

CRD Presidency compromise text

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(9) Articles 65 and 66 are replaced by the following:	
<p>‘Article 65</p> <p>Administrative penalties, periodic penalty payments and other administrative measures <u>and enforcement measures</u></p>	<p>‘Article 65</p> <p>Administrative penalties, periodic penalty payments and <u>periodic penalty payments and</u> other administrative measures <u>and enforcement measures</u></p>
<p>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 <u>and enforcement measures, such as periodic penalty payments,</u> in respect of breaches of national provisions transposing this <u>this</u> Directive <u>2013/36/EU, and</u> of Regulation (EU) No 575/2013 <u>or of decisions issued by a competent authority on the basis of those acts,</u> and shall take all measures necessary to ensure that they are implemented. The administrative penalties, periodic penalty payments and other administrative measures <u>and periodic penalty payments,</u> shall be effective, proportionate and dissuasive.</p>	<p>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 <u>periodic penalty payments and</u> other administrative measures <u>and enforcement measures, such as periodic penalty payments,</u> in respect of breaches of national provisions transposing this <u>this</u> Directive <u>2013/36/EU, and</u> of Regulation (EU) No 575/2013 <u>or of decisions issued by a competent authority on the basis of those acts,</u> and shall take all measures necessary to ensure that they are implemented. The administrative penalties, periodic penalty payments and <u>periodic penalty payments and</u> other administrative measures <u>and periodic penalty payments,</u> shall be effective, proportionate and dissuasive.</p>
<p>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</p>	<p>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</p>

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<p>transposing this <u>this</u> Directive 2013/36/EU, or of Regulation (EU) No 575/2013 <u>or of decisions issued by a competent authority based on those acts</u>, administrative penalties, periodic penalty payments and other administrative measures <u>and periodic penalty payments</u> may be applied, subject to the conditions laid down in national law, to the members of the management body and to <u>any</u> other natural persons who, <u>under national law</u>, are responsible for the breach. <u>Periodic penalty payments on natural persons may only be applied to those members of the management body in their management functions that are identified as being responsible for the breaches of obligations, and the identification of such responsibility shall be conducted in accordance with national law.</u></p>	<p>transposing this <u>this</u> Directive 2013/36/EU, or of Regulation (EU) No 575/2013 <u>or of decisions issued by a competent authority based on those acts</u>, administrative penalties, periodic penalty payments and <u>periodic penalty payments</u> and other administrative measures <u>and periodic penalty payments</u> may be applied, subject to the conditions laid down in national law, to the members of the management body and to <u>any</u> other natural persons who, <u>under national law</u>, are responsible for the breach <u>in accordance with national law</u>. <u>Periodic penalty payments on natural persons may only be applied to those members of the management body in their management functions that are identified as being responsible for the breaches of obligations, and the identification of such responsibility shall be conducted in accordance with national law.</u></p>
<p>3. The application of periodic penalty payments shall not prevent competent authorities from imposing administrative penalties <u>or other administrative measures</u> for the same breach.</p>	
<p>4. Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Those powers shall include:</p>	
<p>(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</p>	

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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;	

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(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) the power, subject to other conditions set out in Union law, to conduct , <u>subject to other conditions set out in Union law</u> , 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	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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.	
<p>Article 66</p> <p>Administrative penalties, periodic penalty payments and other administrative measures <u>and periodic penalty payments</u> for breaches of authorisation and requirements for acquisitions or divestiture of <u>qualifying material</u> holdings, material transfers of assets and liabilities, mergers or divisions</p>	<p>Article 66</p> <p>Administrative penalties, periodic penalty payments and <u>periodic penalty payments and</u> other administrative measures <u>and periodic penalty payments</u> for breaches of authorisation and requirements for acquisitions or divestiture of <u>qualifying material</u> holdings, material transfers of assets and liabilities, mergers or divisions</p>
<p>1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties, periodic penalty payments and other administrative measures <u>and periodic penalty payments</u> at least where:</p>	<p>1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties, periodic penalty payments and <u>periodic penalty payments and</u> other administrative measures <u>and periodic penalty payments</u> at least where:</p>
<p>(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;</p>	
<p><u>(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;</u></p>	

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(b) activities as a credit institution are commenced without obtaining prior authorisation in breach of Article 9-8 ;	
(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 the acquirer person 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 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) acquires directly or indirectly, a qualifying holding in an institution, or increases an already	

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<p>held qualifying holding, such that the proportion of voting rights or qualifying holding capital held by the acquirer in the institution would exceed 15% of <u>its</u> the institution's eligible capital <u>in accordance with the principles set out in Article 27a(1)</u> without the acquirer's notifying the competent authorities in breach of that Article; <u>fails to notify the relevant competent authority of a direct or indirect acquisition of a material holding in breach of that Article;</u></p>	
<p>(g) any of the parties referred to in Article 27d of this Directive disposes directly or indirectly of a qualifying holding that exceeds the threshold referred to in Article 89 of Regulation (EU) 575/2013 27d <u>of Directive 2013/36/EU</u> without notifying the competent <u>authority</u> authorities in breach of Article 27d of this Directive <u>the same Article;</u> 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;</p>	
<p>(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;</p>	
<p>(i) any of the parties referred to in Article 27k(l) engages in a process of merger or division in breach of that Article.</p>	

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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 amount of the financial capacity indicator total annual net turnover of the undertaking as defined in paragraph 3 of this article Article; total annual net turnover of the undertaking;	
(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 amount of the financial capacity indicator, as defined in paragraph 3 of this article, turnover net turnover , which, in the case of an ongoing infringement breach , the legal person shall be obliged to pay per day of infringement breach until compliance with an obligation is restored, and which may be imposed for a period of up to six months from	

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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 30 000 500 000 , <u>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]</u> , which, in the case of an ongoing breach, the natural person shall be obliged to pay per day of infringement <u>breach</u> , 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. <u>Member states may decide to set a higher maximum amount for periodic penalty payments to be applied per day of infringement.</u>	
<u>Member States may set a higher maximum amount for periodic penalty payments to be applied per day of breach.</u>	
<u>By way of derogation from Article 66(2) point (b), Member sStates may decide that apply periodic penalty payments can be applied on a weekly or monthly basis. In this case, the maximum amount of periodic penalty payments to be applied for a given the relevant weekly or monthly period of infringement when a breach takes place should shall not exceed the sum of the maximum amount of periodic penalty payments</u>	

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that would apply on a daily basis in accordance with per days referred to in Articles 66(2) point (b) for the number of days constituting this given period 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, or 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 temporary or a definitive 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 the institutions.	
3. The total annual net turnover amount of the financial capacity indicator total annual net turnover - referred to in paragraph 2, -points (a)(i) and (b)(i), and (b)(i) of this Article is-shall be the sum of the elements items listed in Table 1 of this paragraph. shall be equal to the business	3. The total annual net turnover amount of the financial capacity indicator total annual net turnover - referred to in paragraph 2, -points (a)(i) and (b)(i), and (b)(i) of this Article is-shall be the sum of the elements items listed in Table 1 of this paragraph. shall be equal to

