documented and its rationale set out therein. The consolidating supervisor shall communicate the joint decision to the financial holding company or mixed financial holding company.

In the event of a disagreement, the consolidating supervisor or the competent authority in the Member State where the financial holding company or the mixed financial holding company is established shall refrain from taking a decision and shall refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. The EBA shall take its decision within 1 month. The competent authorities concerned shall adopt a joint decision in conformity with the decision of the EBA. The matter shall not be referred to the EBA after the end of the two months period or after a joint decision has been reached.

- 7a. In the case of mixed financial holding companies, where the consolidating supervisor determined in accordance with Article 111 or the competent authority in the Member State where the mixed financial holding company is established is different from the coordinator determined in accordance with Article 10 of Directive 2002/87/EC, the agreement of the coordinator shall be required for the purposes of decisions or joint decisions referred to in paragraph 3. The coordinator shall be consulted for the purposes of decisions or joint decisions referred to in paragraph 3a and the application of paragraphs 3, 3a, 5 and 6, as applicable. Where the agreement of the coordinator is required, disagreements shall be settled by the relevant European Supervisory Authorities, which shall take their decision within 1 month. A decision, joint decision or settlement shall be without prejudice to the obligations under Directives 2002/87/EC or 2009/138/EC.
8. Where approval of a financial holding company or mixed financial holding company pursuant to this Article is refused, the consolidating supervisor shall notify the applicant of the decision and the reasons therein within four months of receipt of the application, or where the application is incomplete, within four months of receipt of the complete information required for the decision.

A decision to grant or refuse approval shall, in any event, be taken within [six] months of receipt of the application. Refusal may be accompanied, where necessary, by any of the measures referred to in paragraph 5.

*Article 21b*

*Intermediate EU parent undertaking*

1. Two or more institutions in the Union which are part of the same third country group shall have a single intermediate EU parent undertaking established in the Union.
- 1a. Competent authorities may allow the institutions referred to in paragraph 1 to have two intermediate EU parent undertakings where the competent authorities ascertain that a single intermediate EU parent undertaking would be incompatible with a mandatory requirement for separation of activities in accordance with the rules of the third country where the ultimate parent undertaking of the third country group has its head office.
2. An intermediate EU parent undertaking shall be a credit institution authorised in accordance with Article 8, or a financial holding company or mixed financial holding company approved in accordance with Article 21a.

By way of derogation from the first subparagraph, where none of the institutions referred to in paragraph 1 is a credit institution or the second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in paragraph 1a, the intermediate EU parent company or the second intermediate EU parent company, respectively, may be an investment firm authorised in accordance with Article 5(1) of Directive 2014/65/EU.

3. Paragraphs 1, 1a and 2 shall not apply where the total value of assets in the Union of the third country group is lower than EUR [30] billion.
4. For the purposes of this Article, the total value of assets in the Union of the third country group shall be the sum of the following:
  - (a) the amount of total assets of each institution in the Union of the third country group, as resulting from their consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and

- (b) the amount of total assets of each branch of the third country group authorised to operate in the Union in accordance with Article 47.
5. Competent authorities shall notify to the EBA the following information in respect of each third country group operating in their jurisdiction:
- (a) the names and amount of total assets of supervised institutions belonging to a third country group and the types of activities which they are authorised to carry out;
- (b) the names and amount of total assets corresponding to branches authorised in that Member State pursuant to Article 47 and the types of activities that they are authorised to carry out;
- (c) the name and legal form of any intermediate EU parent undertaking set-up in that Member State and the name of the third country group of which it is part.
6. EBA shall publish on its website the list of all third country groups operating in the Union and of their intermediate EU parent undertaking or undertakings, where applicable .

Competent authorities shall ensure that each institution under their jurisdiction that is part of a third country group meets one of the following conditions:

- (a) it has an intermediate EU parent undertaking;
- (b) it is an intermediate EU parent undertaking;
- (c) it is the only institution in the Union of the third country group; or
- (d) it is part of a third country group whose total value of assets in the Union is below EUR [30] billion .
7. By way of derogation from paragraph 1, groups operating through more than one institution in the Union and with total value of assets exceeding EUR 30 billion on [date of entry into force of this directive] shall have an intermediate EU parent undertaking or, in the case referred to in paragraph 1a, two intermediate EU parent undertakings by [date of application of Directive + four years].".

8. [Within four years after the entry into force of this Regulation, the Commission shall review the requirements imposed on institutions by this article and, after consulting the EBA, submit a report to the European Parliament and the Council. Following the publication of this report, the Commission shall bring forward any necessary legislative amendments. This report shall consider:
- (a) whether the requirements of this Article are operable, necessary and proportionate and whether other measures would be more appropriate;
  - (b) whether other jurisdictions apply requirements which are similar to this Article and, if so, the nature and effect of those requirements, whether they are consistent with the requirements of this Article and the impact of different asset thresholds in those jurisdictions;
  - (c) the impact of structural separation requirements in other jurisdictions].
- (10) In Article 23(1), point (b) is replaced by the following:
- "(b) the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the credit institution as a result of the proposed acquisition;"
- (11) Article 47 is amended as follows:
- (a) a new paragraph 1a is inserted after paragraph 1:

"1a. Member States shall require branches of [credit] institutions having their head office in a third country to report at least annually to the competent authorities the following information:

    - (a) the total assets corresponding to the activities of the branch in that Member State;
    - (b) information on liquid assets available to the branch, in particular availability of liquid assets in Union currencies;
    - (c) own funds that are at the disposal of the branch;



- (d) the deposit protection arrangements available to depositors in the branch;
- (e) their risk management arrangements;
- (f) the governance arrangements, including key function holders for the activities of the branch;
- (g) the recovery plans covering the branch;
- (e) any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.

