Council of the European Union

Brussels, 31 October 2022
(OR. en)

13773/22

Interinstitutional File:
2021/0341 (COD)

EF 308
ECOFIN 1055
CCG 42
CODEC 1560

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Implementation of Basel III - Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU (CRD) - General approach

2021/0341 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

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[1] OJ C , , p. .
[2] OJ C , , p. .

Whereas:

(1) Competent authorities, their staff and members of their governance bodies should be independent of political and economic influence. Risks of conflicts of interest undermine the integrity of the Union financial system and harm the goal of an integrated banking and capital markets union. Directive 2013/36/EU should provide more detailed provisions for Member States to ensure that the competent authorities, including their staff and members of the competent authority's governance bodies, act independently and objectively. In this context, minimum requirements should be laid down to prevent conflicts of interests such as cooling-off periods and the prohibition from trading instruments issued by a supervised entity, applicable to staff directly involved in the supervision of an institution and members of competent authorities' governance bodies. Furthermore, where Member States consider it necessary, they should be able to adopt or retain stricter requirements for the prevention of conflicts of interests.

(1a) Member States should be able to provide appropriate compensation mechanisms for the benefit of members of staff and of governance bodies subject to cooling-off periods. The purpose of such mechanisms should be to compensate for the burden imposed on those individuals as a result of the colling-off period, in particular the inability for them to take up employment with entities subject to the scope of these restrictions over a certain period of time. The compensation should be proportionate to the length of the relevant cooling-off period.

(1b) Supervisors should act with the utmost integrity in the exercise of their supervisory function. In order to increase transparency and provide high ethical standards, it is appropriate that members of the competent authority's governance bodies be obliged to make a declaration of interests on an annual basis. This declaration should disclose information on the member's holdings of financial instruments to reduce the risk arising from conflicts of interest that may result from those holdings and allow competent authorities to manage appropriately those risks. The declaration of interests should be without prejudice to any requirement to submit a wealth declaration under applicable national rules.

(2) Competent authorities should have the necessary power to withdraw the authorisation granted to a credit institution where such a credit institution has been declared failing or likely to fail, there is no reasonable prospect that any alternative private sector measures or supervisory action could prevent a failure of such institution within a reasonable timeframe and a resolution action is not necessary in the public interest . In such a situation, a credit institution should be wound up in accordance with the applicable national insolvency proceedings, or in other types of proceedings laid down for those institutions under national law, which would ensure its orderly exit from the market, and should therefore discontinue the activities for which the authorisation had been granted. However, there should be no automaticity between the failing or likely to fail determination and the withdrawal of the authorisation, as for other cases where the competent authority may withdraw the authorisation. Competent authorities should exercise their powers in a manner that is proportionate and that takes into consideration the features of the applicable national insolvency proceedings, including existing judicial procedures, while the power to withdraw the authorisation should not be used in order to prevent the opening or force the termination of insolvency proceedings such as the application of a judicial moratorium or other measures which are conditional upon an active license.

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

(5) Concerning mergers and divisions, the Directive (EU) 2017/1132 lays down harmonised rules and procedures, in particular for cross-border mergers and divisions of limited liability companies. Therefore, the assessment procedure by the competent authorities stipulated in this directive should be complementary to the Directive (EU) 2017/1132 and should not contradict any of its provisions. In case of those cross-border mergers and divisions which fall under the scope of Directive 2017/1132, the motivated opinion issued by the competent supervisory authority should be part of the assessment of the compliance with all relevant conditions and the proper completion of all procedures and formalities required for the pre-merger or pre-division certificate. The motivated opinion should therefore be transferred to the designated national authority responsible for issuing the pre-merger or pre-division certificate under Directive 2017/1132.

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

(7) In the case of the acquisition of a material holding in a financial sector entity, , the conclusion of the assessment could lead the competent authority to decide to oppose to the operation. In the absence of opposition from the competent authority within a given period, the operation should be deemed approved.

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

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

(11) EBA should be mandated to develop regulatory technical standards, implementing technical standards and guidelines to ensure an appropriate framing of the use of those additional supervisory powers. Those regulatory technical standards and implementing technical standards should, in particular, specify the information to be received by the competent authorities, the elements to be assessed, and cooperation when more than one competent authorities are involved. Those various elements are crucial to ensure that a sufficiently harmonised supervisory methodology allows provisions on the additional powers to be implemented efficiently, with the minimum possible additional administrative burden.

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

(13) To ensure a level playing field in the area of sanctioning powers, Member States should be required to provide for effective, proportionate and dissuasive administrative penalties, periodic penalty payments and other administrative measures in relation to breaches of national provisions transposing Directive 2013/36/EU, breaches of Regulation (EU) No 575/2013[5] or decisions issued by a competent authority based on those legal acts. In particular, Member States should be able to impose administrative penalties where the relevant breach is also subject to national criminal law. Those administrative penalties, periodic penalty payments and other administrative measures should meet certain minimum requirements, including the minimum powers that should be vested on competent authorities to be able to impose them, the criteria that competent authorities should take into account in their application, publication requirements or the levels of administrative penalties and periodic penalty payments. Member States should lay down specific rules and effective mechanisms regarding the application of periodic penalty payments.

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

(16) Administrative pecuniary penalties on legal persons should be applied consistently, in particular as regards the determination of the maximum amount of administrative penalties, which should take into account the total annual net turnover of the relevant undertaking.To ensure a consistent calculation throughout the Union, the total annual net turnover should be determined by reference to specific categories from the FINREP Templates in Annex III, IV and V of the Commission Implementing Regulation (EU) 2021/451.

(17) In addition to administrative penalties, competent authorities should be empowered to impose periodic penalty payments on credit institutions, financial holding companies, mixed financial holding companies and those members of the management body in its management function who are identified as responsible in accordance with national law for the breach of obligation to comply with national provisions transposing Directive 2013/36/EU, their obligations under Regulation (EU) No 575/2013 or a decision issued by a competent authority based on those acts. Those enforcement measures should be imposed where a breach is continuing. Without prejudice to the due-process rights of the affected persons under applicable law, including their right to be heard, competent authorities should be able to impose those enforcement measures without having to address a prior request, order or warning to the party in breach requiring a return to compliance. Since the purpose of the periodic penalty payments is to compel natural or legal persons to terminate an ongoing breach, the application of periodic penalty payments should not prevent competent authorities from imposing subsequent administrative penalties for the same breach. Periodic penalty payments may be imposed on a given date and start applying at a later date.

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

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

(20) Where the legal system of the Member State does not allow the administrative penalties provided for in this Directive, the rules on administrative penalties may be applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities. Therefore, it is necessary that those Member States ensure that the application of the rules and penalties has an effect equivalent to the administrative penalties imposed by the competent authorities. When imposing such penalties, judicial authorities should take into account the recommendation by the competent authority initiating the penalty. The penalties imposed should be effective, proportionate and dissuasive.

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

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

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

(24) Third country branches should also be classified as class 1 where the undertaking in the third country that is their head office (the "head undertaking") is subject to regulation, oversight and implementation of such regulation that are not determined to be at least equivalent to Directive 2013/36/EU and Regulation (EU) No 575/2013 or where the relevant third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing in accordance with Directive (EU) 2015/849[3]. Those third country branches pose a significant risk to the financial stability of the Union and of the Member State of establishment because the banking regulatory or anti-money laundering frameworks that apply to their head undertaking fail to adequately capture or permit a proper monitoring of the specific risks that arise from the activities conducted by the branch in the Member State or of the risks to counterparties in the Member State that arise from the third country group. For the purposes of determining the equivalence of the third country's banking prudential and supervisory standards to the Union's standards, the Commission should be able to instruct EBA to conduct an assessment in accordance with Article 33 of Regulation (EU) No 1093/2010. EBA should ensure that the assessment is conducted in a rigorous and transparent manner and in accordance with a sound methodology. Furthermore, EBA should also consult and cooperate closely with the third countries' supervisory authorities and government departments in charge of banking regulation and, where appropriate, private sector parties, endeavouring to treat those parties fairly and to give them the opportunity to submit documentation and make representations within reasonable timeframes. Furthermore, EBA should ensure that the report issued in accordance with Article 33 of Regulation (EU) No 1093/2010 is adequately reasoned, sets out a detailed description of the assessed matters and is delivered within a reasonable timeframe.

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

(25) Competent authorities should have an explicit power to require that third country branches established in its Member State apply for authorisation as a subsidiary institution in accordance with Title III, Chapter 1 of Directive 2013/36/EU where they assess that the third country branches have a systemic importance for their Member State. Moreover, competent authorities should be able to impose other requirements, in particular an obligation to restructure the third country branches' assets or activities , or a requirement to comply with additional capital, liquidity, reporting or disclosure requirements, where that would be sufficient to address the risks to financial stability.

The EBA should be mandated to submit a report on the merit of performing assessments, at an aggregate level, of the systemic importance for the Union of third country groups that operate through third country branches, as well as on the merit of introducing a mechanisms fostering the exchange of information and of articulating the exercise of supervisory powers between the competent authorities responsible for the supervision of those groups and the branches established in their respective Member States.

(27) Competent authorities should conduct regular reviews of third country branches' compliance with relevant requirements under Directive 2013/36/EU, and take supervisory measures on those branches to ensure or restore compliance with those requirements. To enable the cooperation and information exchange with the supervisory authorities of third countries, competent authorities should endeavour to use the model administrative agreements developed by EBA in accordance with Article 33(5) of Regulation (EU) No 1093/2010. However, other forms of agreements, for example through exchange of letters, should be equally acceptable. To facilitate the effective supervision of the requirements on third country branches and allow for a comprehensive overview of third country groups' activities within the Union, common supervisory and financial reporting should be made available to competent authorities in accordance with standardised templates. EBA should be mandated to develop draft implementing technical standards setting out those templates and the Commission should be empowered to adopt those draft implementing technical standards. Furthermore, it is necessary to implement appropriate cooperation arrangements between competent authorities to ensure that all the activities of third country groups operating in the Union through third country branches are subject to comprehensive supervision, to prevent the requirements applicable to those groups under Union law from being circumvented and to minimise the potential risks to the financial stability of the Union. In particular, class 1 third country branches should be included within the scope of the colleges of supervisors of third country groups in the Union. Where such a college does not exist already, competent authorities should set up an *ad hoc* college for all class 1 third country branches of the same group where it operates in more than one Member State.