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<p>indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purposes of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. 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 <u>amount of the financial capacity indicator total annual net turnover</u> shall be the <u>amount</u> total annual net turnover <u>total annual net turnover</u> resulting from the consolidated account of the ultimate parent undertaking.</p>	<p>the business indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purposes of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. 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 <u>amount of the financial capacity indicator total annual net turnover</u> shall be the <u>amount</u> total annual net turnover <u>total annual net turnover</u> resulting from the consolidated account of the ultimate parent undertaking.</p>
<u>Table 1</u>	
<u>1. Interest receivable and similar income</u>	
<u>2. Interest payable and similar charges</u>	
<u>3. Income from shares and other variable/fixed-yield securities</u>	
<u>4. Commissions/fees receivable</u>	

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<u>5. Commissions/fees payable</u>	
<u>6. Net profit or net loss on financial operations</u>	
<u>7. Other operating income</u>	
<u>8. Other operating expense</u>	
<u>Institutions shall include each element in the sum with its positive or negative sign.</u>	
<u>Institutions shall adjust these elements to reflect the following qualifications:</u>	
<u>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 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014;</u>	
<u>ab) 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 rendered-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</u>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>the institution. Institutions may use expenditure on the outsourcing of services rendered<u>provided</u> by third parties to reduce the relevant indicator where the expenditure is incurred from an undertaking subject to rules under, or equivalent to, this Regulation No 575/2013 and <u>this Directive</u>;</u>	
<u>bc) institutions shall not use the following elements <u>items</u> in the calculation of the relevant indicator:</u>	
<u>(i) realised profits/losses from the sale of non-trading book items;</u>	
<u>(ii) income from extraordinary or irregular items;</u>	
<u>(iii) income derived from insurance.</u>	
<u>ed) 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.²²</u>	
4. The average daily amount of the financial capacity indicator turnover <u>net turnover</u> referred to in paragraph (2), point (b)(i), shall be the <u>amount of the financial capacity indicator</u> total annual net turnover <u>total annual net turnover</u> referred to in paragraph 3 divided by 365.’;	
(10) Article 67 is amended as follows:	
(a) paragraph 1 is amended as follows:	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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 the national provisions transposing Article 74;	
(e) an institution fails to report information or provides incomplete or inaccurate information regarding compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the competent authorities in breach of Article 430(1) of that Regulation;’;	
<u>(i bis) points (f), and (i) are deleted:</u>	
(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;’;	
<u>(ii bis) point points (k) and (l) is-are deleted</u>	
(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;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(s) an institution or a natural person fails to comply with an obligation arising from a decision issued by the competent authority or an obligation arising from national provisions transposing Directive 2013/36/EU or from Regulation (EU) No 575/2013;	
(t) an institution that fails to comply with the remuneration requirements in accordance with Articles 92, 94 and 95 of this Directive 2013/36/EU;	(t) an institution that fails to comply with the remuneration requirements in accordance with Articles 92, 94 and 95 of this Directive of this Directive 2013/36/EU;
(u) an institution acts without the prior permission of the competent authority where national provisions transposing this Directive 2013/36/EU 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;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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 Articles 430a and 430b <u>Article 430a</u> 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:	


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2 nd Presidency compromise	Changes following comments on the 2nd compromise
‘2. Member States shall ensure that in the cases referred to in paragraph 1, the measures than 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 amount of the financial capacity indicator as defined in paragraph 3 of this article; total annual net turnover <u>total annual net turnover</u> of the undertaking <u>as defined in paragraph 3 of this Article;</u>	
(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 amount of the financial capacity indicator as defined in paragraph 3 of this article turnover <u>net turnover</u> , which, in the case of an ongoing infringement breach , the legal person shall be obliged to pay per day of infringement breach until compliance with an obligation is restored, and which may be imposed for a period of up to six months from	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment.</p> <p>The average daily turnover referred to in this paragraph shall be the <u>amount of the financial capacity indicator</u> total annual net turnover divided by 365.</p>	
<p>(ii) in the case of a natural person, periodic penalty payments of up to EUR 30 000 500 000, <u>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]</u>, which, in the case of an ongoing infringement breach, the natural person shall be obliged to pay per day of infringement 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 decide to set a higher maximum amount for periodic penalty payments to be applied per day of infringement.</p>	
<p><u>Member States may set a higher maximum amount for periodic penalty payments to be applied per day of breach.</u></p>	
<p><u>By way of deri<u>o</u>gation from Article 67(2) point (b), Member sStates may decide that apply periodic penalty payments <u>can be applied</u> on a weekly or monthly basis. In this case, the maximum amount of periodic penalty</u></p>	

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<p>payments to be applied for the relevant weekly or monthly a given period of infringement when a breach takes place should <u>shall not</u> exceed the sum of the maximum amount of periodic penalty payments that would apply on a daily basis in accordance with per days referred to in Articles 67(2) point (b) for the number of days constituting this given period relevant period. <u>Periodic penalty payments may be imposed on a given date and start applying at a later date.</u></p>	
<p>(c) other administrative measures:</p>	
<p>(i) a public statement which identifies the natural person, institution, financial holding company, or mixed financial holding company, <u>or</u> intermediate parent undertaking responsible and the nature of the breach;</p>	
<p>(ii) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;</p>	
<p>(iii) in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;</p>	
<p>(iv) subject to Article 65(2), a temporary or a definitive ban of a member of the institution's management body or any other natural person who is held responsible for the infringement <u>breach</u> from exercising functions in the institutions.</p>	

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(v) — suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.2;	
(c) the following paragraphs 3 and 4 are added:	
3. The total annual net turnover <u>amount of the financial capacity indicator total annual net turnover</u> referred to in paragraph 2, points (a)(i) and (b)(i) <u>(b)(i)</u> of this Article <u>is shall be the sum of the elements items listed in Table 1 of this paragraph.</u> shall be equal to the business indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purposes of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. 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 <u>amount of the financial capacity indicator total annual net turnover</u> shall be the total annual net turnover <u>amount total annual net turnover</u> resulting from the consolidated account of the ultimate parent undertaking.	
<u>Table 1</u>	
<u>1. Interest receivable and similar income</u>	
<u>2. Interest payable and similar charges</u>	

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<u>3. Income from shares and other variable/fixed-yield securities</u>	
<u>4. Commissions/fees receivable</u>	
<u>5. Commissions/fees payable</u>	
<u>6. Net profit or net loss on financial operations</u>	
<u>7. Other operating income</u>	
<u>8. Other operating expense</u>	
<u>Institutions shall include each element in the sum with its positive or negative sign.</u>	
<u>Institutions shall adjust these elements to reflect the following qualifications:</u>	
<u>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 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014;</u>	
<u>ab) 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</u>	