(b) paragraph 2 is replaced by the following:

"2. The competent authorities shall notify the EBA of the following:

- (a) all authorisations for branches granted to credit institutions having their head office in a third country and any subsequent changes to such authorisations;
- (b) the total assets attributable and the total liabilities corresponding to the authorised branches of credit institutions having their head office in a third country, as periodically reported;
- (c) the name of the third country group to which an authorised branch belongs;
- (d) the branches that are deemed to carry out critical economic functions in the Member State or that provide intragroup services.

EBA shall publish on its website the list of all third country branches authorised to operate in the Member States, indicating the Member State and the total assets of each branch.";

(c) the following new paragraph is added after paragraph 2:

"2a. Competent authorities supervising branches of credit institutions having their head office in a third country, competent authorities of institutions that are part of the same third country group shall cooperate closely to ensure that all activities of the third country group in the Union are subject to comprehensive supervision, to prevent the requirements applicable to third country groups pursuant to this Directive and Regulation (EU) No 575/2013 from being circumvented and to prevent any detrimental impact on the financial stability of the Union.

EBA, in cooperation with all the competent authorities concerned, shall assess whether branches of credit institutions having their head office in a third country provide key intragroup services to a substantial number of entities which are part of the third country group in the Union, or have a material presence in the Union which may impact on the financial stability in the Union.

".

(11a) The following new Article 58a is added:

"Article 58a

Transmission of information to international and European bodies

1. Notwithstanding Articles 53(1) and Article 54 the competent authorities may, subject to the conditions set out in paragraphs two, three and four, transmit or share certain information with the following bodies :

- (a) the International Monetary Fund and the World Bank for the purposes of assessments for the Financial Sector Assessment Program ;
- (b) the Bank for International Settlements for the purposes of Quantitative Impact Studies ;
- (c) the Financial Stability Board for the purposes of its surveillance function;

- (d) [the European Commission];
- (e) resolution authorities and the Single Resolution Board; and
- (f) the European Stability Mechanism;<sup>2</sup> Competent authorities may only share confidential information following an explicit request by the relevant body, where at least the following conditions are met:
  - (a) the request is duly justified in light of the specific tasks performed by the requesting body in accordance with its statutory mandate;
  - (b) the request is sufficiently precise as to the nature, scope, and format of the required information, and the means of its disclosure or transmission;
  - (c) the requested information is strictly necessary for the performance of specific tasks of the requesting body and does not go beyond the statutory tasks conferred to the requesting body ;
  - (d) the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the specific task;
  - (e) the persons having access to the information are subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

3. Where the conditions in paragraph 2 are fulfilled, competent authorities may only transmit aggregate and anonymised information. Other information may be shared with the requesting body only at the premises of the competent authority. Any transmission of information shall be done by means of secure channels of communication between the competent authority and the requester.

4. To the extent that the disclosure of information involves processing of personal data, any processing by the requesting body shall comply with the applicable requirements of the Regulation 2016/679.

(11b) In Article 64, paragraph 1 is replaced by the following:

" Competent authorities shall be given all supervisory powers to intervene in the activity of institutions, financial holding companies and mixed financial holding companies 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 18, the powers required in accordance with Article 102 the powers set out in Articles 104 and 105, and the powers to take the measures referred to in Article 21a."

(11c) In Article 66(1) the following point(e) is added:

"(e) failing to apply for approval in breach of Article 21a or any other breach of the requirements set out in Article 21a."

(11d) In Article 67(1) the following point(q) is added:

(q) a parent institution, parent financial holding company or parent mixed financial holding company fails to take any action that may be required to ensure compliance with the prudential requirements set out in Parts Three, Four, Six or Seven of Regulation (EU) No 575/2013 or imposed under Article 104(1)(a) or Article 105 of this Directive at consolidated or sub-consolidated level."

(12) In Article 75, paragraph 1 is replaced by the following:

"1. Competent authorities shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h), (i) and (k) 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."

(13) Article 84 is replaced by the following:

*"Article 84*

*Interest risk arising from non-trading book activities*

1. Competent authorities shall ensure that institutions implement internal systems or use the standardised methodology to identify, evaluate, manage and mitigate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities.
2. Competent authorities shall ensure that institutions implement systems to assess and monitor the risks arising from potential changes in credit spreads that affect both the economic value of equity and the net interest income of an institution's non-trading book activities.
3. Competent authorities may require an institution to use the standardised methodology referred to in paragraph 1 where the internal systems implemented by that institutions for the purposes of evaluating the risks referred to in paragraph 1 are not satisfactory.
4. EBA shall develop draft regulatory technical standards to specify, for the purposes of this Article, the details of a standardised methodology that institutions may use for the purpose of evaluating the risks referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].