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

(28a) In order to assess adequately the conditions for third country groups to apply for authorisation in accordance with Title VI , the EBA should be mandated to submit a report to the European Parliament, to the Council and to the Commission.

(28b) Notwithstanding current secrecy rules applicable, information exchange between competent authorities and tax authorities should be improved. Such exchanges should be in line with national law, and, where the information originates in another Member State, it should only be disclosed with the express agreement of the relevant competent authority which has disclosed it.

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

(30) Regulation (EU) 2019/876[4] amended Regulation (EU) No 575/2013 by introducing a revised market risk framework developed by the Basel Committee for Banking Supervision. The alternative standardised approach that is part of that new framework allows institutions to model certain parameters used in the calculation of risk-weighted assets and own funds requirements for market risk. It is therefore important that competent authorities and EBA have a clear view of the range of values for risk-weighted assets and own funds requirements that arise for similar exposures not only under the alternative internal model approach, but also under the alternative standardised approach. As a result, the market risk benchmarking exercise should cover the revised standardised and internal model approaches, taking into account the principle of proportionality.

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

(31) The global transition towards a sustainable economy as enshrined in the Paris Agreement[5], as concluded by the Union, and the United Nations 2030 Agenda for Sustainable Development will require a profound socio-economic transformation and will depend on the mobilisation of significant financial resources from the public and private sectors. The European Green Deal[6] commits the Union to becoming climate-neutral by 2050. The financial system has a relevant role to play in supporting that transition, which relates not only to capturing and supporting the opportunities that will arise but also to properly managing the risks that it may entail. As those risks can have implications for the stability of both individual institutions and the financial system as a whole, an enhanced risk-based regulatory prudential framework that better integrates the related risks is necessary.

(32) The unprecedented scale of transition towards a sustainable, climate-neutral and circular economy will have considerable impacts on the financial system. In 2018, the Network of Central Banks and Supervisors for Greening the Financial System[7] acknowledged that climate-related risks are a source of financial risk. The Commission's Renewed Sustainable Finance Strategy[8] emphasises that environmental, social and governance (ESG) risks, and risks steaming from the physical impact of climate change, biodiversity loss and the broader environmental degradation of ecosystems in particular, pose an unprecedented challenge to our economies and to the stability of the financial system. Those risks present specificities such as their forward-looking nature and their distinctive impacts over short, medium and long-term time horizons. The specificity of climate-related and other environmental risks, for example risks stemming from environmental degradation and biodiversity loss, as regards both transition and physical risks, requires in particular to manage those risks with a long-term horizon of at least 10 years.

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5 Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 4).
6 COM(2019) 640 final.
7 Launched at the Paris One Planet Summit on 12 December 2017, is a group of Central Banks and Supervisors willing, on a voluntary basis, to share best practices and contribute to the development of environment and climate risk management in the financial sector and to mobilise mainstream finance to support the transition toward a sustainable economy.
8 COM(2021) 390 final, 06.07.2021.

(33) The long-term nature and the profoundness of the transition towards a sustainable, climate-neutral and circular economy will entail significant changes in the business models of institutions. The adequate adjustment of the financial sector, and of credit institutions in particular, is necessary to achieve the objective of net-zero greenhouse gas emissions in the Union's economy by 2050, while maintaining the inherent risks under control. Competent authorities should, therefore, be enabled to assess this process and intervene in cases where institutions' manage climate risks, as well as risks stemming from environmental degradation and biodiversity loss, in a way that endangers the stability of the individual institutions, or the financial stability overall. Competent authorities should also monitor and be empowered to act, when there are financial risks arising from transition trends towards the relevant Member States and Union legal and regulatory objectives in relation to environmental, social and governance factors, for example as set out in Regulation (EU) 2021/1119 ("European Climate Law"), the Fit for 55 package and the post-2020 Global Biodiversity Framework, as well as, where relevant for internationally active institutions, third country legal and regulatory objectives, resulting in risks to their business models and strategies, or to the financial stability. When third country objectives in relation to environmental, social and governance factors would result in transition trends that are less ambitious than those under Union law, competent authorities should be encouraged to act based on the Union objectives. Climate and, more broadly, environmental risks, should be considered together with social risks and governance risks under one category of risks to enable a comprehensive and coordinated integration of these factors, as they are often intertwined. ESG risks are closely linked with the concept of sustainability, as ESG factors represent the main three pillars of sustainability.

(34) To maintain adequate resilience to the negative impacts of ESG factors, institutions established in the Union need to be able to systematically identify, measure and manage ESG risks, and their supervisors need to assess the risks at the level of the individual institution as well as at the systemic level, giving priority to environmental factors and progressing to the other sustainability factors as the methodologies and tools for the assessment evolve. Institutions should assess the alignment of their portfolios with the ambition of the Union to become climate-neutral by 2050 as well as avert environmental degradation and biodiversity loss. Institutions should set out specific plans to address the financial risks arising, in the short, medium and long term, from environmental, social and governance factors, including from transition trends towards the relevant legal and regulatory objectives of the Union and Member States, for example as set out in the Paris Agreement, Regulation (EU) 2021/1119, the Fit for 55 package[9] and the post-2020 Global Biodiversity Framework, as well as, where relevant for internationally active institutions, third country legal and regulatory objectives. When third country objectives in relation to environmental, social and governance factors would result in transition trends that are less ambitious than those under Union law, institutions should assess the financial risks based on the same level of ambition as under Union law. Institutions should be required to have robust governance arrangements and internal processes for the management of ESG risks and to have in place strategies approved by their management bodies that take into consideration not only the current but also the forward-looking impact of ESG factors.

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

The collective knowledge and awareness of ESG factors by the management body and institutions' internal capital allocation to address ESG risks will also be key to strenghten resilience to the negative impacts of these risks. The specificities of ESG risks as well as their relative novelty means that understandings, measurements and management practices can differ significantly across institutions. To ensure convergence across the Union and a uniform understanding of ESG risks, appropriate definitions and minimum standards for the assessment of those risks should be provided in prudential regulation. To achieve this objective, definitions are laid down in Regulation (EU) No 575/2013 and the EBA is empowered to specify a minimum set of reference methodologies for the assessment of the impact of ESG risks on the financial stability of institutions, giving priority to the impact of environmental factors. Since the forward-looking nature of ESG risks means that scenario analysis and stress testing, together with plans for addressing those risks, are particularly informative assessment tools, EBA should be also empowered to develop uniform criteria for the content of the plans to address those risks and for the setting of scenarios and applying the stress testing methods. Environment-related risks, including climate related risks and risks stemming from environmental degradation and biodiversity loss, should take priority in light of their urgency and the particular relevance of scenario analysis and stress testing for their assessment.

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

(37) Having a robust "fit-and-proper" framework for assessing the suitability of members of the management body and key function holders is a crucial factor to ensure that institutions are adequately run and their risks appropriately managed.

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

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

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

(44) Similarly, upon becoming bound by the output floor, the nominal amount of an institution's CET1 capital required under the systemic risk buffer could increase although there has not been a corresponding increase in the macroprudential or systemic risks associated with the institution. In such cases, the institution's competent or designated authority, as applicable, should review the calibration of the systemic risk buffer rates and make sure that they remain appropriate and do not double-count the risks that are already covered by virtue of the fact that the institution is bound by the output floor.

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

(46) To enable the timely and effective activation of the systemic risk buffer it is necessary to clarify the application of the relevant provisions and simplify and align the applicable procedures. Setting a systemic risk buffer should be possible for designated authorities in all Member States to enable the recognition of systemic risk buffer rates set by authorities in other Member States and to ensure that authorities are empowered to address systemic risks in a timely and effective manner. Recognition of a systemic risk buffer rate set by another Member State should require only a notification from the authority recognising the rate. To avoid unnecessary authorisation procedures where the decision to set a buffer rate results in a decrease or no change from any of the previously set rates, the procedure laid down in Article 131(15) of Directive 2013/36/EU needs to be aligned with the procedure laid down in Article 133(9) of that Directive. The procedures laid down in Article 133(11) and (12) of that Directive should be clarified and made more consistent with the procedures applying for other systemic risk buffer rates, where relevant.

(47) To increase proportionality in the permission regime for the reduction of eligible liabilities instruments laid down in Regulation (EU) No 575/2013, which is also applicable to institutions and liabilites subject to the minimum requirement for own funds and eligible liabilities under Directive 2014/59/EU, institutions whose resolution plan provides for a winding up under normal insolvency proceedings should not be required to obtain the prior permission of the resolution authority to reduce eligible liabilities in those cases where the resolution authority has not set a minimum requirement for own funds and eligible liabilities that exceeds the institution's own funds requirement as set out in Regulation (EU) No 575/2013 and Directive 2013/36/EU.

HAVE ADOPTED THIS DIRECTIVE:

2021/0341 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

Article 1

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) in Article 2, paragraph 5 is amended as follows:

(a) point(5) is replaced by the following:

'(5) in Germany, the 'Kreditanstalt für Wiederaufbau', 'Landwirtschaftliche Rentenbank', 'Bremer Aufbau-Bank GmbH', 'Hamburgische Investitions- und Förderbank', 'Investitionsbank Berlin', 'Investitionsbank des Landes Brandenburg', 'Investitionsbank Sachsen–Anhalt', 'Investitionsbank Schleswig-Holstein', 'Investitions- und Förderbank Niedersachsen – NBank', 'Investitions- und Strukturbank Rheinland-Pfalz', 'Landeskreditbank Baden-Württemberg – Förderbank', 'LfA Förderbank Bayern', 'NRW.BANK', 'Saarländische Investitionskreditbank AG', 'Sächsische Aufbaubank – Förderbank', 'Thüringer Aufbaubank', 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;';

(b) point (24) is replaced by the following:

'(24) in the United Kingdom, National Savings and Investments (NS&I), CDC Group plc, the Agricultural Mortgage Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks;';

(c) the following point (25) is added:

'(25) in Romania, the 'Investment and Development Bank'.';

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

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

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

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

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

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

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

(9b) 'chief financial officer' means the person who has overall responsibility for the institution's financial resources management, financial planning and financial reporting ;

(9c) 'internal control functions' means risk management, compliance and internal audit functions;';

(9d) 'heads of internal control functions' means the persons at the highest hierarchical level responsible for effectively managing the day-to-day operation of the internal control functions of the institution;

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

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

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

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

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

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

(g) the following points (66) to (68) are added:

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

(67) ‘periodic penalty payments’ means periodic pecuniary enforcement measures, aimed at ending ongoing breaches of national provisions transposing this Directive, breaches of Regulation (EU) No 575/2013 or decisions issued by a competent authority based on those legal acts and compelling legal or natural person to return to compliance with such requirements;

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

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

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

For the purposes of preserving the independence of competent authorities in the exercise of their powers, Member States shall provide the necessary arrangements to ensure that those competent authorities, including their staff and members of their governance bodies, can exercise their supervisory powers independently and objectively, without seeking or taking instructions, from supervised institutions, from any government of a Member State or body of the Union or from any other public or private body without prejudice to arrangements under national law whereby the competent authorities are subject to public and democratic accountability. These arrangements shall be without prejudice to the rights and obligations of the competent authorities as stemming from being part of the international and European systems of financial supervision as stemming from Regulation (EU) No 1093/2010 , the Single Supervisory Mechanism as stemming from Council Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank , for the Single Resolution Mechanism as stemming from Regulation (EU) No 806/2014.