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<u>rendered-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 rendered-provided by third parties to reduce the relevant indicator where the expenditure is incurred from an undertaking subject to rules under, or equivalent to, this Regulation No 575/2013 and this Directive;</u>	
<u>bc) institutions shall not use the following elements items in the calculation of the relevant indicator:</u>	
<u>(i) realised profits/losses from the sale of non-trading book items;</u>	
<u>(ii) income from extraordinary or irregular items;</u>	
<u>(iii) income derived from insurance.</u>	
<u>ed) 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.²²</u>	
4. The average daily amount of the financial capacity indicator turnover net turnover referred to in paragraph (2), point (b)(i), shall be the amount of the financial capacity indicator total annual net turnover total annual net turnover referred to in paragraph 3 divided by 365.'	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(11) Article 70 is replaced by the following:	
<p>‘Article 70</p> <p>Effective application of administrative penalties <u>or other administrative measures</u> and exercise of powers to impose penalties by competent authorities</p>	
<p>1. 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:</p>	
(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;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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.	
<p>2. In the exercise of their powers to impose penalties, competent authorities shall cooperate closely to ensure that penalties produce the results pursued by this Directive. They shall also coordinate their actions to prevent accumulation and overlap when applying penalties and administrative measures to cross-border cases. Competent authorities shall cooperate closely with judicial authorities when dealing with same cases.</p>	
<p>3. Competent authorities may apply penalties in relation to the same natural or legal person responsible for the same acts or omissions in the case of an accumulation of administrative and criminal proceedings and penalties is punishing the same breach. However, such accumulation of proceedings and penalties shall be strictly necessary and proportionate to pursue different and complementary objectives of general interest. The severity of all the penalties and other administrative measures</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>imposed in case of accumulation of administrative and criminal proceedings shall be limited to what is necessary in the view of the seriousness of the breach concerned. Member States shall lay down clear and precise rules regarding the circumstances in which acts or and omissions may be subject to such accumulation of administrative and criminal proceedings and penalties.</p>	
<p>4. Member States shall lay down rules providing for full cooperation between competent authorities and judicial authorities to ensure a sufficiently close connection in substance and time between administrative and criminal proceedings.</p>	
<p>5. By 18 July 2029, EBA shall submit a report to the Commission on the cooperation between competent authorities and judicial authorities in the context of application of administrative penalties. In addition, EBA shall assess any divergences in the application of penalties between competent authorities in this respect. In particular, EBA shall assess:</p>	
<p>(a) — the level of cooperation between competent authorities and judicial authorities in the context of application of penalties;</p>	
<p>(b) — the level of cooperation between competent authorities in the context of penalties applicable to cross-border cases or in case of accumulation of administrative and criminal proceedings;</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(e) — the application and the level of protection of ne bis in idem principle with regards to administrative and criminal penalties by Member States;	
(d) — the application of the principle of proportionality when both penalties are imposed in case of accumulation of administrative and criminal proceedings;	
(e) — the exchange of information between competent authorities when dealing with cross border cases.’;	
(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 Tthe coverage of environmental, social and governance risks through this process institutions shall be done for explicitly take into account in the short, medium and long term time including environmental, social and governance risks. ’;	
(13) in Article 74, paragraph 1 is replaced by the following:	
‘1. Institutions shall have robust governance arrangements, which include:	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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 in the short, medium and long term time horizon , including environmental, social and governance risks <u>in the short, medium and long term</u> ;	
(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 the first subparagraph <u>point 1(d)</u> 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 at least every two years 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 resulting from the current, short, medium	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
and long term impacts of environmental, social and governance factors <u>in the short, medium and long-term.</u> ’;	
(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, and quantifiable targets and processes to monitor and address the financial risks arising in the short, medium and long-term from the misalignment of the business model and strategy of the institutions, with the relevant <u>Member States and</u> Union legal and regulatory policy objectives or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors <u>in particular those set out in Regulation (EU) 2021/1119 (“European Climate Law”)</u> , as well as, where relevant, <u>third country objectives.</u> ’;	‘Member States shall ensure that the management body develops and monitors the implementation of specific plans, and quantifiable targets and processes to monitor and address the financial risks arising in the short, medium and long-term from ESG factors, including those arising from the process of adjustment and transition trends towards the misalignment of the business model and strategy of the institutions, with the relevant <u>Member States and</u> Union legal and regulatory policy objectives or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors <u>in particular those set out in Regulation (EU) 2021/1119 (“European Climate Law”)</u> , as well as, where relevant, <u>third country legal and regulatory objectives.</u> ’;
(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.	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>Member States shall ensure that the internal control functions ensure that all material risks are identified, measured, and properly reported <u>and managed</u> and that the internal control functions deliver a complete view of the whole range of risks of the institution. They shall ensure that the internal control <u>risk management and the compliance functions</u> are actively involved in elaborating the institution's risk strategy, <u>in controlling its effective implementation</u> and in all material risk management decisions and that the internal control functions can deliver a complete view of the whole range of risks of the institution.</p> <p><u>Member States shall ensure that:</u></p>	
<p><u>a) the internal control functions ensure that all material risks are properly identified, measured and reported;</u></p>	
<p><u>b) the internal control functions provide a comprehensive view of the whole range of risks that the institution is exposed to;</u></p>	
<p><u>c) the risk management function is actively involved in elaborating the institution's risk strategy and in all its material risk management decisions;</u></p>	<p><u>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;</u></p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p><u>d) the risk management function, together with the internal audit function, has control over the effective implementation of the institution's risk strategy.</u></p>	<p><u>d) the risk management function, together with the internal audit function, has control over performs an independent review of the effective implementation of the institution's risk strategy.</u></p>
<p><u>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.</u></p>	
<p>Member States shall ensure that the internal control function can report directly to the management body in its supervisory function, independent from members of the management body in its management function or senior management, and <u>have direct access to the management body in its supervisory function, in particular to</u> can raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body pursuant to this Directive and Regulation (EU) No 575/2013.</p> <p><u>Member States shall ensure that the internal control function:</u></p> <p><u>i) has direct access to the management body in its supervisory function,</u></p>	<p>Member States shall ensure that the internal control function can report directly to the management body in its supervisory function, independent from members of the management body in its management function or senior management, and <u>have direct access to the management body in its supervisory function, in particular to</u> can raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body pursuant to this Directive and Regulation (EU) No 575/2013.</p> <p><u>Member States shall ensure that the internal control function:</u></p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>ii) can report directly to the management body in its supervisory function.</u>	<u>i) has direct access to the management body in its supervisory function;</u> <u>ii) can report directly to the management body in its supervisory function;</u>
	<u>(d) The following new paragraph 5a is inserted:</u>
	<u>'5a. Member States shall ensure that the internal control functions:</u>
	<u>a) have direct access to the management body in its supervisory function;</u>
	<u>b) can report directly to the management body in its supervisory function.'</u>
<u>The internal control function shall exercise the options under points (i) and (ii) independent from members of the management body in its management function, and in particular to raise concerns and warn that body 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.</u>	<u>The internal control function functions shall exercise the options functions referred to in under-points (ia) and (iib) independent 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 that the management body in its supervisory function where appropriate or where specific risk developments affect or may affect the institution, without</u>