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 issue guidelines to specify:
  - (a) the criteria for the evaluation by an institution's internal system of the risks referred to in paragraph 1;
  - (b) the criteria for the identification, management and mitigation by institutions of the risks referred to in paragraph 1;

- (c) the criteria for the assessment and monitoring by institutions of the risks referred to in paragraph 2;
- (d) the criteria for determining which the internal systems implemented by the institutions for the purposes of paragraph 1 are not satisfactory as referred to in paragraph 3;

EBA shall issue those guidelines by [one year after entry into force]."

(14) In Article 85, paragraph (1) is replaced by the following:

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

(15) Article 92 is amended as follows:

(a) paragraph 1 is deleted.

(b) in paragraph 2, the introductory phrase is replaced by the following:

"Competent authorities shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on the institution's risk profile , institutions comply with the following requirements in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities."

(c) the following paragraph (3) is added:

"3. For the purposes of paragraph 2, categories of staff whose professional activities have a material impact on the institution's risk profile shall include:

(a) all the members of the institution's management body and senior management;

(b) risk takers;

(c) staff with managerial responsibility over the institution's control functions and material business units;

(d) staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:

(i) the staff member's remuneration is equal to or higher than EUR 500,000 and the weighted average remuneration awarded to the institution's senior management and risk takers referred to in points (a) and (b);

(ii) the staff member performs their professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile."

(16) Article 94 is amended as follows:

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

"(i) shares or, subject to the legal structure of the institution concerned, equivalent ownership interests; or share-linked instruments or, subject to the legal structure of the institution concerned, equivalent non-cash instruments;"

(b) the following paragraphs are added:

"3. By way of derogation from paragraph 1 , the requirements set out in points (l), (m) and in the second subparagraph of point (o) shall, at a minimum, not apply to:

- (a) an institution that is not a large institution as defined in point (1) of Article 430a of Regulation (EU) No 575/2013 and the value of the assets of which is on average and on an individual or, where applicable, on a consolidated basis in accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;
  - (b) a staff member whose annual variable remuneration does not exceed EUR [50,000] and does not represent more than one third of that staff member's total annual remuneration. For the purposes of this point competent authorities may modify the thresholds referred to herein taking into account the particularities of the remuneration practices in the relevant national market and the responsibilities and job profile of those staff members.
- 3a. Acompetent authority may:
- (a) lower the threshold referred to in paragraph 3(a) for institutions other than a large institution as defined in point (1) of Article 430a of Regulation (EU) No 575/2013 taking into account the nature and scope of their activities, their internal organisation or, if applicable, the characteristics of the group to which they belong; or
  - (b) increase the threshold referred to in paragraph 3(a) up to a maximum of EUR 15 billion, provided that the institution is not a large institution as defined in point (1) of Article 430a of Regulation (EU) No 575/2013 and meets the criteria set out in points (b) to (e) of Article 430a(4) of Regulation (EU) No 575/2013.
4. By [four years after entry into force of this Directive], the Commission, in close cooperation with EBA, shall review and report on the application of paragraph 3 and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.
5. EBA shall adopt guidelines facilitating the implementation of paragraph 3 and ensuring its consistent application."



(17) Article 97(1) is amended as follows:

(a) point (b) is deleted;

(b) the following new paragraph 4a is inserted after paragraph 4:

"4a. Competent authorities may tailor the methodologies for the application of the review and evaluation process referred to in paragraph 1 to take into account institutions with a similar risk profile, such as similar business models or geographical location of exposures. Such tailored methodologies may include risk-oriented benchmarks and quantitative indicators, and shall allow for due consideration of the specific risks that each institution may be exposed to and shall not affect the institution-specific nature of measures imposed in accordance with Article 104a.

The competent authorities shall notify EBA where they use tailored methodologies pursuant to this paragraph. EBA shall monitor supervisory practices and issue guidelines to specify how similar risk profiles should be assessed for the purposes of this paragraph and to ensure a consistent and proportionate application of similar institutions-tailored methodologies across the Union. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010".

(18) Article 98 is amended as follows:

(a) in paragraph (1), point (j) is deleted;

(b) paragraph 5 is replaced by the following:

"5. The review and evaluation performed by competent authorities shall include the exposure of institutions to the interest rate risk arising from non-trading book activities. Competent authorities shall exercise supervisory powers at least in the following cases unless they consider, based on the review and evaluation referred to in this paragraph, that the institution's management of interest rate risk arising from non-trading book activities is adequate and that the institution is not excessively exposed to interest rate risk arising from non-trading book activities

(a) where the institution's economic value of equity referred to in Article 84(1) declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of six supervisory shock scenarios applied to interest rates;

(b) where the institution experiences a large decline in its net interest income as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates as referred to in point (b) of Article 448(3) of Regulation 575/2013;

For the purpose of this paragraph, 'supervisory powers' mean any of following powers:

(a) the powers referred to in Article 104(1);

(b) the power to impose modelling and parametric assumptions, other than those identified by the EBA pursuant to Article 98(5a)(b), that institutions shall reflect in their calculation of the economic value of equity under Article 84(1).

(c) the following paragraph 5a is inserted:

"5a. EBA shall develop draft regulatory technical standards to specify for the purpose of paragraph 5:

(a) six supervisory shock scenarios to be applied to interest rates for every currency;

(b) in light of internationally agreed prudential standards, common modelling and parametric assumptions, excluding behavioural assumptions, that institutions shall reflect in their calculation of the economic value of equity under point (a) of paragraph 5 which are limited to:

(i) the treatment of the institution's own equity;

(ii) the inclusion, composition and discounting of cash-flows sensitive to interest rates arising from the institution's assets, liabilities and off-balance sheet items, including the treatment of commercial margins and other spread components;

- (iii) the use of dynamic and/or static balance sheet models and the resulting treatment of amortized and maturing positions.
- (c) common modelling and parametric assumptions that institutions shall reflect in their calculations of the net interest income and what constitutes a "large decline" for the purpose of paragraph 5;

EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].