Member States shall ensure that competent authorities have in place the necessary arrangements to prevent conflicts of interests of their staff and members of their governance bodies.

At a minimum, Member States shall ensure that:

The members of staff directly involved in the supervision of institutions, the members of staff who have access to market-sensitive informations and the members of the competent authority's governance bodies are prohibited from trading in financial instruments issued by or referenced to the institutions supervised by the competent authorities, their direct or indirect parent undertakings, subsidiaries or affiliates, with the exemption of:

i) instruments managed by third parties   provided that the owners of the instruments are precluded from intervening in the management of the portfolio; and

ii) investments in collective investment undertakings provided that they do not predominantly invest in instruments issued by or referenced to the above-mentioned undertakings;

(b) the members of the competent authority's governance bodies are subject to a declaration of interest. The declaration shall include information on the member's holdings in the form of stocks, equities, bonds, mutual funds, investment funds, mixed-type funds, hedge funds and exchange traded funds, that may raise conflict of interest concerns. The members shall submitt the declaration of interest on an annual basis. The declaration of interest shall be without prejudice to any requirement to submit a wealth declaration under applicable national rules;

(c) for a period of time (“cooling off period”), members of staff directly involved in the supervision of institutions and the members of the governance bodies of the competent authority are prohibited from being hired by or from accepting any kind of contractual agreement for the provision of professional services with any of the following:(i) institutions in relation to which the member of staff or the member of the governance body has been directly involved with for the purposes of supervision or decision-making, respectively, as well as their direct or indirect parent undertakings, subsidiaries or affiliates;

(ii) firms that provide services to any of the undertakings referred to in point (i) , unless the relevant member of the competent authority’s staff or governance body is strictly precluded from taking part in any provision of those services while the prohibition referred to herein remains in force.

Where a member referred to in point (a) owns financial instruments that may give rise to conflicts of interest at the time of being hired or appointed or at any time thereafter, the competent authority shall have the power to require on a case-by-case basis that those instruments be sold or disposed of within a reasonable time. Competent authorities shall also have the power to allow on a case-by-case basis that those members referred to in point (a) sell or dispose of financial instruments that they owned at the time of being hired or appointed.

For the purposes of paragraph 4 point (c), Member States shall lay down rules proportionate to the role and responsibilities of the affected individual.

The cooling off period shall start from the date on which the direct involvement in the supervision of the institution ceased and its length shall be no less than six months for members of staff directly involved in the supervision of institutions and no less than twelve months for the members of the competent authority's governance bodies.

Member States may subject the members referred to in point (a) to a cooling-off period in the event of hires by direct competitors of one of the undertakings referred to in point (c)(i). For these purposes, the length of the cooling off period shall be no less than three months for members of staff directly involved in the supervision of the competing institutions and no less than six months for the members of the competent authority's governance bodies.

(2a) in Article 4, the following paragraph 4a is inserted:

4a. By way of derogation from the third and fourth subparagraphs of paragraph 4, Member States may apply shorter cooling-off periods for all or part of the members of staff directly involved in the supervision of institutions when the minimum length of six months or three months in case of direct competitors:

a) unduly restricts the ability of the competent authority to hire new members of staff with the adequate or necessary skills for the performance of its supervisory functions, in particular taking into account the small size of the domestic labour market; or

b) constitutes a breach of any relevant fundamental right recognised in the constitution of the Member State, the European Charter of Human Rights, or of any relevant workers' rights as set out in the labour laws of the Member State.';

[*1] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

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

[*3] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

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

(2b) In Article 4, the following paragraph 9 is inserted:‘9. For the purposes of this Article, the following shall apply:

(a) ‘members of staff directly involved in the supervision of institutions’ means staff of the competent authority whose primary responsibility is to perform the regular assessment and monitoring of one or several specific institutions’ compliance with the prudential requirements that apply to them in accordance with this Directive and Regulation (EU) No 575/2013;

(b) ‘members of the competent authority’s governance bodies’ means individuals that form part of collective decision-making bodies that are, regarding the exercise of the competent authority’s supervisory powers, vested with the power to:

(i) exercise executive functions within the relevant competent authority and who are responsible for its management; or

(ii) take decisions .

(c) references to members of the competent authority’s governance bodies shall be understood to include, as the case may be, the individual function holders and officers of the authority that are vested with analogous powers as those referred to herein for collective decision-making bodies;

(d) ‘market-sensitive information’ means non-public information of a precise nature which, if made public, is likely to have a significant effect on the price of assets or prices in the financial markets.’;

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

‘(g) meets all of the following conditions:

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

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

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

(4) Article 21a is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies shall seek approval in accordance with this Article. Other financial holding companies or mixed financial holding companies shall seek approval in accordance with this Article where they are required to comply with this Directive or Regulation (EU) No 575/2013 on a sub-consolidated basis or where they are designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis in accordance with paragraph 4.

Competent authorities shall, on a regular basis, and at least annually , perform a review of the parent undertakings of an institution, in order to verify if the institution, the entity requesting authorisation or the designated entity has correctly identified any undertaking complying with the criteria to be considered as a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company.

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

Competent authorities shall publish on their websites and update on an annual basis, a list of financial holding companies and mixed financial holding companies approved, designated or exempted from approval in the Member State in accordance with this Article. Where an exemption has been granted the list shall also name the credit institution or financial holding company that has been designated in accordance with paragraph 4 as responsible to ensure the group’s compliance with prudential requirements on a consolidated basis.’;

(b) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘2. For the purposes of paragraph 1, financial holding companies and mixed financial holding companies referred to therein shall provide the consolidating supervisor determined in accordance with Article 111 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 types of activities 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 mixed financial holding company, and the compliance with the requirements set out in Article 91(1);

(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 4 of this Article.’;

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

‘Where the approval or the exemption from approval of a financial holding company or mixed financial holding company referred to in paragraphs 3 and 4 takes place concurrently with the assessment referred to in Article 8, Article 22 or Article 27a, the competent authority for the purposes of those Articles shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. The assessment period referred to in Article 22(2) , second subparagraph, or in Article 27a(3) shall be suspended until the procedure set out in this Article is complete.’;

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

‘(c) the criteria regarding shareholders and members of credit institutions set out in Article 14 and the requirements laid down in Article 121 are complied with.’;

(d) in paragraph 4 the first subparagraph is replaced by the following :

‘4. The financial holding company or mixed financial holding company may seek exemption from approval under this Article which shall be granted where all of the following conditions are met:

(a) the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holdings in subsidiaries;

(b) the financial holding company or mixed financial holding company has not been designated as a 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 or a subsidiary financial holding company or mixed financial holding company approved in accordance with this Article 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 financial holding company or mixed financial holding company does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;

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

e) the following paragraph 4a is added: Without prejudice to paragraph 4, the consolidating supervisor may allow on a case-by-case basis financial holding companies or mixed financial holding companies which are exempted from approval to be excluded from the perimeter of consolidation provided that the following conditions are met:

(i) the exclusion does not affect the effectiveness of the supervision on the subsidiary credit institution, or the group;

(ii) the financial holding company or mixed financial holding company has no equity exposures other than the equity exposure in the subsidiary credit institution or in the intermediate parent financial holding company or mixed financial holding company controlling the subsidiary credit institution;

(iii) the financial holding company or mixed financial holding company does not make substantial recourse to leverage and does not have exposures which are not related to its ownership in the subsidiary credit institution or in the intermediate parent financial holding company or mixed financial holding company controlling the subsidiary credit institution ;

f) Paragraph 7 is replaced by the following 7. Where the consolidating supervisor has established that the conditions set out in paragraph 4, first subparagraph, are no longer met, the financial holding company or mixed financial holding company shall seek approval in accordance with this Article. Where the consolidating supervisor has established that the conditions set out in paragraph 4, third subparagraph, are no longer met, the consolidating supervisor shall require full consolidation of the financial holding company or mixed financial holding company.

g) paragraph 8 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘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 for the purpose of taking decisions on the approval, exemption from approval and exclusion from the perimeter of consolidation referred to in paragraphs 3 and 4, and the supervisory measures referred to in paragraphs 6 and 7. The consolidating supervisor shall prepare an assessment on the matters referred to in paragraphs 3, 4, 6 and 7, as applicable, and shall forward that 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 powers to reach a joint decision within two months of receipt of that assessment.’;

(ii) the following second subparagraph is added:

‘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 joint decision shall also apply under the national law of the Member State where the financial holding company or mixed financial holding company is established.’;

(h) in the paragraph 10 the first subparagraph is replaced by the following:

‘(10) Where approval or exemption from 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 therefore 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.’;

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

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

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

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

(6) in Article 22 paragraph 2 the first subparagraph is replaced by the following:

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

(6a) Article 23 is amended as follows:

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

‘(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ([5]) is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

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

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

‘For the purpose of this paragraph and with regard to the criterion laid down in paragraph 1, point (e), an objection in writing by the authorities competent for the supervision of the undertakings in line with Directive (EU) 2015/849 shall constitute a reasonable ground for opposition.’

(c) the following paragraph 6 is added:

‘6. EBA shall develop draft regulatory technical standards specifying the minimum list of information to be provided to the competent authorities at the time of the notification referred to in paragraph 1.