2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>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 to appoint a specific person for each internal control functions, another senior person within the institution <u>Where the nature, scale and complexity of the activities of the institution do not justify appointing a specific person for each internal control functions, another senior person within the institution</u> Institutions that are not significant in terms of their size, internal organisation and the nature, scope and complexity of their activities may combine the responsibilities for those functions <u>the compliance and the risk management function functions, where the nature, scale and complexity of the activities of the institution do not justify to appoint a specific person for each internal control functions,</u> provided <u>that</u> there is no conflict of interest.:</p>	<p><u>prejudice to the responsibilities of the management body pursuant to this Directive and Regulation (EU) No 575/2013.</u></p> <p>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 to appoint a specific person for each internal control functions, another senior person within the institution <u>Where the nature, scale and complexity of the activities of the institution do not justify appointing a specific person for each internal control functions</u> <u>the risk management function and/or the compliance function,</u> another senior person <u>that performs other tasks</u> within the institution Institutions that are not significant in terms of their size, internal organisation and the nature, scope and complexity of their activities may <u>combine fulfil</u> the responsibilities for those functions <u>the compliance and/or the risk management function functions, where the nature, scale and complexity of the activities of the institution do not justify to appoint a specific person for each internal control functions,</u> provided <u>that:</u> <u>i</u> there is no conflict of interest.:</p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
	<u>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</u>
	<u>iii) the person responsible for the risk management function and the compliance function has the time needed to perform both control functions correctly.</u>
	<u>The internal audit function shall not be combined with any other business line or control function of the institution.</u>
The heads of the internal control functions shall not be removed without prior approval of the management body in its supervisory function and shall be able to have direct access to the management body in its supervisory function where necessary.	
*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:	

2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p><u>3. Competent authorities shall encourage institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, to develop internal specific market risk assessment capacity and to increase the use of internal models for calculating own funds requirements for portfolio of trading book positions debt instruments in the trading book, together with internal models to calculate own funds requirements for default risk where their exposures to specific market 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.</u></p>	
<p><u>This Article shall be without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 5-1b, Sections 1 to 5-3, of Regulation (EU) No 575/2013.'</u></p>	
<p>(b) the first subparagraph of paragraph 4 is replaced by the following:</p>	
<p><u>4. EBA shall develop draft regulatory technical standards to define the notion concept of 'exposures to specific market 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</u></p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>counterparties and positions in traded debt or equity instruments of different issuers.'</u>	
(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 <u>portfolios templates; 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 Article 325a(1)</u>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>(c) that institutions permitted to use internal approaches under Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, as well as <u>relevant significant</u> 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 <u>portfolios templates</u>, where any of the following conditions is met:</p>	
<p>(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;</p>	
<p>(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;</p>	
<p>(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.</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>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.; <u>These results shall be submitted at least to the competent authorities at least annually to the competent authorities;</u> but with the possibility for EBA may to conduct the exercise biennially <u>for each approach mentioned in paragraph 1, points (a), (b) and (c)</u> after the exercise has run five times <u>for each single approach.</u></p>	
(c) paragraph 3 is amended as follows:	
(i) the introductory wording is replaced by the following:	
<p>‘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 <u>at least the same</u> frequency <u>as the EBA exercise</u> referred to in paragraph 1, second subparagraph, paying particular attention to:’;</p>	
<u>(ii) point (b) is replaced by the following :</u>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p><u>‘(b) approaches where there is particularly high or low variability diversity, and also where there is a significant and systematic under-estimation of own funds requirements.’;</u></p>	
<p>(ii) (iii) the second subparagraph is replaced by the following:</p>	
<p>‘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.’;</p>	
<p>(d) in paragraph 5, the introductory sentence is replaced by the following:</p>	
<p>‘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.’;</p>	
<p>(e) paragraph 6 is replaced by the following:</p>	
<p>‘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.’;</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(f) paragraph 8 is amended as follows:	
(i) in the first subparagraph, the following point (c) is added:	
‘(c) the list of relevant significant 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 significant relevant institutions EBA shall take into account proportionality considerations.’;	

^{*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 resulting 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:	


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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>‘Article 87a</p> <p>Environmental, social and governance risks</p>	
<p>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 <u>the short, medium and long term</u> an appropriate set of time horizons.</p>	
<p>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 of to the business model and scope of the institution’s activities, and consider <u>the</u> short, medium and a long-term of at least 10 years.</p>	
<p>3. Competent authorities shall ensure that institutions test their resilience to long-term negative impacts of environmental, social and governance <u>risks</u> factors, both under baseline and adverse scenarios within a given timeframe, starting with <u>environmental risks</u> climate-related factors. 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.</p>	


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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>4. Competent authorities shall assess and monitor developments of institutions' practices concerning their environmental, social and governance strategy and risk management, including the plans, <u>quantifiable targets and processes to monitor and address the ESG risks arising in the short, medium and long-term</u>, to be prepared in accordance with Article 76(2),as well as the progress made and the risks to adapt their business models to financial the risks stemming from the relevant Member States and Union policy legal and regulatory objectives of the Union or broader transition trends towards a sustainable economy, in particular those set out in Regulation (EU) 2021/1119 ("European Climate Law"), as well as, where relevant, third country objectives, taking <u>This assessment shall take</u> into account <u>the institutions' sustainability related product offering, transition finance policies, related loan origination policies, and sustainability related product offering, their transition finance policies, related loan origination policies, and</u> environmental, social and governance related targets and limits.</p>	
<p>5. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify:</p>	
<p>(a) minimum standards and reference methodologies for the identification, measurement, management and monitoring of environmental, social and governance risks;</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>(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 <u>monitor and</u> address the <u>financial</u> risks <u>stemming</u> from misalignment of the business model and strategy of institutions with <u>ESG factors, including those arising from the process of adjustment and transition trends towards</u> the relevant <u>Member States and Union legal and regulatory</u> policy objectives of the Union, or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors, in particular those set out in Regulation (EU) 2021/1119 (“the European Climate Law”) <u>as well as, where relevant for internationally active institutions, third country objectives that are at least as ambitious as those under Union law;</u></p>	
<p>(c) qualitative and quantitative criteria for the assessment of the impact of environmental, social and governance risks on the <u>risk profile and solvency</u> financial stability of institutions in the short, medium and long term;</p>	
<p>(d) until 31 December 2024, competent authorities should have the possibility to waive the requirement for these plans to include quantitative criteria.</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>(de) (d) criteria for setting the scenarios and methods referred to in paragraph 3, including the parameters and assumptions to be used in each of the scenarios, and specific risks <u>and time horizons</u>:-</p>	
<p>EBA shall publish those guidelines by [OP please insert the date = 18 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.’;</p>	
<p><u>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.</u></p>	
<p>(18) Article 88 is amended as follows:</p>	
<p>(a) in paragraph 1, point (e) is replaced by the following:</p>	
<p>‘(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.’;</p>	
<p>(b) — in Article 88, the following paragraph 3 is added: <u>(b) in Article 88, the following paragraph 3 is added:</u></p>	