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."

(19) In Article 99(2), point (b) is deleted.

(20) Article 103 is deleted.

(21) Article 104 is amended as follows:

(a) paragraph 1 replaced by the following:

"1. For the purposes of Article 97, Article 98(4) and (5), Article 101(4) and Article 102 and the application of Regulation (EU) No 575/2013, competent authorities shall have at least the following powers:

- (a) to require institutions to have additional own funds in excess of the requirements set out in Regulation (EU) No 575/2013, under the conditions laid down in Article 104a;
- (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, including outsourced activities;
  - (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 .
- (b) paragraph 2 is amended as follows:

2. For the purposes of paragraph 1(j), competent authorities may only impose additional or more frequent reporting requirements on institutions where the information to be reported is not duplicative and the additional information is required for the purposes of Articles 97 to 102. Any additional information that may be required from institutions shall be deemed as duplicative where the same or substantially the same information has otherwise already been reported to the competent authority. The competent authority shall not require an institution to report additional information where it has previously received information in a different format or level of granularity and that different format or granularity does not prevent the competent authority from producing information of the same degree of quality and reliability as that of the additional information that would otherwise be reported.";

(c) paragraph 3 is deleted.

(22) The following Articles 104a, 104b and 104c are inserted:

*"Article 104a*

*Additional own funds requirement*

1. Competent authorities shall impose the additional own funds requirement referred to in Article 104(1)(a) where, on the basis of the reviews carried out in accordance with Articles 97 and 101, they ascertain any of the following situations for an individual institution:
  - (a) the institution is exposed to risks or elements of risks that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 as specified in paragraph 2;
  - (b) the institution does not meet the requirements set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013 and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe;

- (c) the adjustments referred to in Article 98(4) are deemed to be insufficient to enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;
- (d) the evaluation carried out in accordance to Article 101(4) reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;
- (e) the institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance communicated in accordance with Article 104b(3);
- (f) other institution-specific situations deemed by the competent authority to raise material supervisory concerns.

The competent authorities shall only impose the additional own funds requirements referred to in Article 104(1)(a) to cover the risks incurred by individual institutions due to their activities, including those reflecting the impact of certain - economic factors or market developments on the risk profile of an individual institution.

2. For the purposes of paragraph 1(a), risks or elements of risk shall be considered as not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 where the amounts, types and distribution of capital considered adequate by the competent authority taking into account the supervisory review of the assessment carried out by institutions in accordance with the first paragraph of Article 73, are higher than the institution's own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.

For the purposes of the first subparagraph, competent authorities shall assess, taking into account the risk profile of each individual institution, the risks to which the institution is exposed, including:

- (a) the risks or elements of risk that are explicitly excluded from or not explicitly addressed by the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013; and

- (b) the risks or elements of risk likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.

To the extent that risks or elements of risks are subject to transitional arrangements or grandfathering provisions in this Directive or Regulation (EU) No 575/2013 they shall not be considered risks or elements of risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.

For the purposes of the first subparagraph, the capital considered adequate shall cover all material risks or elements of such risks that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.

Interest rate risk arising from non-trading positions may be considered material at least in the cases referred to in Article 98(5) unless competent authorities consider, based on the review and evaluation referred to in the same paragraph, that the institution's management of interest rate risk arising from non-trading book activities is adequate and that the institution is not excessively exposed to interest rate risk arising from non-trading book activities.

3. Competent authorities shall determine the level of the additional own funds required under Article 104(1)(a) as the difference between the capital considered adequate pursuant to paragraph 2 and the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.
4. The institution shall meet the additional own funds requirement referred to in Article 104(1)(a) with own funds meeting the following conditions:
  - (a) at least three quarters of the additional own funds requirement shall be met with Tier 1 capital;
  - (b) at least three quarters of the Tier 1 capital shall be composed of CET 1 capital.

By way of derogation from the first subparagraph, the competent authority may require the institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or CET1 capital where necessary and having regard to the specific circumstances of the institution.

Own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) shall not be used towards meeting any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, the combined buffer requirement defined in Article 128(6) of this Directive or the guidance on additional own funds referred to in Article 104b.

Own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) imposed by competent authorities to address risks or elements of risks not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013 may be used to meet the combined buffer requirement referred to in Article 128(6) of this Directive.

5. The competent authority shall duly justify in writing to each institution the decision to impose an additional own funds requirement under Article 104(1)(a), at least by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 4. This includes, in the case set out in paragraph 1(e), a specific statement of the reasons for which the imposition of capital guidance is no longer considered sufficient.
- 6.

#### *Article 104b*

##### *Guidance on additional own funds*

1. Pursuant to the strategies and processes referred to in Article 73 , institutions shall set their internal capital at an adequate level of own funds that is sufficient to cover all risks that an institution is exposed to and to ensure that:
  - (a) cyclical economic fluctuations do not lead to a breach of those requirements; and
  - (b) the institution's own funds can absorb the potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in Article 100 .



