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Risk reduction measures in the CRD, CRR, BRRD and SRMR

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Over the past years the EU implemented a substantial reform of the financial services regulatory framework to enhance the resilience of financial institutions in the EU, largely based on global standards agreed with the EU's international partners. In particular, the reform package included Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR) and Directive 2013/36/EU (the Capital Requirements Directive or CRD), on prudential requirements for and supervision of institutions, Directive 2014/59/EU (the Bank Recovery and Resolution Directive or BRRD), on recovery and resolution of institutions and Regulation (EU) No 806/2014 on the Single Resolution Mechanism (SRM).

These measures were taken in response to the financial crisis that unfolded in 2007-2008 and reflect internationally agreed standards. While the reforms have rendered the financial system more stable and resilient against many types of possible future shocks and crises, they do not yet comprehensively address all identified problems. The present proposals therefore aim to complete the reform agenda by tackling remaining weaknesses and implementing some outstanding elements of the reform that are essential to ensure the institutions' resilience but have only recently been finalised by global standard setters (i.e. the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB)):

- a binding leverage ratio which will prevent institutions from excessively increasing leverage, e.g. to compensate for low profitability;
- a binding net stable funding ratio (NSFR) which will build on institutions' improved funding profiles and establish a harmonised standard for how much stable, long-term sources of funding an institution needs to weather periods of market and funding stress.
- more risk sensitive own funds (i.e. capital) requirements for institutions that trade to an important extent in securities and derivatives which will prevent too much divergence in those requirements that is not based on the institutions' risk profiles;
- last but not least, new standards on the total loss-absorbing capacity (TLAC) of global systemically important institutions (G-SIIs) which will require those institutions to have more loss-absorbing and recapitalisation capacity, tackle interconnections in the global financial markets and further strengthen the EU's ability to resolve failing G-SIIs while minimising risks for taxpayers.

The Commission recognised the need for further risk reduction in its Communication of 24 November 2015 and committed to bring forward a legislative proposal that builds on the international agreements listed above. Such risk reduction measures will not only further strengthen the resilience of the European banking system and the markets' confidence in it, but will also provide the basis for further progress in completing the Banking Union. The need for further concrete legislative steps to be taken in terms of reducing risks in the financial sector has been recognised also by the Ecofin Council Conclusions from 17 June 2016. The European Parliament resolution of 10 March 2016 on the Banking Union – Annual

Report 2015 also indicates some areas in the current regulatory framework that could be further addressed.

At the same time, the Commission has considered the existing regulatory framework and the new regulatory developments at international level also against the background of broader challenges affecting the EU economy, especially the need to promote growth and jobs at times of uncertain economic outlook. Various major policy initiatives, such as the Investment Plan for Europe (EFSI) and the Capital Markets Union have been launched in order to strengthen the economy of the Union. In order to ensure that regulatory measures interact smoothly with such policy initiatives, but also with broader recent reforms in the financial sector, the Commission carried out, on the basis of a call for evidence, a thorough holistic assessment of the existing financial services framework (including the CRR, CRD, BRRD and SRMR) and of the upcoming reviews of global standards from a wider economic impact perspective.

After careful consideration of all interactions between different EU policies, the Commission has decided to propose amendments of the CRR, CRD, BRRD and SRMR to implement outstanding international standards. The amendments represent a faithful implementation of international standards into European Union law, subject to targeted adjustments in order to reflect EU specificities and broader policy considerations. For instance, the predominant reliance on bank financing by EU small- and medium-sized enterprises (SMEs) or for infrastructure projects prompts specific regulatory adjustments that ensure institutions remain capable of funding such entities, which constitute the backbone of the single market. Furthermore, broader policy considerations require ensuring a smooth interaction with existing requirements, such as for central clearing and collateralisation of derivatives exposures, or a gradual transition to some of the new requirements. Such adjustments are limited in terms of scope or time. Therefore, they do not impinge on the overall soundness of the proposals, which are aligned with the basic level of ambition of the international standards.

Moreover, based on the call for evidence, the proposals aim at improving existing rules. The analysis of the Commission showed that the present framework can be applied in a more proportionate way, taking into account in particular the situation of smaller institutions where some of the current disclosure, reporting and complex trading book-related requirements appear not to be justified by prudential considerations. Also in the area of remuneration the Commission's analysis showed that, while in general the existing framework is useful and valid, some targeted adjustments should be proposed to cater for the problems encountered in the application of some of the rules in small and non-complex institutions and towards staff members with low variable remuneration. Furthermore, the Commission has considered the risk attached to loans to SMEs and for funding infrastructure projects and found that for some of those loans, it would be justified to apply lower own funds requirements than are applied at present. Accordingly, the present proposals will bring corrections to these requirements and will enhance the proportionality of the prudential framework for institutions. Thereby, the ability of institutions to finance the economy will be enhanced without impinging on the stability of the regulatory framework.

- **Consistency with existing policy provisions in the policy area**

The reviews of several elements of the CRD and CRR were envisaged since the inception of those legal instruments, whilst other adaptations of the financial regulatory framework are necessary in light of subsequent developments, such as the adoption of the BRRD, the establishment of the Single Supervisory Mechanism and the work undertaken by the European Banking Authority (EBA) and on international level.