2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>‘3. Member States shall ensure that institutions draw up, maintain and update individual statements setting out the roles and duties of each member of the management body, 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.</p> <p><u>‘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.</u></p>	<p>‘3. Member States shall ensure that institutions draw up, maintain and update individual statements setting out the roles and duties of each member of the management body, 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.</p> <p><u>‘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 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.</u></p>
<p>Member States shall ensure that the statements of duties and the mapping of the duties are made available and communicated in due time, upon request, to the competent authorities.</p>	<p>Member States shall ensure that the statements of duties and the mapping of the duties are made available and communicated in due time, upon request, to the competent authorities.</p> <p><u>Member States shall ensure that the statements of duties and the mapping of the duties are made available at all time and</u></p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>Member States shall ensure that the statements of duties and the mapping of the duties are made available and communicated in due time, upon request, to the competent authorities.'</u>	<u>communicated</u> <u>including to obtain authorisation as referred in Article 8, in due time, upon request, to the competent authorities.'</u>
EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, ensuring the implementation of this paragraph and its consistent application. EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].²	
(19) Article 91 is replaced by the following: <u>The last subparagraph of Article 91 is amended as follows:</u>	
(a) paragraph 1 is replaced by the following:	
<u>'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.</u>	<u>'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 <u>Managers managers</u> 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.</u>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>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.</u>	
<u>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.'</u>	
<u>(b) in paragraph 4 the following subparagraph is added:</u>	
<u>'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 of the European Parliament and of the Council*.'</u>	
<u>(c) paragraph 7 is replaced by the following:</u>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p><u>‘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.’</u></p>	
<p><u>(d) the last subparagraph of Article 91 is replaced by the following:</u></p>	<p><u>(d) the last subparagraph paragraph of Article 91 is replaced by the following:</u></p>
<p><u>‘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.’</u></p>	
<p><u>(19a) The following Article 91a is inserted:</u></p>	
<p><u>Article 91a</u></p> <p><u>Key function holders</u></p>	
<p><u>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.</u></p>	

2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>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.</u>	
<u>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.</u>	
<u>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 to be appointed for roles at least in the following entities:</u>	<u>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 to be appointed for roles at least in the following entities:</u>
<u>(a) the EU parent institution that qualifies as large institution;</u>	
<u>(a) (b) the parent institution in a Member State that qualifies as large institution; except if it is affiliated to a central body. In that case, only the suitability of members or the management body of the central body should be assessed;</u>	<u>(a) (b) the parent institution in a Member State that qualifies as large institution; except if it is affiliated to a central body. except where it is affiliated to a central body; In that case, only the suitability of members or the management body of the central body should be assessed;</u>
<u>(b) (c) central body that qualifies as large institution or that supervises large institutions affiliated to it;</u>	