2. Competent authorities shall regularly review the level of internal capital set by each institution in accordance with paragraph 1 as part of the reviews and evaluations carried out in accordance with Articles 97 and 101, including the results of stress tests referred to in Article 100.

Pursuant to these reviews competent authorities shall determine for each institution the overall level of own funds they consider appropriate.

3. Competent authorities shall communicate to institutions their supervisory guidance on additional own funds, which shall consist of the difference between the overall level of own funds considered appropriate by the competent authorities and the amount of own funds required in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and pursuant to Articles 104(1)(a) and 128 of this Directive .
4. Competent authorities' guidance on additional own funds pursuant to paragraph 3 shall be institution-specific. The guidance may cover risks addressed by additional own funds requirements imposed pursuant to Article 104a only to the extent that it covers aspects of those risks that are not already covered under that requirement.
5. Failure to meet the guidance referred to in paragraph 3 where an institution meets the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/201, the additional own funds requirement referred to in Article 104(1)(a) and the combined buffer requirement referred to in Article 128(6) shall not trigger the restrictions referred to in Article 141.
6. The guidance on additional own funds referred to in paragraph 3 shall not be subject to the disclosure requirements laid down in Article 17(1) of Regulation (EU) No 596/2014.

*Article 104c*

*Cooperation with resolution authorities*

1. Competent authorities shall [consult/notify] resolution authorities prior to determining any additional own funds requirement referred to in Article 104(1)(a) and prior to communicating to institutions any expectation for adjustments to the level of own funds in accordance with Article 104b. For these purposes, competent authorities shall provide resolution authorities with all available information.
2. Competent authorities shall inform the relevant resolution authorities about the additional own funds requirement imposed on institutions pursuant to Article 104(1)(a) and about any guidance on additional own funds communicated to institutions in accordance with Article 104b."

*[Note: pars. 1 and 2 subject to change depending on the limits to MREL]*

(23) In Article 105, point (d) is deleted.

(24) In Article 108, paragraph 3 is deleted.

(25) In Article 109, paragraphs 2 and 3 are replaced by the following

"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 the 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 these arrangements, processes and mechanisms in their subsidiaries not subject to this Directive, including those established in offshore financial centres. 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 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."

(25a) In Article 109, the following paragraph 4 is added:

4. The remuneration requirements laid down in Articles 92, 94 and 95 shall not apply on a consolidated basis to either of the following:

- (a)** subsidiary undertakings established in the Union where those are subject to specific remuneration requirements in accordance with other instruments of Union law;
- (b)** subsidiary undertakings established in a third country where these would be subject to specific remuneration requirements in accordance with other instruments of Union law if they were established in the Union".

(25b) Article 111 is replaced by the following:

#### Article 111

##### Determination of the consolidating supervisor

1. Where a parent undertaking is a parent credit institution in a Member State or an EU parent credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent or the EU parent credit institution on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm and none of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent or the EU parent investment firm on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm, and at least one of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution, or where there are several credit institutions, the credit institution with the largest balance sheet total.

2. Where the parent of an institution is a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authority that supervises the institution on an individual basis.
3. Where two or more institutions authorised in the Union have the same parent financial holding company in a Member State, parent mixed financial holding company in a Member State, EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by
  - (a)** the competent authority of the credit institution where there is only one credit institution within the group;
  - (b)** the competent authority of the credit institution with the largest balance sheet total, where there are several credit institutions within the group; or
  - (c)** the competent authority of the investment firm with the largest balance sheet total, where the group does not include any credit institution.

Where the parent undertakings of institutions authorised in the Union 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 Member 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 consolidation is required pursuant to paragraphs 3 or 6 of Article 18 of Regulation (EU) No 575/2013, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total or, where the group does not include any credit institution, by the competent authority of the investment firm with the largest balance sheet total.

- 4a. By way of derogation from the third subparagraph of paragraph 1, from point (b) of paragraph 3 and from paragraph 4, the consolidating supervisor shall be the competent authority that supervises on an individual basis more than one credit institution within a group where the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institution with the largest balance sheet total.
5. In particular cases, the competent authorities may waive by common agreement the criteria referred to in paragraphs 3 and 4 and appoint a different competent authority to exercise supervision on a consolidated basis where the application of the criteria therein would be inappropriate taking into account the institutions concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision at consolidated level by the same competent authority. In such cases, the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the institution with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.
6. The competent authorities shall notify the Commission and EBA of any agreement falling within paragraph 5."

(26) Article 113 is replaced by the following:

*"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 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 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;
  - (c) on any supervisory guidance on additional own funds determined in accordance with Article 104b(3).

2. The joint decisions referred to in paragraph 1 shall be reached:
- (a) for the purposes 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 Article 104a to the other relevant competent authorities;
  - (b) for the purposes of paragraph 1(b), within four months 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;
  - (c) for the purposes of paragraph 1(c), within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Article 104b.

The joint decisions shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 73, 97, 104a and 104b.

The joint decisions referred to in points (a) and (b) of paragraph 1 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), Article 104b 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 after a joint decision has been reached.

The decision on the application of Articles 73, 86 and 97, Article 104(1)(a), Article 104b 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 after a joint decision has been reached.



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), Article 104b 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), Article 104b 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."