For the purpose of the first subparagraph, EBA shall take into consideration Directive (EU) 2017/1132.

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

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

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

'CHAPTER 3

Acquisition or divesture of a material holding

Article 27a

Notification and assessment of the acquisition

1. Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, or other financial holding companies or mixed financial holding companies that are obliged to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis (the "acquirer") , carrying out, directly or indirectly, an acquisition of a material holding in a financial sector entity (the "proposed acquisition") to notify the competent authority in advance. The notification shall indicate the size of the proposed holding and the relevant information, as specified in Article 27b(5).

For the purposes of the first subparagraph, the holding shall be deemed material where it is at least equal to 15% of the eligible capital of the acquirer.

For the purpose of the first subparagraph, where the acquirer is an institution, the threshold shall apply at both an individual level and on the basis of the consolidated situation of the parent institution in the EU. In case the threshold referred to in the second subparagraph is only exceeded at an individual level, the competent authority in the Member State where the acquirer is established shall be notified and asssess the proposed acquisition. In case the threshold is also exceeded on the basis of the consolidated situation of the parent institution in the EU, the consolidating supervisor, in accordance with Article 111, shall also be notified and assess the proposed acquisition.

For the purpose of the first subparagraph, where the acquirer 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 and an EU parent mixed financial holding company, or another financial holding company or mixed financial holding company required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis, the threshold referred to in the second subparagraph shall apply on the basis of the consolidated situation, and the consolidated supervisor, in accordance with Article 111, shall be the competent authority to be notified and in charge of the assessment.

[paragraph 2 was deleted by accident in June presidency compromise text]

2. The competent authority shall acknowledge, in writing, the receipt of the notification under paragraph 1 or of any additional information under paragraph 5 promptly and in any event within ten working days following receipt of the notification or of the additional information.

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

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

3a. Where the acquisition of a material holding is conducted between entities of the same group that are subject to Article 113 (6) of Regulation 575/2013 or between entities within the same institutional protection scheme and are subject to Article 113(7) of Regulation 575/2013, the competent authority shall not be required to carry out the assessment provided for in Article 27a(3).

3b. Where the acquisition of a material holding is conducted between small and non-complex institutions subject to Article 4 paragraph 1 number 145 of Regulation 575/2013, the competent authority shall not be required to carry out the assessment provided for in Article 27a(3).

4. The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt referred to in paragraph 2 .

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

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

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

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

(b) exchange of information with authorities responsible for supervising the obliged entities listed in Article 2(1) points (1) and (2) of Directive (EU) 2015/849 [*5] is necessary to perform the assessment referred to in Article 27a(3) of this Directive.

8. Where the approval of a financial holding company or mixed financial holding company pursuant to Article 21a takes place concurrently with the assessment referred in this Article, the competent authority for the purposes of that Article shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In that case, the assessment period shall be suspended until the procedure set out in Article 21a is complete.

9. Where the competent authority decides to oppose the proposed acquisition, it shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the acquirer in writing, providing the reasons for their objection.

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

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

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

Article 27b

Assessment criteria

1. In dealing with the notification of the proposed acquisition provided for in Article 27a(1) and the information referred to in Article 27a(5), the competent authority shall, while acting in accordance with paragraph 3a and 3b of Article 27a, assess the sound and prudent management of the acquirer after the acquisition and in particular of the risks to which the acquirer is or might be exposed, in accordance with the following criteria:

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

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

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

3. The competent authority may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the acquirer is incomplete, despite a request made in accordance with Article 27a (5).

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

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

5. Member States shall publish a list specifying the information required to carry out the assessment. That information shall be provided to the competent authorities at the time of the notification referred to in Article 27a(1), covering at least the information requirements included in the regulatory technical standards referred to in Article 27b(7)(a). The information shall be proportionate and appropriate to the nature of the entity to be acquired. Member States shall not require information that is not relevant for the prudential assessment under this Article.

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

7. EBA shall develop draft regulatory technical standards specifying:

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

(b) a common assessment methodology of the criteria set out in this Article, Article 23 and Article 27l;

(c) the process applicable to notification and the prudential assessment required under Article 27a, Article 27b(1)(b) and Article 27k.

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

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

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

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

Article 27c

Cooperation between competent authorities

1. The competent authority shall consult the relevant authorities entrusted with the supervision of other financial sector entities when carrying out the assessment referred to in Article 27a(3) where the entity acquired is one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or an asset management company authorised in another Member State or in a sector other than that of the proposed acquirer;

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

(c) a legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or an asset management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

In the case where the acquirer is an institution and the threshold as referred to in Article 27a(1) is only exceeded at an individual level, the competent authority assessing the proposed acquisition shall notify the consolidating supervisor of the proposed acquisition within ten working days following receipt of the notification by the acquirer, if the acquirer is part of a group and the competent authority in charge of the assessment is different from the consolidating supervisor. The competent authority shall also forward its assessment to the consolidating supervisor.

In the case where the acquirer 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 and an EU parent mixed financial holding company, or another financial holding company or mixed financial holding company required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis, the consolidating supervisor shall notify the competent authority in the Member State where the acquirer is established of the proposed acquisition within ten working days following receipt of the notification by the acquirer, if this competent authority is different from the consolidating supervisor assessing the proposed acquisition. The consolidating supervisor shall also forward its assessment to that competent authority.

In the case where the acquirer is an institution and the threshold as referred to in Article 27a(1) is exceeded at both individual and on the basis of the consolidated situation of the parent institution in the EU, the competent authority and consolidating supervisor assessing the proposed acquisition shall seek to coordinate their assessments, in particular with regard to their consultation of the relevant authorities referred to in Article 27c(1).

Where the assessment of the proposed acquisition needs to be carried out by the consolidating supervisor referred to in paragraph 1 of Article 27a, and the consolidating supervisor is different from the competent authority in the Member State where the acquirer is established, the two authorities shall work together in full consultation. The consolidating supervisor shall prepare an assessment on the proposed acquisition and shall forward that assessment to the competent authority in the Member State where the acquirer is established. The two authorities shall do everything within their powers to reach a joint decision within two months of receipt of that assessment. The joint decision shall be duly documented and reasoned. The consolidating supervisor shall communicate the joint decision to the acquirer.

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

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

2. . To this end, the decision by the competent authority in charge of the assessment shall indicate any views or reservations made by the other relevant competent authorities.

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

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

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

Article 27d

Notification in the case of divestiture

Member States shall require institutions, parent 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, as well as other financial holding companies and mixed financial holding companies that are obliged to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis,, carrying out a disposal, directly or indirectly, of a material holding in a financial sector entity , in accordance with Article 27a(1), to notify the competent authority . That notification shall be made in writing and in advance of the divestiture, indicating the size of the holding concerned.

Article 27e

Information obligations and penalties

Where the acquirer fails to notify the proposed acquisition in advance in accordance with Article 27a(1) or has acquired a material holding as referred to in that Article despite the competent authority's opposition, Member States shall require that competent authority to take appropriate measures. Where a material holding is acquired despite opposition by the competent authority , Member States shall, without prejudice to potential penalties, provide either for exercise of the corresponding voting rights to be suspended or for votes cast to be declared null and void.

CHAPTER 4

Material transfers of assets and liabilities

Article 27f

Notification of material transfers of assets and liabilities

1. Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies , EU parent mixed financial holding companies, or other financial holding companies and mixed financial holding companies that are obliged to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis carrying out any material transfer of assets or liabilities which they execute either through a sale or any other type of transaction (the "proposed operation"), to notify their competent authority in advance of the completion of the proposed operation. .

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

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

2. For the purposes of paragraph 1:

(a) the proposed operation shall be deemed material for an entity where it is at least equal to 10 % of its total assets or liabilities, unless the proposed operation is performed between entities of the same group, in which case the proposed operation shall be deemed material for an entity where it represents at least equal to 15 % of its total assets or liabilities.

For the purpose of point (a) of paragraph 2, for parent financial holding companies or mixed financial holding companies referred to in paragraph 1, the threshold shall apply on the basis of their consolidated situation;

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

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

5.

6.

(a)

CHAPTER 5

Mergers and divisions

Article 27j

Definitions

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

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

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

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

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

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

(b) 'division' means any of the following operations:

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

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

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

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

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

Article 27k

Notification and assessment of the merger or division

1 . Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies, EU parent mixed financial holding companies, or other financial holding companies and mixed financial holding companies that are obliged to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis (the 'financial stakeholders') carrying out a merger or division (the "proposed operation"), to notify after the adoption of the draft terms of the proposed operation and in advance of the completion of the proposed operation the competent authorities which will be responsible for the supervision of the entities resulting from such proposed operation, indicating the relevant information, as specified in accordance with Article 27l(5). The competent authorities shall carry out the assessment provided for in Article 27l(1) (the "assessment").

By way of derogation of the first paragraph mergers and divisions that result from the application of Directive 2014/59/EU shall not be subject to the obligations of this chapter.

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

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

Where the proposed operation consists of a division , the competent authority shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification in accordance with Article 27l(5) ("the assessment period"), to carry out the assessment provided for in Article 27l(1).

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

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

Where the proposed operation consists of a division , the competent authority may request additional information by no later than the fiftieth working day of the assessment period.

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

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

(a) one or multiple financial stakeholders are situated or regulated in a third country;

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

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

6. The competent authorities shall, within two working days from the completion of their assessment, issue in writing a motivated positive or negative opinion to the financial stakeholders.

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

7. When the proposed operation consists of a division , and the competent authority does not oppose the proposed operation within the assessment period in writing, the opinion shall be deemed to be positive.

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

9. This Chapter is without prejudice to the application of the Council Regulation (EC) No 139/2004*[8] and Directive (EU) 2017/1132.10. The assessment under Article 27k(1) shall not be performed where the proposed operation requires an authorisation in accordance with Article 8, or an approval in accordance with Article 21a.

11. By way of derogation from paragraph 1, when the proposed operation is a merger that only involves financial stakeholders from the same group, including a group of credit institutions that are permanently affiliated to a central body and which is supervised as a group, Article 27k shall not apply

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

Article 27l

Assessment criteria

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

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

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

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

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

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

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

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

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

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

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

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

Article 27m

Cooperation between competent authorities

1. The competent authority shall consult the relevant authorities entrusted with the supervision of other financial sector entities when carrying out the assessment referred to in Article 27k(1) where the proposed operation involves, in addition to the financial stakeholder(s), entities that are one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or an asset management company authorised in another Member State or in a sector other than that in which the proposed operation is undertaken ;

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

(c) a legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or an asset management company authorised in another Member State or in a sector other than that in which the proposed operation is undertaken .