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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>(d) stand-alone 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;</u>	
<u>(e) relevant subsidiary when they are parent institutions in a Member State;</u>	
<u>(f)(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 or relevant subsidiaries within their group, except those falling under Article 21a(4).</u>	<u>(f)(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 or relevant subsidiaries within their group, except those falling under Article 21a(4).;</u>
<u>Without prejudice to paragraph 4, where it is strictly necessary to replace the heads of internal control functions or the chief financial officer immediately, the competent authorities may assess the suitability of such replacement heads or officer after they have taken up their positions. The entities shall be able to duly justify such immediate replacement.</u>	<u>Without prejudice to paragraph 4, where it is strictly necessary to replace the heads of internal control functions or the chief financial officer immediately, the competent authorities may assess the suitability of such replacement heads or officer after they have taken up their positions. The entities shall be able to duly justify such immediate replacement.</u>
Article 91 Suitability criteria for members of the management body of the entities	
1. Institutions and financial holding companies and mixed financial holding companies, as approved pursuant to Article 21a(1), (“the	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>entities”), shall have the primary responsibility for ensuring that members of the management body are at all times of good repute and possess sufficient knowledge, skills and experience to perform their duties and fulfil the requirements set out in paragraphs 2 to 8 of this Article.</p>	
<p>Competent authorities shall in particular verify whether the criteria and requirements set out in the first subparagraph of this Article 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.</p>	
<p>2. Each member of the management body shall commit sufficient time to perform his or her functions in the entities.</p>	
<p>3. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Being a member of the management body of a credit institution permanently affiliated to a central body shall not in itself constitute an obstacle for acting with independence of mind.</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>4. The management body shall possess collective knowledge, skills and experience to be able to adequately understand the institution's activities, as well as the associated risks it is exposed to, in the short, medium and long term, taking into account the environmental, social and governance factors. The overall composition of the management body shall reflect an adequately broad range of experience.</p>	
<p>5. The number of directorships which a member of the management body may hold simultaneously shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Unless where members of the management body represent the interests of a Member State, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships simultaneously:</p>	
<p>(a) one executive directorship with two non-executive directorships;</p>	
<p>(b) four non-executive directorships.</p>	
<p>6. For the purposes of paragraph 5, the following shall count as a single directorship:</p>	
<p>(a) executive or non-executive directorships held within the same group.</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(b) executive or non-executive directorships held within either of the following:	
(i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled;	
(ii) undertakings, including non-financial entities, in which the institution holds a qualifying holding.	
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 of the European Parliament and of the Council^{*13}.	
7. Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 5.	
8. Competent authorities may authorise members of the management body to hold one non-executive directorship on top of the directorships referred to in paragraph 5, points (a) and (b).	
9. The entities shall devote adequate human and financial resources to the induction and training of members of the management body.	
10. Member States or competent authorities shall require entities and their respective nomination committees, where established, to engage a	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity in the management body.	
11. Competent authorities shall collect the information disclosed in accordance with Article 435(2), point (c), of Regulation (EU) No 575/2013 and shall use that information to benchmark diversity practices. Competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.	
12. EBA shall issue guidelines on the following:	
(a) the notion of sufficient time commitment of a member of the management body to perform his or her functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution;	
(b) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 3;	
(c) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 4;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 9;	
(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 10;	
EBA shall issue those guidelines by [OP please insert the date – 12 months from date of entry into force of this amending Directive].	
13. This Article and Articles 91a to 91d shall be without prejudice to provisions of the Member States on the representation of employees in the management body.’;	
^{*13} Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council (OJ L 182, 29.6.2013)	
(20) the following Articles 91a to 91d are inserted:	
<i>Article 91a</i> Suitability assessment of members of the management body by the entities	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>1. The entities as referred to in Article 91(1) shall ensure that members of the management body fulfil the criteria and requirements set out in Article 91(1) to (8) at all times.</p>	
<p>2. The entities shall assess the suitability of members of the management body before those members take up their positions. Where the entities conclude, based on the suitability assessment, that the member concerned does not fulfil the criteria and requirements set out in paragraph 1, the entities shall ensure that the member concerned does not take up the position considered.</p>	
<p>However, where it is strictly necessary to replace a member of the management body immediately, the entities may assess the suitability of such replacement members after they have taken up their positions. The entities shall be able to duly justify such immediate replacement.</p>	
<p>3. The entities shall ensure that information about the suitability of the members of the management body remains up-to-date. Where requested, the entities shall communicate that information to the competent authorities.</p>	
<p>4. The entities that renew the mandate of members of the management body shall inform in writing the competent authorities within 15 working days of the date of that renewal of the mandate.</p>	
<p><i>Article 91b</i></p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Suitability assessment of members of the management body of the entities by competent authorities	
1. Member States shall ensure that competent authorities assess whether members of the management body of the entities as referred to in Article 91(1) fulfil the criteria and requirements set out in Article 91(1) to (8) at all times.	
2. For the assessment referred to in paragraph 1, the entities shall submit the initial application of the relevant member of the management body to the competent authorities without undue delay after the internal suitability assessment is completed. That application shall be accompanied by all the information and documentation necessary for competent authorities to carry out the suitability assessment effectively.	
3. Competent authorities shall acknowledge in writing the receipt of the application and the documentation required in accordance with paragraph 2 within two working days.	
Competent authorities shall complete the assessment referred to in paragraph 1 within 80 working days ('assessment period') as from the date of the written acknowledgement referred to in the first subparagraph of this paragraph.	
4. Competent authorities that request from the entities additional information or documentation, including interviews or hearings, may	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>extend the assessment period for a maximum of 40 working days. However, the assessment period shall not exceed 120 working days. Request for additional information or documentation shall be made in writing and shall be specific. The entities shall acknowledge receipt of request for additional information or documentation within two working days and provide the requested additional information or documentation within 10 working days as of the date of the written acknowledgement of the request from competent authorities.</p>	
<p>5. As soon as any new facts or other issues that may affect the suitability of the member of the management body are known to the entities or the relevant member of the management body, the entities shall inform without undue delay the relevant competent authorities thereof.</p>	
<p>6. Competent authorities shall not reassess the suitability of 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.</p>	
<p>7. Where members of the management body do not fulfil the requirements set out in Article 91(1) to (8) at all times or where the entities do not comply with the obligations and deadlines laid down in paragraphs 2 or 4 of this Article, Member States shall ensure that competent authorities have the necessary powers to:</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(a) prevent such members to be part of the management body;	
(b) remove such members from the management body;	
(c) require the entities concerned to take the measures necessary to ensure that such member is suitable for the position concerned.	
8. In accordance with paragraphs 1 to 7, competent authorities shall carry out the suitability assessment before members of the management body take up their positions 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;	
(c) central body that qualifies as large institution or that supervises large institutions affiliated to it;	
(d) stand-alone institution in the EU that qualifies as large institution;	
(e) relevant subsidiary;	
(f) 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 or relevant subsidiaries within their group.	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>However, where it is strictly necessary to replace a member of the management body immediately, competent authorities may carry out the suitability assessment of members of the management body after they take up their positions. The entities shall be able to duly justify such immediate replacement.</p>	
<p>9. For the purposes of paragraph 2, EBA shall develop draft regulatory technical standards specifying information or accompanying documents required to be submitted to the competent authorities for performing the suitability assessment.</p>	
<p>EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date – 12 months from the date of entry into force of this amending Directive].</p>	
<p>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.</p>	
<p>10. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in paragraph 2.</p>	
<p>EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date – 12 months from the date of entry into force of this amending Directive].</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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.	
<i>Article 91c</i> Suitability criteria and assessment by the entities of 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.	
<i>Article 91d</i> Suitability assessment by competent authorities of the heads of internal control functions and chief financial officer	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>1. Member States shall ensure that competent authorities assess before the heads of internal control functions and the chief financial officer take up their positions whether they fulfil the suitability criteria set out in Article 91c(1), where those heads or officer are to be appointed for roles in the following entities:</p>	
<p>(a) the EU parent institution that qualifies as large institution;</p>	
<p>(b) the parent institution in a Member State that qualifies as large institution;</p>	
<p>(c) central body that qualifies as large institution or that supervises large institutions affiliated to it;</p>	
<p>(d) stand-alone institution in the EU that qualifies as a large institution;</p>	
<p>(e) relevant subsidiary.</p>	
<p>2. For the assessment of the suitability of the heads of internal control functions and chief financial officer as referred to in paragraph 1, the entities referred to in that paragraph shall submit the initial application of the person concerned to the competent authorities without undue delay after the internal suitability assessment is completed. That application shall be accompanied by all the information and documentation necessary to competent authorities to carry out the suitability assessment effectively.</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>3. Competent authorities shall acknowledge in writing the receipt of the application and the documentation required in accordance with paragraph 2 within two working days.</p>	
<p>Competent authorities shall assess the suitability of the heads of internal control functions and chief financial officer within 80 working days ('assessment period') as from the date of the written acknowledgement referred to in the first subparagraph.</p>	
<p>4. Competent authorities that request from the entities referred to paragraph 1 additional information or documentation, including interviews or hearings, may extend the assessment period for maximum 40 working days. However, the assessment period shall not exceed 120 working days. Request for additional information or documentation shall be made in writing and shall be specific. The entities referred to paragraph 1 shall acknowledge receipt of request for additional information or documentation within two working days and provide the requested additional information or documentation within 10 working days as of the date of the written acknowledgement of the request from competent authorities.</p>	
<p>5. As soon as any new facts or other issues that may affect the suitability of the member of the management body are known to the entities referred to in paragraph 1 or the relevant member of the management</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
body, the entities referred to in that paragraph shall inform without undue delay the relevant competent authorities thereof.	
6. Where the heads of internal control functions and chief financial officer do not fulfil the requirements set out in Article 91e(1), or where the entities referred to paragraph 1 of this Article do not comply with the obligations and deadlines in paragraphs 2 and 4 of this Article, Member States shall ensure that competent authorities have the necessary powers to:	
(a) prevent such heads or officer to exercise their functions;	
(b) remove such heads or officer;	
(c) require the entities referred to paragraph 1 to take the appropriate measures to ensure that such heads or officer concerned are suitable for the position considered.	
7. For the purposes of this Article, EBA shall develop draft regulatory technical standards specifying information or accompanying documents required to be submitted to the competent authorities for performing the suitability assessment.	
EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date – 12 months after the date of entry into force of this amending Directive].	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	
8. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in paragraph 2.	
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 the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.	
9. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, facilitating the implementation and consistent application of procedural requirements laid down in Articles 91a to 91d of this Directive and the application of powers and actions to be taken by the competent authorities referred to in Article 91b(7) and 91d(6) of this Directive. EBA shall issue those guidelines by [OP please insert the date – 12 months from date of entry into force of this Directive].²;	
(22) <u>(21)</u> Article 92 is amended as follows:	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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 senior staff in the 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:	
(a) — in paragraph 1, point (g)(ii), the fifth indent is replaced by the following:	
the institution shall, without delay, inform the competent authority of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the competent authorities shall use the information received to benchmark the practices of institutions in that regard. The	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>competent authorities shall provide EBA with the benchmarks and EBA shall publish them on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this indent and to ensure the consistency of the information collected;²</p>	
<p>(b) in paragraph 2, third subparagraph, point (a) is replaced by the following:</p>	
<p>‘(a) managerial responsibility and internal control functions;’;</p>	
<p>(c) in paragraph 3, point (a) is replaced by the following:</p>	
<p>‘(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;’;</p>	
<p>(24) in Article 98, the following paragraph 9 is added:</p>	
<p>‘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</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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 and any third parties acting in a consulting capacity to 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. <u>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].</u> EBA, EIOPA and ESMA shall, through the Joint Committee referred to in	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, explore how <u>other environmental</u> , social and governance related risks can be integrated into stress testing.’;	
(25a) in Article 101, paragraph 3 is replaced by the following :	
<u>‘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.’</u>	
(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 :	
<u>‘ (e) restrict or limit the business, including with regard to the acceptance of deposits, operations or network of institutions or to</u>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>request the divestment of activities that pose excessive risks to the soundness of an institution;</u>	
(ii) (iii) the following point (m) is added:	
<p>‘(m) require institutions to reduce excessive ESG financial the risks arising <u>in the short, medium and long-term, including those arising</u> from the institutions’s misalignment with <u>process of adjustment and transition trends towards the</u> relevant <u>Member States, Union and third country policy legal and regulatory objectives of the Union and broader transition trends relating in relation</u> to environmental, social and governance factors in particular those set out in Regulation (EU) 2021/1119 (“European Climate Law”) over the short, medium and long term, including through <u>restricting or limiting their business, commercial activity or through</u> adjustments to their business models, governance strategies and risk management, <u>or requiring institutions to review their strategies.</u>’;</p>	<p>‘(m) require institutions to reduce <u>excessive material</u> ESG financial the risks arising <u>in the short, medium and long-term, including those arising</u> from the institutions’s misalignment with <u>process of adjustment and transition trends towards the</u> relevant <u>Member States, Union and third country policy legal and regulatory objectives of the Union and broader transition trends relating in relation</u> to environmental, social and governance factors in particular those set out in Regulation (EU) 2021/1119 (“European Climate Law”) over the short, medium and long term, including through <u>restricting or limiting their business, commercial activity or through</u> adjustments to their business models, governance strategies and risk management, <u>or requiring institutions to review their strategies.</u>’;</p>
(b) the following paragraph 3 is added:	
<p>‘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 (38) 1 of Regulation (EU) No 575/2013, pose excessive risks to the soundness of those institutions.’;</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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,	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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-;	
<u>c) as soon as the competent authority has completed the review in point (b), point (a) shall no longer apply.</u>	
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 to require institutions:	