- (26a) In Article 115, the following new paragraph is added:

"3. Where the consolidating supervisor is different from the competent authority in the Member State where a financial holding company or mixed financial holding company approved in accordance with Article 21a is established, the coordination and cooperation arrangements referred to in paragraph 1 shall also be concluded with the competent authority of the Member State where the parent undertaking is established."

- (27) Article 116 is amended as follows:

- (a) In the first subparagraph the following sentence is added:

"Colleges of supervisors shall also be established where all subsidiaries of an EU parent institution, an EU parent financial holding company or EU parent mixed financial holding company are located in a third country.";

- (b) the following new subparagraph is added in paragraph 6:

"The competent authority in the Member State where a financial holding company or mixed financial holding company approved in accordance with Article 21a is established may participate in the relevant college of supervisors."

(28) In Article 119, paragraph 1 is replaced by the following:

"1. Subject to Article 21a, Member States shall adopt any measures necessary to include financial holding companies and mixed financial holding companies in consolidated supervision."

(29) In Article 120, paragraph 2 is replaced by the following:

"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 the Directive relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC."

(29a) In Article 125(1) the following new subparagraph is added:

"Where pursuant to Article 111 the consolidating supervisor of a group with a parent mixed financial holding company is different from the coordinator determined in accordance with Article 10 of Directive 2002/87/EC the two authorities shall cooperate for the purpose of the application of this Directive and Regulation (EU) No 575/2013 on a consolidated basis. In order to facilitate and establish effective cooperation, the consolidating supervisor and the coordinator shall have written coordination and cooperation arrangements in place."

(29b) In Article 128 paragraph 2 is replaced by the following:

"2. 'institution-specific countercyclical capital buffer' means the own funds that an institution is required to maintain in accordance with Article 130;"

(29c) Article 129 and Article 130 are replaced by the following:

*“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 points (a) to (c) of Article 92(1) 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 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 ESRB. The ESRB shall forward the notifications to the Commission, EBA and the competent and designated 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 (1).

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 104a and any guidance imposed under Article 104b.
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 ESRB. The ESRB shall forward the notifications to the Commission, EBA and the competent and designated authorities of the Member States concerned without delay.

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 points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013, the 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).”
- (30) The text in Article 131 is replaced by the following:

*"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 any of the following:

- (a) a group headed by an EU parent institution, or an EU parent financial holding company, or an EU parent mixed financial holding company; or
- (b) an institution that is not 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 institution or a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company ”.

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.
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 [3%/3.5 %] 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 Common Equity Tier 1 capital.
- 5a. Subject to the Commission authorisation as described below, 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 higher than [3%/3.5%] of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013. That buffer shall consist of Common Equity Tier 1 capital.

Within one month of the notification referred to in paragraph 7, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

Within two months after receiving the ESRB opinion, the Commission, taking into account the assessment of the ESRB and EBA, if relevant, and if it is satisfied that the O-SII buffer does not entail 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.



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 ESRB one month before the publication of the decision referred to in paragraph 5 and shall notify the ESRB three months before the publication of the decision of the competent authority or designated authority referred to in paragraph 5a. The ESRB shall forward the notifications to the Commission, the EBA and the competent and designated authorities of the Member States without delay. 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 either an institution or a group headed by 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 lower of:
- (a) the sum of the higher of the G-SII or O-SII buffer rate applicable to the group at consolidated level and [1 %/1.5 %] of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
  - (b) [3%/3.5%] of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, or the rate the Commission has authorised to be applied to the group at consolidated level according to paragraph 5a.
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 at least 0,5 % 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.

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 ESRB. The ESRB shall forward the notifications to the Commission and EBA without delay, 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 ESRB which shall forward the results to the Commission and EBA without delay. The competent authority or the designated authority shall disclose to the public the updated list of identified systemically important institutions and 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 points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013 and Articles 104a, 129, 130, 133 and 134 of this Directive and any guidance imposed under Articles 104b of this Directive.
14. Where a group, on a consolidated basis, is subject to a G-SII buffer and an O-SII buffer the higher buffer shall apply .
15. Where an institution is subject to a systemic risk buffer, set in accordance with Article 133, this shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with this Article.

[Where the sum of the institution-specific systemic risk buffer rate and the O-SII or G-SII buffer rate would be higher than 5%, the procedure set out in Article 131(5a) shall apply.]

16. Where 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. 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 institution or a group headed by 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. 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.”(30a)  
Article 133 and Article 134 are replaced as following:

*“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 on one or more subsets of that sector on all or a subset of exposures, in order to prevent and mitigate systemic or macroprudential risks not covered by Regulation (EU) No 575/2013 and by Article 131 of this Directive, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State.
- 1a. Institutions shall calculate the systemic risk buffer ('BSR') as follows:

$$B_{SR} = r^T \cdot E^T + \sum_i r^i \cdot E^i$$

where:

$i$  = the index denoting the subset of exposures as defined in paragraph 8;

$r^T$  = the buffer rate applicable to the total risk exposure amount of an institution;

$E^T$  = the total risk exposure amount of an institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

$r^i$  = the buffer rate applicable to the risk exposure amount of subset of exposures  $i$ ;

$E^i$  = the risk exposure amount of an institution for the subset of exposures  $i$  calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

The institution-specific systemic risk buffer rate is equal to the systemic risk buffer of an institution divided by the total risk exposure amount of that institution.