2. The competent authorities shall, without undue delay, provide each other with any information which is relevant for the assessment. In that regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority of the financial stakeholder shall indicate any views or reservations expressed by the competent authority that supervise one or more of the entities listed above and involved in the proposed operation.

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

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

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

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

Article 27n

Information obligations and penalties

Member States shall require that, where the financial stakeholders fail to provide prior notification of the proposed operation in accordance with Article 27k(1) or have carried out the proposed operation as referred to that Article without prior positive opinion by the competent authorities, the competent authorities shall take appropriate measures.

(8) Title VI is replaced by the following:

'Title VI

PRUDENTIAL SUPERVISION OF THIRD COUNTRY BRANCHES AND RELATIONS WITH THIRD COUNTRIES'

Chapter 1

Prudential supervision of third-country branches

Section I

General provisions

Article 47

Scope and definition

1. This Chapter lays down the minimum requirements concerning the carrying out in a Member State of the activities of a third country branch.

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

(a) 'third country branch' means a branch established in a Member State in accordance with this Title by either: (i) an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1)(a) of Regulation (EU) 575/2013 if it were established in a Member State, for the purposes of carrying out in that Member State both of the services or activities listed in Annex I points (1) and (2); or (ii) an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1)(b) of Regulation (EU) 575/2013 if it were established in a Member State, for the purposes of carrying out in that Member State any of the services or activities referred to in Article 4(1)(1)(b) of Regulation (EU) 575/2013.(b) 'head undertaking' shall mean the undertaking with its head office in the third country that has established the third country branch in the Member State, and the undertaking's intermediate and ultimate parent undertakings, as the case may be.

4. By [date: 31/12/2025], EBA and ESMA shall submit a joint report to the European Parliament, to the Council and to the Commission on the merit and modalities of harmonising the conditions under which a third country group may be required to set up a branch in a Member State and seek authorisation under Title VI of this Directive in order to provide banking services in that Member State. That report shall take due consideration of the articulation with investment services as regulated by Directive 2014/65/EU and Regulation (EU) No 600/2014. The report shall, at least, consider the existing frameworks for the cross-border provision of banking services in Member States and other jurisdictions and assess:

(a) the potential risks related to the cross-border provision of each of the services listed in Annex I, by an undertaking established in a third country that would qualify as a credit institution as per Article 4(1)(1) of Regulation (EU) 575/2013 if it were established in a Member State, with a service by service distinction ;

(b) whether the obligation to set up a branch should be exempted in the case of services provided to certain categories of counterparties;

(c) the extent to which reverse solicitation can add further flexibility and legal certainty in the framework;

(d) how any other exemptions from the obligation to set up a branch may be regulated.

In drawing up the report EBA and ESMA shall also analyse the available international experience in comparable jurisdictions. The Commission may, if appropriate, submit a legislative proposal to the European Parliament and to the Council, taking into account the recommendations made by EBA and ESMA.

Article 48

Prohibition of discrimination

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

Article 48a

Classification of third country branches

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

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

(b) the third country branch's authorised activities include taking deposits or other repayable funds from retail customers, provided that the amount of such deposits and other repayable funds is equal to or higher than 10% of the total liabilities of the third country branch or the amount of such deposits and other repayable funds exceeds EUR 100 million;

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

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

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

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

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

4. Member States may apply to third country branches authorised in their territory, or to certain categories thereof, the same requirements that apply to credit institutions authorised under this Directive, instead of the requirements set out in this Title. Where the treatment laid down in this paragraph only applies to certain categories of third country branches, Member States shall set out the relevant classification criteria for the purposes herein. Paragraphs (1) to (3) shall not apply to those third country branches, except for the purposes of Article 48q.

Article 48b

Conditions for 'qualifying third country branches'

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

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

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

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

2. The Commission may adopt, by means of implementing acts, decisions as to whether the conditions laid down in paragraph 1, points (a) and (b) of this Article are met in relation to a third country's banking regulatory framework. For those purposes, the Commission shall comply with the examination procedure referred to in Article 464(2) of Regulation (EU) No 575/2013.

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

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

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

Section II

Authorisation and regulatory requirements

Sub-section 1

Authorisation requirements

Article 48c

Minimum conditions for the authorisation of third country branches

1. The establishment of a third country branch shall be subject to prior authorisation in accordance with this Chapter.2. Member States shall require that the applications for authorisation of third country branches be accompanied by a programme of operations setting out the envisaged business, the activities to be carried out among those referred to in Article 47(3) and the structural organisation and risk controls of the branch in the relevant Member State in accordance with Article 48h.

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

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

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

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

(d) the authorisation provides that the third country branch may only conduct the authorised activities within the Member State where it is established and expressly prohibits the third country branch from offering or conducting those same activities in other Member States on a cross-border basis, except where those services are provided on the basis of reverse solicitation or for intragroup liquidity purposes between third country branches of the same head undertaking or between third country branches and subsidiary institutions of the relevant third country branch's head undertaking;

(dd) the EBA and ESMA shall monitor operations between the third country branches of the same head undertaking, and between the third country branches and subsidiaries of the same third country group authorised in Union with the same head undertaking and shall submit a report to the Commission setting out its findings on those by [OP please insert the date = 24 months from the date of entry into force of this amending Directive] .

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

(f) there are no reasonable grounds to suspect that the third country branch would be used to commit or facilitate the commission of money laundering or terrorist financing within the meaning of Article 1, point 3 and 5 of Directive (EU) 2015/849.

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

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

5. Competent authorities may decide that the authorisations of third country branches granted before [OP please insert the date = 24 months from date of application of this amending Directive] shall remain valid, provided that the third country branches that were granted those authorisations comply with the minimum requirements laid down in this Title as amended by [this Directive].

Article 48d

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

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

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

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

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

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

(a) the third country branch does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

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

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

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

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

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

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

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

Sub-section 2

Minimum regulatory requirements

Article 48e

Capital endowment requirement

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

(a) for class 1 third country branches, 2% of the branch's average liabilities as reported for the three immediately preceding annual reporting periods or, for newly authorised third country branches, of the branch's liabilities at the time of authorisation in accordance with Sub-section 4, subject to a minimum of EUR 10 million;

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

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

(a) cash or cash assimilated instruments as defined in Article 4(1), point 60, of Regulation (EU) No 575/2013;

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

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

3. Member States shall require third country branches to deposit the capital endowment instruments referred to in paragraph 2 in an escrow account held in the Member State where the branch is authorised with a credit institution that is not part of its head undertaking's group or, where permitted under national law, with the central bank of the Member State. The capital endowment instruments deposited in the escrow account shall be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third country branch and for the purposes of the winding-up of the third country branch in accordance with the national law of the Member State.

Article 48f

Liquidity requirements

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

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

3. Member States shall require third country branches to deposit the liquid assets held to comply with this Article in an account held in the the Member State where the branch is authorised with a credit institution that is not part of its head undertaking's group or, where permitted under national law, with the central bank of the Member State. . Where there are liquid assets remaining in the account after they have been applied to cover liquidity outflows in accordance with paragraph 1, those remaining liquid assets shall be available for use for the purposes of Article 96 of Directive 2014/59/EU in the case of resolution of the third country branch and for the purposes of the winding-up of the third country branch in accordance with the national law of the Member State.

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

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

Article 48h

Internal governance and risk controls

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

2. Member States shall require class 1 third country branches to comply with Articles 74, 75, Article 76(5)and Articles 92, 94 and 95. Competent authorities may require third country branches to establish a local management committee to ensure an adequate governance of the branch.

3. Member States shall require class 2 third country branches to comply with Articles 74, and 75 and to have internal control functions as provided for under Article 76(5), first, second and third subparagraphs. Class 2 third country branches shall also comply with articles 92, 94 and 95.

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

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

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

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

7. Where critical or important functions of the third country branch are carried out by its head undertaking according to internal arrangements or intragroup agreements of any type, competent authorities in charge of the supervision of third country branches shall have access to all information they need to fulfil their supervisory function.

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

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

Article 48i

Booking requirements

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

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

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

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

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

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

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

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

Sub-section 3

Power to require authorisation under Title III and requirements on systemic branches

Sub-section 4

Minimum reporting requirements

Article 48l

Regulatory and financial information of the third country branch and of the head undertaking

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the services provided by the head undertaking to eligible counterparties or professional clients within the meaning of Section 1 of Annex II to Directive 2014/65/EU established or situated in the Union on the basis of reverse solicitation of services. Forthese purposes, reverse sollicitation shall have the same meaning as in Article 42 of Directive 2014/65/EU.

3. The reporting obligations laid down in this Article shall not prevent

competent authorities from imposing additional reporting requirements on third country branches where the competent authority deems the additional information necessary to gain a comprehensive view of the branch's or its head undertaking's business, activities or financial soundness, verify the branch's and its head undertaking's compliance with applicable laws and ensure the branch's compliance with those laws.

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

Article 48m

Standard forms and templates and frequency of reporting

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

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

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

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

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

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

Section III

Supervision

Article 48n

Third country branches supervision and supervisory examination programme

1. Member States shall require that competent authorities comply with this Section for the purposes of supervising third country branches.

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

Article 48o

Supervisory review and evaluation

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

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

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

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

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

6. EBA shall develop uidelines to further specify:

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

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

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

EBA shall issue those guidelines by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Article 48p

Supervisory measures and powers

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

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

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

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

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

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

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

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

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

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

(g) make public disclosures.

3. Competent authorities, or where appropriate the designated authorities, shall assess the financial stability risks that third country branches that are considered as systemic pose for the Member State where they are established. Those authorities shall be granted with the following powers to address the actual or potential financial stability risks identified in relation to third country branches assessed as systemic:

(a) to require that the relevant third country branch applies for authorisation as a subsidiary institution under Title III, Chapter 1;

(b) to require that the relevant third country branch restructure its assets or activities;

(c) to impose additional prudential requirements on the relevant third country branch.

4. For the purposes of conducting the assessment referred to in paragraph 3, the competent authorities, or where appropriate designated authorities, shall take into account appropriate criteria of systemic importance of third country branches, which shall include in particular:

(a) the size of the third country branch;

(b) the type of business that the third country branch conducts;

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

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

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

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

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

(h) the role and importance of the third country branch in the context of resolution or winding up based on information from the resolution authority.