2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>(a) <u>to require institutions</u> to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for the submission of disclosure information by large and other institutions to EBA for its publication on a centralised EBA website;</p>	<p>(a) <u>to require institutions</u> to publish information referred to in Part Eight of Regulation (EU) No 575/2013 <u>more than once per year</u>, and to set deadlines for the submission of disclosure information by large and other institutions to EBA for its publication on a centralised EBA website; <u>more frequently than prescribed in Articles 433, 433a, 433b and 433c;</u></p>
<p>(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 the submission of disclosure information by large and other institutions to EBA the competent authority which shall forward the information received 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 the competent authority which forward the information received to EBA, pursuant to Article 434(1) of the same that Regulation;</p>	<p>(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 the submission of disclosure information by large and other institutions to EBA the competent authority which shall forward the information received 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 the competent authority which forward the information received to EBA, pursuant to Article 434(1) of the same that Regulation;</p>
<p>(b)-(c) to require institutions to use specific media and locations for publications other than the EBA website for centralised disclosures or <u>to publish the their</u> financial statements of institutions if 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 the</p>	<p>(b)-(c) to require institutions to use specific media and locations for publications other than the EBA website for centralised disclosures or <u>to publish the their</u> financial statements of institutions if 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 the</p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>competent authority which forward the information received to EBA, in accordance with Article 434(1) of the same that Regulation.</u>	<u>competent authority which forward the information received to EBA, in accordance with Article 434(1) of the same that Regulation.</u>
<u>Notwithstanding point (a), Article 433 and Article 434 of Regulation (EU) No 575/2013 shall apply.</u>	
(29) Article 121 is replaced by the following:	
<p>‘Without prejudice to provisions applicable to financial holding company or mixed financial holding approved in accordance with Article 21a(1),</p> <p>Member States shall require that the members of the management body of a financial holding company or mixed financial holding, <u>that are not authorised in accordance with Article 21a(1),</u> 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. <u>The financial holding company or mixed financial holding shall has the primary responsibility for ensuing the suitability of the members of their management body’.</u></p>	<p>‘Without prejudice to provisions applicable to financial holding company or mixed financial holding approved in accordance with Article 21a(1),</p> <p>Member States shall require that the members of the management body of a financial holding company or mixed financial holding, <u>that are not authorised not approved in accordance with Article 21a(1),</u> 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. <u>The financial holding company companies or mixed financial holding company companies shall has have the primary responsibility for ensuing ensuring the suitability of the members of their management body’.</u></p>
(30) In Title VII, Chapter 3, the following Section 0 is inserted:	
‘Section 0	
Application of this Chapter to investment firm groups	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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 of the European Parliament and of the Council*, 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.*;	

^{*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 5, the following subparagraph is added:	
‘Where an O-SII becomes bound by the output floor, its competent or designated authority, as applicable, shall review the institutions O-SII buffer requirement to make sure that its calibration remains appropriate.’;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(b) (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.’;	
<u>(b) in paragraph 6, point b) is replaced by the following:</u>	
<u>‘(b) the O-SII buffer must be reviewed by the competent authority or the designated authority at least annually’;</u>	
<u>(c) in paragraph 6, the following point c) is added:</u>	
<u>‘(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.’;</u>	
(e) (d) in paragraph 15, the first 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-	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>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.’;</p>	
(32) Article 133 is amended as follows:	
(a) paragraph 1 is replaced by the following:	
<p><u>‘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. ’;</u></p>	
(b) the following paragraph 2a is inserted:	
<p>‘2a. Where an institution is bound by the output floor, both of the following shall apply:</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(a) the amount of CET1 capital it is required to have in accordance with <u>paragraph 2</u> the first subparagraph 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;	
$r_T, r_i = r_T$ and r_i as defined in <u>paragraph 2</u> the first subparagraph .	
(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 competent or designated authority, <u>as applicable</u> , has completed the revision set out in point (b) and has published a new decision on the calibration of the	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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	

CRD Presidency compromise text

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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 as to whether it considers 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.	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 as to whether it considers 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.
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, the ESRB and the Commission shall also consider in their opinions whether applying the systemic risk buffer rate or rates to those institutions is deemed appropriate.	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, the ESRB and the Commission shall also consider in their opinions whether applying the systemic risk buffer rate or rates to those institutions is deemed appropriate.