2. For the purposes of paragraph 1, the Member State shall designate the authority in charge of setting the systemic risk buffer and of identifying the exposures and subsets of institutions to which it applies. This authority shall be either the competent authority or the designated authority.
3. For the purposes of paragraph 1, the relevant competent or designated authority, as applicable, may require institutions to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013, a systemic risk buffer of Common Equity Tier 1 capital calculated in accordance with paragraph 1a, on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Part One, Title II of that Regulation. 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 points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013 and Articles 104a, 129 and, 130 and 131 of this Directive and any guidance imposed under Article 104b of this Directive.

5. 6. Where 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, the O-SII buffer and the systemic risk buffer applicable to it on an individual basis.
7. 8. A systemic risk buffer may apply to:
- (a) all exposures located in the Member State that sets that buffer;
  - (b) the following sectoral exposures in the Member State that sets that buffer, or sub-sectors thereof:
    - (i) retail exposures to natural persons which are secured by residential property;
    - (ii) exposures to legal persons secured by mortgages on commercial immovable property;
    - (iii) exposures to legal persons excluding those specified in point (ii);
    - (iv) exposures to natural persons excluding those specified in point (i).
  - (c) all exposures located in other Member States, subject to paragraphs 15 and 18;
  - (d) sectoral exposures located in other Member States only to enable recognition of a buffer rate set by another Member State in accordance with Article 134;
  - (e) exposures in third countries.

9. A systemic risk buffer shall apply to all or a subset of exposures of 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 institutions and of exposures.<sup>10</sup> 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.
  - (c) the systemic risk buffer shall not address risks that are covered by the framework set out in Article 131.



11. Where the systemic risk buffer rate applicable to all exposures ( $r^T$ ) is set or reset to a level below 5 %, or where the setting or resetting of one or more systemic risk buffer rates ( $r^i$ ) results in a cumulative systemic risk buffer rate applicable to a subset of exposures ( $r^T + r^i$ ) of less than 5%, the competent authority or the designated authority, as applicable, shall notify the ESRB one month before the publication of the decision referred to in paragraph 16. The ESRB shall forward the notifications to the Commission, EBA and the competent and designated authorities of the Member States concerned without delay. For the purposes of this paragraph, the buffer requirement that results from the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the 5 % threshold. Where the systemic risk buffer rate applies to exposures located in third countries the competent authority or the designated authority, as applicable, shall also notify the ESRB and the ESRB shall forward the notification to 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) where the systemic risk buffer rate applies to all exposures, a justification why the authority considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided in Article 131 of this Directive;
- (f) the justification for why the existing measure under Article 130 in this Directive will not be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of this measure;

- (g) the systemic risk buffer rate or rates that the competent or designated authority, as applicable, wishes to require, to which exposures the rate of rates apply.

12. Where the systemic risk buffer rate applicable to all exposures ( $r^T$ ) is set or reset at a level above 5 %, or when the setting or resetting of one or more systemic risk buffer rates ( $r^i$ ) results in a cumulative systemic risk buffer rate applicable to a subset of exposures ( $r^T + r^i$ ) of more than 5%, the competent authority or the designated authority, as applicable, shall notify the ESRB. The ESRB shall forward the notifications to the Commission, EBA and the competent and designated authorities of the Member States concerned without delay. For the purposes of this paragraph, the buffer requirement that results from the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the 5 % threshold. Where the systemic risk buffer rate applies to exposures located in third countries the competent authority or the designated authority, as applicable, shall also notify the ESRB and the ESRB shall forward the notification to 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) where the systemic risk buffer rate applies to all exposures, a justification why the authority considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided in Article 131 of this Directive;

- (f) the justification for why the existing measure under Article 130 in this Directive will not be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of this measure;
- (g) the systemic risk buffer rate or rates that the competent or designated authority, as applicable, wishes to require, to which exposures the rate of rates apply

13. 14. When the systemic risk buffer rate applicable to all exposures ( $r^T$ ) would be set or reset at a level between 3 % and 5 %, or when the setting or resetting of one or more systemic risk buffer rates ( $r^i$ ) would result in a cumulative systemic risk buffer rate applicable to a subset of exposures ( $r^T + r^i$ ) of between 3% and 5%, in accordance with paragraph 13, the competent authority or the designated authority, as applicable, of the Member State that sets that buffer shall request the Commission's opinion. The Commission shall provide its opinion within one month after receiving the request. Where the opinion of the Commission is negative, the competent authority or the designated authority, as applicable, of the Member State that sets that buffer shall comply with that opinion or give reasons for not doing so.

Where the institution to which one or more systemic risk buffer rates apply 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 of the subsidiary and of the parent disagree on the institution-specific systemic risk buffer rate applicable to that institution and in the case of a negative recommendation of both the Commission and the ESRB, the competent authority or the designated authority, as applicable, may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the systemic risk buffer rate or rates for those exposures shall be suspended until EBA has taken a decision.

Where the decision to set one or more systemic risk buffer rates implies a decrease or no change from the previously set buffer rate or rates, the competent authority or the designated authority, as applicable, shall only comply with the procedures set out in paragraph 11.

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 rate or rates are deemed appropriate. EBA may also provide the Commission with its opinion on that buffer rate or rates in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

Within two months from receiving the ESRB opinion, the Commission, taking into account the assessment of the ESRB and EBA, where relevant, and where it is satisfied that the systemic risk buffer rate or rates 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, as applicable, to adopt the proposed measure.