5. By [date: 31/12/2025] EBA shall submit a report to the European Parliament, to the Council and to the Commission, taking due account of the geographical limitations applicable to the authorisations granted to third country branches in accordance with point (d) of paragraph 3 of Article 48c, on the merit of:

(a) performing an assessment of the systemic importance for the Union of a third country group on the basis of systemicity criteria defined in aggregate at the level of the Union. The EBA shall report on such possible criteria;

(b) introducing a cooperation mechanism between the competent authorities concerned for them to perform this assessment jointly, or any other mechanism fostering the exchange of the relevant information. In this regard, the EBA shall set out how such mechanism would be articulated with the supervisory powers of the competent authorities concerned with respect to the branches established in their Member States.

Article 48q

Cooperation between competent authorities and colleges of supervisors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 48r

Notification to the EBA

Competent authorities shall notify EBA the following:

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

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

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

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

Chapter 2

Relation with third countries

Article 48s

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

1. The Union may conclude agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:

(a) institutions the parent undertakings of which have their head offices in a third country;

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

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

(a) the competent authorities of Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of institutions, financial holding companies and mixed financial holding companies situated in the Union which have as subsidiaries institutions or financial institutions situated in a third country, or holding participation therein;

(b) the supervisory authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries institutions or financial institutions situated in one or more Member States or holding participation therein; and

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

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

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

(8a) in Article 53 (1), subparagraph 2 is replaced by the following:

‘Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal or taxation law.’;

(8b) in Article 56 the following second subparagraph is added:

‘Article 53(1) and 54 shall not preclude the exchange of information between competent authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States. Where the information originates in another Member State, it shall only be disclosed in accordance with the first sentence of this subparagraph with the express agreement of the competent authorities which have disclosed it.’;

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

‘Article 65

Administrative penalties, periodic penalty payments and other administrative measures

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

2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive, of Regulation (EU) No 575/2013 or of decisions issued by a competent authority based on those acts, administrative penalties, periodic penalty payments and other administrative measures may be applied, subject to the conditions laid down in national law, to the members of the management body and to any other natural persons who are responsible for the breach in accordance with national law. . Periodic penalty payments on natural persons may only be applied to those members of the management body in its management function that are identified as being responsible for the breach of obligations, and the identification of such responsibility shall be conducted in accordance with national law.

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

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

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

(i) institutions established in the Member State concerned;

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

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

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

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

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

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

(i) require the submission of documents;

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

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

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

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

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

Article 66

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

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

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

(aa) at least one of the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and meeting the threshold indicated in that Article is carried out without being authorised as a credit institution;

(b) activities as a credit institution are commenced without obtaining prior authorisation in breach of Article 8 ;

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

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

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

(f) an acquirer as defined in Article 27a(1)fails to notify the relevant competent authority of a direct or indirect acquisition of a material holding in breach of that Article;

(g) any of the parties referred to in Article 27d fails to notify the relevant competent authority of a direct or indirect disposal of a material holding in a financial sector entity that exceeds the threshold in breach of that Article;

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

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

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

(a) administrative penalties:

(i) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover of the undertaking as defined in paragraph 3 of this Article; ;

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

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

(b) periodic penalty payments:

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

(ii) in the case of a natural person, periodic penalty payments of up to EUR 30 000 , or in those Member States whose currency is not the euro, the corresponding value in the national currency on [OP please insert the date = 24 months from date of entry into force of this amending Directive], which, in the case of an ongoing breach, the natural person shall be obliged to pay per day of breach, until compliance with an obligation is restored, and which may be imposed for a period up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment.

Member States may set a higher maximum amount for periodic penalty payments to be applied per day of breach.

By way of derogation from Article 66(2) point (b), Member States may apply periodic penalty payments on a weekly or monthly basis. In this case, the maximum amount of periodic penalty payments to be applied for the relevant weekly or monthly period when a breach takes place shall not exceed the maximum amount of periodic penalty payments that would apply on a daily basis in accordance with Article 66(2) point (b) for the relevant period. Periodic penalty payments may be imposed on a given date and start applying at a later date.

(c) other administrative measures:

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

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

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

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

3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i) of this Article shall be the sum of the items listed in Table 1 of this paragraph. . If the result is zero or negative, the basis for the calculation shall be the most recent earlier yearly supervisory financial information which produces an indicator above zero. Where the legal person referred to in paragraph 2 is not subject to the Commission Implementing Regulation (EU) 2021/451, the relevant total annual net turnover shall be the total annual net turnover or the corresponding type of income in accordance with the relevant accounting legislative acts. Where the undertaking concerned is part of a group, the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.

Table 1

1. Interest receivable and similar income

2. Interest payable and similar charges

3. Income from shares and other variable/fixed-yield securities

4. Commissions/fees receivable

5. Commissions/fees payable

6. Net profit or net loss on financial operations

7. Other operating income

8. Other operating expense

Institutions shall include each element in the sum with its positive or negative sign.

Institutions shall adjust these elements to reflect the following qualifications:

a) institutions shall calculate the relevant indicator based on the figures reported in Annex III, or where applicable in Annex IV, of the Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014;

b) institutions shall calculate the relevant indicator before the deduction of any provisions and operating expenses. Institutions shall include in the operating expenses the fees paid for outsourcing services provided by third parties which are not a parent or subsidiary of the institution or a subsidiary of a parent which is also the parent of the institution. Institutions may use expenditure on the outsourcing of services provided by third parties to reduce the relevant indicator where the expenditure is incurred from an undertaking subject to rules under, or equivalent to Regulation No 575/2013 and this Directive;

c) institutions shall not use the following items in the calculation of the relevant indicator:(i) realised profits/losses from the sale of non-trading book items;

(ii) income from extraordinary or irregular items;

(iii) income derived from insurance.

d) when the revaluation of trading items is part of the profit and loss statement, institutions may include revaluation. When institutions apply Article 36(2) of Directive 86/635/EEC, they shall include revaluation booked in the profit and loss account.

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

(10) Article 67 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

(i *bis*) points (f), and (i) are deleted:

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

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

(ii *bis*) points (k) and (l) are deleted

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

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

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

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

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

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

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

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

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

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

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

(b) paragraph 2 is replaced by the following:

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

(a) administrative penalties:

(i) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover of the undertaking as defined in paragraph 3 of this Article;

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

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

(b) periodic penalty payments:

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

(ii) in the case of a natural person, periodic penalty payments of up to EUR 30 000 , or in those Member States whose currency is not the euro, the corresponding value in the national currency on [OP please insert the date = 24 months from date of entry into force of this amending Directive], which, in the case of an ongoing breach, the natural person shall be obliged to pay per day of breach until compliance with an obligation is restored, and which may be imposed for a period up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment.

Member States may set a higher maximum amount for periodic penalty payments to be applied per day of breach.

By way of derogation from Article 67(2) point (b), Member States may apply periodic penalty payments on a weekly or monthly basis. In this case, the maximum amount of periodic penalty payments to be applied for the relevant weekly or monthlyperiod when a breach takes place shall not exceed the maximum amount of periodic penalty payments that would apply on a daily basis in accordance with Article 67(2) point (b) for the relevant period. Periodic penalty payments may be imposed on a given date and start applying at a later date.

(c) other administrative measures:

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

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

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

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

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

3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i) of this Article shall be the sum of the items listed in Table 1 of this paragraph. If the result is zero or negative, the basis for the calculation shall be the most recent earlier yearly supervisory financial information which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.

Table 1

1. Interest receivable and similar income

2. Interest payable and similar charges

3. Income from shares and other variable/fixed-yield securities

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5. Commissions/fees payable

6. Net profit or net loss on financial operations

7. Other operating income

8. Other operating expense

Institutions shall include each element in the sum with its positive or negative sign.

Institutions shall adjust these elements to reflect the following qualifications:

a) institutions shall calculate the relevant indicator based on the figures reported in Annex III, or where applicable in Annex IV, of the Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014;

b) institutions shall calculate the relevant indicator before the deduction of any provisions and operating expenses. Institutions shall include in the operating expenses the fees paid for outsourcing services provided by third parties which are not a parent or subsidiary of the institution or a subsidiary of a parent which is also the parent of the institution. Institutions may use expenditure on the outsourcing of services provided by third parties to reduce the relevant indicator where the expenditure is incurred from an undertaking subject to rules under, or equivalent toRegulation No 575/2013 and this Directive;

c) institutions shall not use the following items in the calculation of the relevant indicator:(i) realised profits/losses from the sale of non-trading book items;

(ii) income from extraordinary or irregular items;

(iii) income derived from insurance.

d) when the revaluation of trading items is part of the profit and loss statement, institutions may include revaluation. When institutions apply Article 36(2) of Directive 86/635/EEC, they shall include revaluation booked in the profit and loss account.

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

(11) Article 70 is replaced by the following:

'Article 70

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

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

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person responsible for the breach;

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

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;

(e) the losses for third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority;

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

(h) any potential systemic consequences of the breach.

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

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

'Institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. For the coverage of environmental, social and governance risks institutions shall explicitily take into account the short, medium and long term .';"

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

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

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

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

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

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

The remuneration policies and practices referred to in point 1(d) shall be gender neutral.’;

(14) Article 76 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that the management body approves and periodically reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle, and those relating to environmental, social and governance factors in the short, medium and long-term.';

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

'Member States shall ensure that the management body develops and monitors the implementation of specific plans, quantifiable targets and processes to monitor and address the financial risks arising in the short, medium and long-term from ESG factors, inluding those arising from the process of adjustment and transition trends towards the relevant Member States and Union legal and regulatory objectives in relation to environmental, social and governance factors in particular those set out in Regulation (EU) 2021/1119 ("European Climate Law"), as well as, where relevant, third country legal and regulatory objectives.';

(c) paragraph 5 is replaced by the following:

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

Member States shall ensure that: a) the internal control functions ensure that all material risks are properly identified, measured and reported;

b) the internal control functions provide a comprehensive view of the whole range of risks that the institution is exposed to;

c) the risk management function is actively involved in elaborating the institution's risk strategy and in all its material risk management decisions and has control over the effective implementation of the risk strategy;

d) the internal audit functionperforms an independent review of the effective implementation of the institution's risk strategy.