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>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.</p>	<p>Where <u>in the case where</u> 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.</p>
<p>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.</p>	
<p>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.</p>	
<p>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</p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
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;’;	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
(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:	
<u>(1) in Article 2, paragraph 1, the following points 25a to 25d are added:</u>	<u>(1) in Article 2, paragraph 1, the following points 25a to 25d are added:</u>
<u>‘(25a) ‘key function holders’ means key function holders as defined in point (9a) of Article 3(1) of Directive 2013/36/EU;</u>	<u>‘(25a) ‘key function holders’ means key function holders as defined in point (9a) of Article 3(1) of Directive 2013/36/EU;</u>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>(25b) ‘chief financial officer’ means chief financial officer as defined in point (9b) of Article 3(1) of Directive 2013/36/EU;</u>	<u>(25b) ‘chief financial officer’ means chief financial officer as defined in point (9b) of Article 3(1) of Directive 2013/36/EU;</u>
<u>(25c) ‘internal control functions’ means internal control functions as defined in point (9c) of Article 3(1) of Directive 2013/36/EU;</u>	<u>(25c) ‘internal control functions’ means internal control functions as defined in point (9c) of Article 3(1) of Directive 2013/36/EU;</u>
<u>(25d) ‘heads of internal control functions’ means heads of internal control functions as defined in point (9d) of Article 3(1) of Directive 2013/36/EU;’</u>	<u>(25d) ‘heads of internal control functions’ means heads of internal control functions as defined in point (9d) of Article 3(1) of Directive 2013/36/EU;’</u>
<u>(1) (2) in Article 27, the following paragraphs 6, 7, 8 and 8 9 are added:</u>	<u>(1) (2) in Article 27, the following paragraphs 6, 7, 8 and 8 9 are added:</u>
<u>‘6. When new members of the management body or senior management members of senior management that are heads of internal control functions or the chief financial officer are appointed under this Article and Article 28 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders as required by Article 91d(1) 91a(4) of that Directive 2013/36/EU only after they take up their position.</u>	<u>‘6. When new members of the management body or senior management members of senior management that are heads of internal control functions or the chief financial officer are appointed under this Article and Article 28 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders as required by Article 91d(1) 91a(4) of that Directive 2013/36/EU only after they take up their position.</u>
<u>Article 91a(2) and Article 91e(2) of Directive 2013/36/EU shall not apply to the appointment of new members of senior management that are key function holders. members of the management body or senior management referred to in the first subparagraph.</u>	<u>Article 91a(2) and Article 91e(2) of Directive 2013/36/EU shall not apply to the appointment of new members of senior management that are key function holders. members of the management body or senior management referred to in the first subparagraph.</u>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
7. Competent authorities shall ensure that they perform the assessments referred to in paragraph 6 without undue delay. They shall complete the assessments at the latest 20 working days from the date they receive the notification of appointment.	7. Competent authorities shall ensure that they perform the assessments referred to in paragraph 6 without undue delay. They shall complete the assessments at the latest 20 working days from the date they receive the notification of appointment.
8. Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 6. ² ;	8. Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 6.²;
<u>9. National law providing that competent authorities shall assess the suitability of the members of the management body pursuant to Article 91 of Directive 2013/36/EU before they take up their position shall not apply to members of the management body appointed under this Article and Article 28 of this Directive.’;</u>	9. National law providing that competent authorities shall assess the suitability of the members of the management body pursuant to Article 91 of Directive 2013/36/EU before they take up their position shall not apply to members of the management body appointed under this Article and Article 28 of this Directive.’;
(2) (3) in Article 34, the following paragraphs 7, 8, <u>9</u> and <u>9 10</u> are added:	(2) (3) in Article 34, the following paragraphs 7, 8, <u>9</u> and <u>9 10</u> are added:
‘7. When new members of the management body or senior management <u>members of senior management that are heads of internal control functions or the chief financial officer</u> are appointed under this Article and Article 63 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders required by Article 91d(1) <u>91a(4)</u> of that Directive	‘7. When new members of the management body or senior management members of senior management that are heads of internal control functions or the chief financial officer are appointed under this Article and Article 63 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders required by Article 91d(1) <u>91a(4)</u> of that

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>2013/36/EU only after <u>before</u> they take up their position <u>or alongside the decision to appoint them by the resolution authority</u>. <u>For that purpose resolution authorities shall inform competent authorities without delay of their intention to replace the senior management in the institution under resolution.</u></p>	<p>Directive 2013/36/EU only after <u>before</u> they take up their position <u>or alongside the decision to appoint them by the resolution authority</u>. <u>For that purpose resolution authorities shall inform competent authorities without delay of their intention to replace the senior management in the institution under resolution.</u></p>
<p>Article 91a(2) and Article 91e(2) of Directive 2013/36/EU shall not apply to the appointment of new <u>members of the senior management that are key function holders</u>. members of the management body or senior management referred to in the first subparagraph.</p>	<p>Article 91a(2) and Article 91e(2) of Directive 2013/36/EU shall not apply to the appointment of new <u>members of the senior management that are key function holders</u>. members of the management body or senior management referred to in the first subparagraph.</p>
<p>The first and second subparagraphs shall also apply to the assessment of the members of the management body of the bridge institution appointed under Article 41 immediately after taking resolution action.</p>	
<p>8. Competent authorities shall ensure that they perform the assessments referred to in paragraph 7 without undue delay. They <u>in close cooperation with resolution authorities and that they make their best efforts to have the assessments completed at the time the appointment decision is taken</u>. <u>Should it not be possible to conclude the assessment at the time the appointment decision is taken, competent authorities</u> shall complete the assessments <u>without undue delay</u> at the latest 20 working days from the date they receive the notification of appointment.</p>	<p>8. Competent authorities shall ensure that they perform the assessments referred to in paragraph 7 without undue delay. They <u>in close cooperation with resolution authorities and that they make their best efforts to have the assessments completed at the time the appointment decision is taken. Should it not be possible to conclude the assessment at the time the appointment decision is taken, competent authorities</u> shall complete the assessments <u>without undue delay</u> at the latest 20 working days from the date they receive the notification of appointment.</p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<p>9. <u>Resolution authorities shall keep competent authorities informed about their intention to appoint the members of the senior management referred to in paragraph 7 in order to ensure that the assessment referred to in that paragraph is performed in a timely manner.</u></p> <p>Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 7.²;</p>	<p>9. Resolution authorities shall keep competent authorities informed about their intention to appoint the members of the senior management referred to in paragraph 7 in order to ensure that the assessment referred to in that paragraph is performed in a timely manner.</p> <p>Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 7.²;</p>
<p><u>10. National law providing that competent authorities shall assess the suitability of the members of the management body pursuant to Article 91 of Directive 2013/36/EU before they take up their position shall not apply to:</u></p>	<p>10. National law providing that competent authorities shall assess the suitability of the members of the management body pursuant to Article 91 of Directive 2013/36/EU before they take up their position shall not apply to:</p>
<p><u>(a) members of the management body appointed under this Article and Article 63;</u></p>	<p>(a) members of the management body appointed under this Article and Article 63;</p>
<p><u>(b) members of the management body of the bridge institution appointed under Article 41 immediately after taking resolution action.²;</u></p>	<p>(b) members of the management body of the bridge institution appointed under Article 41 immediately after taking resolution action.²;</p>
<p><u>(4) in Article 45c paragraph 2, the following subparagraph is added:</u></p>	<p>(4)-(1) in Article 45c paragraph 2, the following subparagraph is added:</p>
<p><u>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</u></p>	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
<u>level that does not exceed the amount sufficient to absorb losses in accordance with the first subparagraph, point (a), of this paragraph.</u>	
<p>^{*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)</p>	
Article 3	
Transposition	
<p>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.</p>	
<p>They shall apply those provisions from [OP please insert the date = 1 day after the transposition date of this amending Directive].</p>	
	<p><u>By way of derogation from the preceding subparagraph, Member States may apply the provision concerning own funds and eligible</u></p>

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
	<u>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].</u>
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 = 12 <u>24</u> 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	

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2 nd Presidency compromise	Changes following comments on the 2nd compromise
Entry into force	
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
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	
End	



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0341 (COD)**

Brussels, 24 October 2022

WK 14360/2022 ADD 2

LIMITE

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Basel III finalisation) Financial Services Attachés
Subject:	Basel 3 finalisation: CRD - CZ Presidency revised compromise text, Table 3 of 3