Where the decision to set the systemic risk buffer rate implies a decrease or no change from the previously set buffer rate, the competent authority or the designated authority, as applicable, shall only comply with the procedures set out in paragraph 11.

16. Each competent authority or designated authority, as applicable, shall announce the setting or resetting of one or more systemic risk buffer rates by publication on an appropriate website. The announcement shall include at least the following information:
- (a) the systemic risk buffer rate or rates;
  - (b) the institutions to which the systemic risk buffer applies;
  - (b1) the exposures to which the systemic risk buffer rate or rates apply;
  - (c) a justification for setting or resetting the systemic risk buffer rate or rates;
  - (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.

Where 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. Where the competent authority or the designated authority, as applicable, decides to set the buffer on the basis of exposures in other Member States, the buffer shall be set equally on all exposures located within the Union, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State in accordance with Article 134.

## *Article 134*

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

- 1 Other Member States may recognise a 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.
2. Where Member States recognise a systemic risk buffer rate for domestically authorised institutions they shall notify the ESRB. The ESRB shall forward the notifications to the Commission, EBA and the Member State that sets that systemic risk buffer rate without delay.
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).
- 3a. Where Member States recognise a systemic risk buffer rate for domestically authorised institutions, that systemic risk buffer may be cumulative with the systemic risk buffer applied according to Article 133 subject to the condition that the buffers address different risks. Where the buffers address the same risks, only the higher buffer shall apply.
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.”

(30b) Article 136 is replaced as following:

*“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 the appropriateness of the countercyclical buffer rate for its Member State on a quarterly basis and set or adjust the buffer rate if necessary. In so doing it 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 assessment setting or resetting of the countercyclical buffer rate, and revision when applicable, by publication on its website. The announcement shall include at least the following information:
- (a) the applicable countercyclical buffer rate;
  - (b) the relevant credit-to-GDP-ratio and its deviation from the long-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 increase or decrease of the countercyclical buffer rate and the required 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.

”

(31) In Article 141 paragraphs 1 to 6 are replaced by the following:

"1. An institution that meets the combined buffer requirement shall not make 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. An institution that fails to meet the combined buffer requirement shall calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 4 and shall notify the competent authority of that MDA.

Where the first subparagraph applies, the institution shall not undertake 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. Where an institution fails to meet or exceed its combined buffer requirement, it shall not distribute more than the MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2.

4. Institutions shall 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 net of any distribution of profits or any payment related to 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 net of any distribution of profits or any payment related to 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 any of the own funds requirements under Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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 any of the own funds requirements under Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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 requirements under Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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 requirements under Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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."

(32) The following Article 141a is inserted:

*"Article 141a*

*Failure to meet the combined buffer requirement*

1. An institution shall be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where it does not have own funds and eligible liabilities in an amount and of the quality needed to meet at the same time the requirement defined in Article 128(6) and each of the following requirements in:
  - (a) Article 92(1)(a) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;

- (b) Article 92(1)(b) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;
- (c) Article 92(1)(c) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;
- (d) Articles 92a(1)(a) and 494(1)(a) of Regulation (EU) No 575/2013 and in Articles 45c and 45d of Directive 2014/59/EU when calculated in accordance with point (a) of Article 45(2) of that Directive.

2. By way of derogation from paragraph 1, an institution shall not be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where all the following conditions are met:

- (a) the institution meets the combined buffer requirement defined in Article 128(6) and each of the requirements referred to in points (a), (b) and (c) of paragraph 1;
- (b) the failure to meet the requirements referred to in point (d) of paragraph 1 is exclusively due to the inability of the institution to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013;
- (c) the failure to meet the requirements referred to in point (d) of paragraph 1 does not last longer than 6 months."

(33)

(34) In Article 146, point (a) is deleted.

(34a) The following new Chapter is inserted after Article 159:

"CHAPTER 1a CRD

Transitional provisions on financial holding companies and mixed financial holding companies

Article 159a

Transitional provisions on approval of financial holding companies and mixed financial holding companies

Parent financial holding companies and parent mixed financial holding companies already existing on the [day of entry into force of this Directive] shall apply for approval under Article 21a of this Directive by [two years after entry into force of this Directive]. If a financial holding company or mixed financial holding company fails to apply for approval by [two years after entry into force of this Directive], appropriate measures shall be taken pursuant to Article 21a(5).

During the transitional period for application as referred to in the first subparagraph, competent authorities shall have all the necessary supervisory powers in accordance with this Directive that they are granted with regard to financial holding companies or mixed financial holding companies subject to approval under Article 21a for the purposes of consolidated supervision".

(1) In Article 161, the following paragraph 10 is added:

"10. By 31 December 2023, the Commission shall review and report on the implementation and application of the supervisory powers referred to in points (j) and (l) of Article 104(1) and submit a report to the European Parliament and to the Council. "

(35)

## *Article 2*

### *Transposition*

1. Member States shall adopt and publish, by 18 months after entry into force of this Directive at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [ 18 months + 1 day after entry into force of this Directive]. However, the provisions necessary to comply with the amendments set out in points (13) and (18) of Article 1 containing amendments to Articles 84 and 98 of Directive 2013/36/EU shall apply from [two years after entry into force of this Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## *Article 3*

### *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 4*

### *Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament For the Council

*The President*

*The President*