Without prejudice to points a) to d) of this paragraph, the compliance function shall assess and mitigate compliance risk and ensure that the institution's risk strategy takes into account compliance risk and that compliance risk is adequately taken into account in all material risk management decisions.

(d) The following new paragraph 5a is inserted:

'5a. Member States shall ensure that the internal control functions:

a) have direct access to the management body in its supervisory function,

b) can report directly to the management body in its supervisory function.'

The internal control functions shall exercise the functions referred to in points (a) and (b) independently from the members of the management body in its management function and from senior management, and shall in particular be able to raise concerns and warn the management body in its supervisory function where appropriate or where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body pursuant to this Directive and Regulation (EU) No 575/2013.

The heads of internal control functions shall be independent senior managers with distinct responsibility for the risk management, compliance and internal audit functions. Where the nature, scale and complexity of the activities of the institution do not justify appointing a specific person for the risk management function and/or the compliance function, another senior person that performs other tasks within the institution may fulfil the responsibilities for the compliance and/or risk management functions, provided that:

i) there is no conflict of interest;

ii) the person responsible for the risk management function and the compliance function possesses the knowledge and expertise needed for the different areas concerned and

iii) the person responsible for the risk management function and the compliance function has the time needed to perform both control functions correctly.

The internal audit function shall not be combined with any other business line or control function of the institution.

The heads of the internal control functions shall not be removed without prior approval of the management body in its supervisory function .

*11 Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).';

(14a) Article 77 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

This Article shall be without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 1b, Sections 1 to 3, of Regulation (EU) No 575/2013.'

(b) the first subparagraph of paragraph 4 is replaced by the following:

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

(15) Article 78 is amended as follows:

(a) the title is replaced by the following:

‘Supervisory benchmarking of approaches for calculating own funds requirements’;

(b) paragraph 1 is replaced by the following:

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

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

(b) that institutions using the alternative standardised approach set out in Part Three, Title IV, Chapter 1a of Regulation (EU) No 575/2013 report the results of their calculations for their exposures or positions that are included in the benchmark portfolios ; provided that the size of the institution's on- and off-balance-sheet business that is subject to market risk is equal to or more than EUR 500 million in accordance with Regulation (EU) No 575/2013, Article 325a(1)

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

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

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

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

Institutions shall submit the results of their calculations referred to in the first subparagraph together with an explanation of the methodologies used to produce them and any qualitative information, as requested by EBA, that can explain the impact of these calculations on own funds requirements. These results shall be submitted at least annually to the competent authorities. EBA may conduct the exercise biennially for each approach mentionned in paragraph 1, points (a), (b) and (c) after the exercise has run five times for each single approach.

(c) paragraph 3 is amended as follows:

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

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

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

'(b) approaches where there is particularly high or low variability , and also where there is a significant and systematic under-estimation of own funds requirements.';

(iii) the second subparagraph is replaced by the following:'EBA shall produce a report to assist the competent authorities in the assessment of the quality of the approaches based on the information referred to in paragraph 2.';

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

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

(e) paragraph 6 is replaced by the following:

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

(f) paragraph 8 is amended as follows:

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

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

(ii) the following second subparagraph is inserted:

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

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

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

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

(17) a new Article 87a is inserted:

‘Article 87a

Environmental, social and governance risks

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

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

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

4. Competent authorities shall assess and monitor developments of institutions' practices concerning their environmental, social and governance strategy and risk management, including the plans, quantifiable targets and processes to monitor and address the ESG risks arising in the short, medium and long-term, to be prepared in accordance with Article 76(2). This assessment shall take into account the institutions' sustainability related product offering, their transition finance policies, related loan origination policies, and environmental, social and governance related targets and limits.

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

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

(b) the content of plans to be prepared in accordance with Article 76(2), which shall include specific timelines and intermediate quantifiable targets and milestones, in order to monitor and address the financial risks stemming from ESG factors, including those arising from the process of adjustment and transition trends towards the relevant Member States and Union legal and regulatory objectives in relation to environmental, social and governance factors, ,as well as, where relevant for internationally active institutions, third country objectives that are at least as ambitious as those under Union law;

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

(d) criteria for setting the scenarios referred to in paragraph 3, including the parameters and assumptions to be used in each of the scenarios, specific risks and time horizons;EBA shall publish those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive]. EBA shall update those guidelines on a regular basis, to reflect the progress made in measuring and managing environmental, social and governance factors as well as the developments of policy objectives of the Union on sustainability.';

6. Until [OP please insert the date = 24 months from date of entry into force of this amending Directive], competent authorities may waive the requirement that the plans referred to in paragraph 4 include quantitative criteria.

(18) Article 88 is amended as follows:

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

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

(b) in Article 88, the following paragraph 3 is added: ‘3. Without prejudice to the overall responsibility of the management body as a collegial body, Member States shall ensure that institutions draw up, maintain and update individual statements setting out the roles and duties of all members of the management body in its management function senior management and key function holders and a mapping of duties, including details of the reporting lines and the lines of responsibility, and the persons who are part of the governance arrangements as referred to in Article 74 (1) and their duties approved by the management body.

Member States shall ensure that the statements of duties and the mapping of the duties are made available at all time and communicated including to obtain authorisation as referred in Article 8, in due time, upon request, to the competent authorities.’

(19) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Institutions and financial holding companies and mixed financial holding companies, as approved pursuant to Article 21a(1), (“the entities”), shall have the primary responsibility for ensuring that members of the management body are at all times of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties and fulfil the requirements set out in paragraphs 2 to 8, except as regards special managers appointed by resolution authorities under article 35 (1) of the Directive 2014/59/EU and temporary administrators appointed by competent authorities under article 29 (1) of the Directive 2014/59/EU.

Without prejudice to the first subparagraph of this paragraph, competent authorities shall not reassess the suitability of the members of the management body when their mandate is renewed, unless relevant information that is known to competent authorities has changed and such change may affect the suitability of the member concerned.

Where members of the management body do not fulfil the requirements set out in this paragraph, competent authorities shall have the power to remove such members from the management body. The competent authorities shall in particular verify whether the requirements set out in this paragraph are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.’;

(b) in paragraph 4 the following subparagraph is added:

‘For the purposes of point (a) of this paragraph, a group shall mean a group of undertakings that are related to each other as set out in Article 22 of Directive 2013/34/EU *.’;

(c) paragraph 7 is replaced by the following:

‘7. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks, taking into account the environmental, social and governance factors. The overall composition of the management body shall reflect an adequately broad range of experience.’;

(d) the last paragraph of Article 91 is replaced by the following:

‘13. This Article shall be without prejudice to provisions of the Member States on the representation of employees in the management body and on the appointment of members of the management body in its supervisory function by regional or local public elected bodies. In these cases, appropriate safeguards shall be put in place to ensure the suitability of these members of the management body.’;

(19a) The following Article 91a is inserted:

’Article 91a

Key function holders

1. The entities as referred to in Article 91 (1) shall have the primary responsibility for ensuring that key function holders are of good repute, have honesty and integrity and possess the knowledge, skills and experience necessary to perform their duties at all times.

2. Where the entities conclude, based on the assessment referred to in paragraph 1, that the person does not fulfil the requirements set out in that paragraph, they shall not appoint that person as a key function holder. The entities shall take all measures necessary to ensure the appropriate functioning of that position.

3. The entities shall ensure that information about the suitability of the key function holders remains up-to-date. Where requested, the entities shall communicate that information to competent authorities.

4. Member States shall ensure that competent authorities assess whether the heads of internal control functions and the chief financial officer fulfil the suitability criteria set out in paragraph 1, where those heads or the officer are appointed for roles at least in the following entities:

(a) the EU parent institution that qualifies as large institution;

(b) the parent institution in a Member State that qualifies as large institution; except where it is affiliated to a central body; (c) central body that qualifies as large institution or that supervises large institutions affiliated to it;(d) institution in the EU that qualifies as a large institution; for the purpose of this paragraph, the condition under letter (d) of Article 4(1), point (146), of Regulation (EU) No 575/2013 applies on an individual basis;

(e) the parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, having large institutions within their group, except those falling under Article 21a(4).;

(21) Article 92 is amended as follows:

(a) in paragraph 2, points (e) and (f) are replaced by the following:

'(e) staff engaged in internal control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

(f) the remuneration of the heads of internal control functions is directly overseen by the remuneration committee referred to in Article 95 or, if such a committee has not been established, by the management body in its supervisory function;';

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

‘(b) staff members with managerial responsibility over the institution's internal control functions or material business units;’;

(23) Article 94 is amended as follows:

(b) in paragraph 2, third subparagraph, point (a) is replaced by the following:

‘(a) managerial responsibility and internal control functions;’;

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

‘(a) an institution that is not a large institution and the value of the assets of which is on average and on an individual basis in accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;’;

(24) in Article 98, the following paragraph 9 is added:

‘9. The review and evaluation performed by competent authorities shall include the assessment of institutions’ governance and risk management processes for dealing with environmental, social and governance risks, as well as of the institutions’ exposures to environmental, social and governance risks. In determining the adequacy of institutions’ processes and exposures, competent authorities shall take into account the business models of those institutions.’;

(25) in Article 100 the following paragraphs 3 and 4 are added:

‘3. Institutions shall refrain from activities that can impair a stress test, such as benchmarking, exchange of information among themselves, agreements on common behaviour, or optimisation of their submissions in stress tests. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013, competent authorities shall have all information gathering and investigatory powers that are necessary to detect those actions.

4. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines to ensure that consistency, long-term considerations and common standards for assessment methodologies are integrated into the stress testing of environmental, social and governance risks. Stress testing of environmental, social and governance risks by competent authorities should start with climate-related factors. The Joint Committee shall publish those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive]. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, explore how other environemental, social and governance related risks can be integrated into stress testing.’;

(25a) in Article 101, paragraph 3 is replaced by the following :

‘3. If for an internal market risk model, results of backtesting or P&L attribution test indicate for different trading desks that the model is not or is no longer sufficiently accurate, the competent authorities shall review the conditions for the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.’;

(26) Article 104 is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘For the purposes of Article 97, Article 98(4) and (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’;

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

‘(e) restrict or limit the business, including with regard to the acceptance of deposits, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;’;

(iii) the following point (m) is added:

'(m) require institutions to reduce material ESG risks arising in the short, medium and long-term, including those arising from the process of adjustment and transition trends towards the relevant Member States, Union and third country legal and regulatory objectives in relation to environmental, social and governance factors , including through restricting or limiting their business, adjustments to their business models, governance and risk management, or requiring institutions to review their strategies.';

(b) the following paragraph 3 is added:

'3. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify how competent authorities may identify that the credit valuation adjustment (CVA) risks of institutions, referred to in Article 381 of Regulation (EU) No 575/2013, pose excessive risks to the soundness of those institutions.';

(27) Article 104a is amended as follows:

(a) in paragraph 3, the second subparagraph is replaced by the following:

'Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by Article 92(1), point (d), of Regulation (EU) No 575/2013, competent authorities shall determine the level of the additional own funds required under paragraph 1, point (a), of this Article as the difference between the capital considered adequate pursuant to paragraph 2 of this Article, except for the fifth subparagraph thereof, and the relevant own funds requirements set out in Parts Three and Seven of Regulation (EU) No 575/2013.';

(b) the following paragraphs 6 and 7 are added:

‘6. Where an institution becomes bound by the output floor, the following shall apply:

(a) the nominal amount of additional own funds required by the institution’s competent authority in accordance with Article 104(1), point (a), to address risks other than the risk of excessive leverage shall not increase as a result of the institutions’ becoming bound by the output floor;

(b) the institution’s competent authority shall, without undue delay, and no later than by the end date of the next review and evaluation process, review the additional own funds it required from the institution in accordance with Article 104(1), point (a), and remove any parts thereof that would double-count the risks that are already fully covered by the fact that the institution is bound by the output floor;

c) as soon as the competent authority has completed the review in point (b), point (a) shall no longer apply.

For the purposes of this Article and Articles 131 and 133 of this Directive, an institution shall be considered as bound by the output floor when the institution’s total risk exposure amount calculated in accordance with Article 92(3), point (a), of Regulation (EU) No 575/2013 exceeds its un-floored total risk exposure amount calculated in accordance with Article 92(4) of that Regulation.

7. For the purposes of paragraph 2, as long as an institution is bound by the output floor, the institution’s competent authority shall not impose an additional own funds requirement that would double-count the risks that are already fully covered by the fact that the institution is bound by the output floor.’;

(28) in Article 106, paragraph 1 is replaced by the following:

'1. Member States shall empower the competent authorities

(a) to require institutions to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more frequently than prescribed in Articles 433, 433a, 433b and 433c;

(b) to set deadlines for large institutions and other institutions subject to Article 433a and Article 433c of Regulation (EU) No 575/2013 to submit disclosure information to EBA for its publication on a centralised EBA website; if they have submitted the relevant information from Title II and III in Part Eight of Regulation (EU) No 575/2013, in electronic format to EBA, pursuant to Article 434(1) of that Regulation;

(c) to require institutions to use specific media and locations for publications other than the EBA website for centralised disclosures or to publish their financial statements where they have submitted the relevant information required in Title II and III in Part Eight of Regulation (EU) No 575/2013, in electronic format to EBA, in accordance with Article 434(1) of that Regulation.Notwithstanding point (a), Article 433 and Article 434 of Regulation (EU) No 575/2013 shall apply.';

(29) Article 121 is replaced by the following:

‘ Member States shall require that the members of the management body of a financial holding company or mixed financial holding, that are not approved in accordance with Article 21a(1), be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company. The financial holding companies or mixed financial holding companies shall have the primary responsibility for ensuring the suitability of the members of their management body’.

(30) In Title VII, Chapter 3, the following Section 0 is inserted:

'Section 0

Application of this Chapter to investment firm groups

Article 110a

Scope of application to investment firm groups

This Chapter applies to investment firm groups, as defined in Article 4(1), point (25) of Regulation (EU) 2019/2033 [*], where at least one investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) or 1(5) of Regulation (EU) 2019/2033[*14].

This Chapter does not apply to investment firm groups where no investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) or 1(5) of Regulation (EU) 2019/2033.';

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*14 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).';

(31) Article 131 is amended as follows:

(a) in paragraph 5a, the second sub-paragraph is replaced by the following:‘Within six weeks of receipt of the notification referred to in paragraph 7 of this Article, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 16a(1) of Regulation (EU) No 1093/2010.’;

(b) in paragraph 6, point b) is replaced by the following:

‘(b) the O-SII buffer must be reviewed by the competent authority or the designated authority at least annually;’;

(c) in paragraph 6, the following point c) is added:

‘(c) where an O-SII becomes bound by the output floor, its competent or designated authority, as applicable, shall review, by no later than the date of the annual review mandated under point (b), the institution’s O-SII buffer requirement to make sure that its calibration remains appropriate.‘;

(d) in paragraph 15, the second subparagraph is replaced by the following:‘Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraph 10, 11 or 12 of Article 133 and the O-SII buffer rate or the G-SII buffer rate to which the same institution is subject to would be higher than 5 %, the procedure set out in paragraph 5a of this Article shall apply. For the purposes of this paragraph, where the decision to set a systemic risk buffer, O-SII buffer or G-SII buffer results in a decrease or no change from any of the previously set rates, the procedure set out in paragraph 5a of this Article shall not apply.’;

(32) Article 133 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall ensure that it is possible to set a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector on all or a subset of exposures as referred to in paragraph 5 of this Article, in order to prevent and mitigate macroprudential or systemic risks not covered by Regulation (EU) No 575/2013 and by Articles 130 and 131 of this Directive, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State. ';

(b) the following paragraph 2a is inserted:

'2a. Where an institution is bound by the output floor, both of the following shall apply:

(a) the amount of CET1 capital it is required to have in accordance with paragraph 2 shall be capped by the following amount:

$$r_T \cdot E_T^* + \sum_i r_i \cdot E_i^*$$

where:

E_T^* = the un-floored total risk exposure amount of the institution calculated in accordance with Article 92(4) of Regulation (EU) No 575/2013';

$E*_i$ = the un-floored risk exposure amount of the institution for the subset of exposures i calculated in accordance with Article 92(4) of Regulation (EU) No 575/2013;

r_T r_i as defined in paragraph 2 .

(b) the competent or designated authority, as applicable, shall review without undue delay the calibration of the systemic risk buffer rate or rates, as applicable, to ensure they remain appropriate and do not double-count the risks that are already covered by the fact that the institution is bound by the output floor.

The calculation in point (a) shall apply until the competent or designated authority, as applicable, has completed the revision set out in point (b) and has published a new decision on the calibration of the systemic risk buffer rate or rates in accordance with the procedure set out in this Article. As of that moment, the cap in point (a) shall no longer apply.';

(c) in paragraph 8, point (c) is replaced by the following:

'(c) the systemic risk buffer is not to be used to address any of the following:

(i) risks that are covered by Articles 130 and 131;

(ii) risks that are fully covered by the calculation set out in Article 92(3) of Regulation (EU) No 575/2013.';

(d) in paragraph 9, the following point (g) is added:

'(g) how the calculation set out in Article 92(3) of Regulation (EU) No 575/2013 affects the calibration of the systemic risk buffer rate or rates, as applicable, that the competent authority or the designated authority, as applicable, intends to impose.';

(e) paragraphs 11 and 12 are replaced by the following:

‘11. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3 % and up to 5 % for any of those exposures, the competent authority or the designated authority of the Member State that sets that buffer shall request in the notification submitted in accordance with paragraph 9 the opinions of the Commission and the ESRB.

Within a month of receipt of the notification referred to in paragraph 9, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer rate or rates is deemed appropriate. Within two months of receipt of the notification, the Commission, taking into account the assessment of the ESRB, shall provide its opinion .

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

Where one or more institutions to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State,

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

For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the thresholds referred to in the first subparagraph of this paragraph.

12. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate higher than 5 % for any of those exposures, the competent authority or the designated authority, as applicable, shall seek the authorisation of the Commission before implementing a systemic risk buffer.

Within six weeks of receipt of the notification referred to in paragraph 9 of this Article, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer is deemed appropriate. EBA may also provide the Commission with its opinion on that systemic risk buffer in accordance with Article 16a(1) of Regulation (EU) No 1093/2010, within six weeks of receipt of the notification.

Within three months of receipt of the notification referred to in paragraph 9, the Commission, taking into account the assessment of the ESRB and EBA, where relevant, and where it is satisfied that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an act authorising the competent authority or the designated authority, as applicable, to adopt the proposed measure.

For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the threshold referred to in the first subparagraph of this paragraph.';

(33) Article 142 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

‘(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement or, where applicable, the leverage ratio buffer requirement;’;

(b) paragraph 3 is replaced by the following:

‘3. The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirement or, where applicable, its leverage ratio buffer requirement within a period which the competent authority considers appropriate.’;

(c) in paragraph 4, point (b) is replaced by the following:

‘(b) exercise its powers under Article 102 to impose more stringent restrictions on distributions than those required by Articles 141 and 141b, as applicable.’;

(34) in Article 161, paragraph 3 is deleted.

Article 2

Amendments to Directive 2014/59/EU

Directive 2014/59/EU[*15] is amended as follows:

(1) in Article 45c paragraph 2, the following subparagraph is added:

'Articles 77(2) and 78a of Regulation (EU) No 575/2013 shall not apply to eligible liabilities issued by entities for which the resolution authority has set the requirement referred to in Article 45(1) of this Directive at a level that does not exceed the amount sufficient to absorb losses in accordance with the first subparagraph, point (a), of this paragraph.';

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

Article 3

Transposition

1. Member States shall adopt and publish by [OP please insert the date = 18 months from the date of entry into force of this amending Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [OP please insert the date = 1 day after the transposition date of this amending Directive].

By way of derogation from the preceding subparagraph, Member States may apply the provision concerning own funds and eligible liabilities in Article 2 point (1) of this Directive from [OP please insert the date = 6 months after the entry into force of this amending Directive].

However, the provisions necessary to comply with the amendments set out in Article 1, point (8), on the prudential supervision of third country branches shall apply from [OP please insert the date = 24 months from date of application of this amending Directive].

By derogation from the preceding subparagraph, Member States shall apply the provisions on reporting on third country branches in Title VI, Chapter 1, Section II, Sub-section 4 of Directive 2013/36/EU, as inserted by this Directive, from the date of application laid down in the second subparagraph of this Article.

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

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

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	For the Council
The President	The President