The proposal introduces amendments to the existing legislation and renders it fully consistent with the existing policy provisions in the field of prudential requirements for institutions, their supervision and recovery and resolution framework.

- **Consistency with other Union policies**

Four years after the European Heads of State and Governments agreed to create a Banking Union, two pillars of the Banking Union – single supervision and resolution – are in place, resting on the solid foundation of a single rulebook for all EU institutions. While important progress has been made, further steps are needed to complete the Banking Union, including the creation of a single deposit guarantee scheme.

The review of the CRR and the CRD is part of risk reducing measures that would facilitate the introduction of the European Deposit Insurance Scheme (EDIS), but is also aimed at ensuring a continued single rulebook for all EU institutions, whether inside or outside the Banking Union. The overall objectives of this initiative, as described above, are fully consistent and coherent with the EU's fundamental goals of promoting financial stability, reducing the likelihood and the extent of taxpayers' support in case an institution is resolved as well as contributing to a harmonious and sustainable financing of economic activity, which is conducive to a high level of competitiveness and consumer protection (Article 169 TFEU).

These overall objectives are also in line with the objectives set by other major EU initiatives, as described above.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed amendments are built on the same legal basis as the legislative acts that are being amended, i.e. Article 114 TFEU for the proposal for a regulation amending CRR and Article 53(1) TFEU for the proposal for a directive amending CRD IV.

- **Subsidiarity (for non-exclusive competence)**

The objectives pursued by the proposed measures aim at supplementing already existing EU legislation and can therefore best be achieved at EU level rather than by different national initiatives. National measures aimed at e.g. reducing institutions' leverage, strengthening their stable funding and trading book capital requirements would not be as effective in ensuring financial stability as EU rules, given the freedom of institutions to establish and provide services in other Member States and the resulting degree of cross-border service provision, capital flows and market integration. On the contrary, national measures could distort competition and affect capital flows. Moreover, adopting national measures would be legally challenging, given that the CRR already regulates banking matters, including leverage requirements (reporting), liquidity (specifically the liquidity coverage ratio or LCR) and trading book requirements.

The amendment of the CRR and CRD is thus considered to be the best alternative striking the right balance between the single rules for banks and maintaining national flexibility, such as on some macro prudential measures, for competent authorities to address risks to financial stability. Therefore the amendments would further promote a uniform application of prudential requirements, the convergence of supervisory practices and ensure a level playing field throughout the single market for banking services. These objectives cannot be sufficiently achieved by Member States alone. This is particularly important in the banking sector where many banks operate across the EU single market. Full cooperation and trust within the single supervisory mechanism (SSM) and within the colleges of supervisors and competent authorities outside the SSM is essential for banks to be effectively supervised on a consolidated basis. National rules would not achieve these objectives.

- **Proportionality**

Proportionality has been an integral part of the impact assessment accompanying the proposal. Not only have all the proposed options in different regulatory fields been individually assessed against the proportionality objective, but also the lack of proportionality of the existing rules has been presented as a separate problem and specific options have been analysed aiming at reducing administrative and compliance costs for smaller institutions (see sections 2.9 and 4.9 of the impact assessment).

- **Choice of the instrument**

The measures are proposed to be implemented by amending the CRR and the CRD through a Regulation and a Directive, respectively. The proposed measures indeed refer to or develop further already existing provisions inbuilt in those legal instruments (liquidity, leverage, remuneration, proportionality).

As regards the new FSB agreed standard on TLAC, it is suggested to incorporate the bulk of the standard into the CRR, as only a regulation can achieve the necessary uniform application, much in the same way as the existing risk-based own funds requirements. Shaping prudential requirements in the form of an amendment to the CRR would ensure that those requirements will in fact be directly applicable to G-SIIs. This would prevent Member States from implementing diverging national requirements in an area where full harmonisation is desirable in order to prevent an un-level playing field. Fine-tuning of the current legal provisions within the BRRD will however be necessary to make sure that the TLAC requirement and the minimum requirement on own funds and eligible liabilities (MREL) are fully coherent and consistent with each other.

The proposed CRD amendments affecting proportionality would leave Member States with a certain degree of flexibility to maintain divergent rules at the stage of their transposition into national law. It would give Member States the option of imposing stricter rules on matters which are not fully harmonised.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Commission carried out various initiatives in order to assess whether the existing prudential framework and the upcoming reviews of global standards were the most adequate instruments to ensure prudential objectives for EU institutions and also whether they would continue to provide the necessary funding to the EU economy.

In particular, the Commission launched in July 2015 a public consultation on the possible impact of the CRR and the CRD on bank financing of the EU economy with a particular focus on the financing of SMEs and of infrastructure and in September 2015 a Call for Evidence (CfE) covering EU financial legislation as a whole. The two initiatives sought empirical evidence and concrete feedback on i) rules affecting the ability of the economy to finance itself and growth, ii) unnecessary regulatory burdens, iii) interactions, inconsistencies and gaps in the rules, and iv) rules giving rise to unintended consequences. In addition, the Commission carried out specific analyses on rules relating to remuneration and on the proportionality of the rules contained in the CRR and the CRD. Finally, the Commission contracted a study to assess the impact of the CRR on the bank financing of the economy .

All the initiatives mentioned above have provided clear evidence of the need to update and complete the current rules in order i) to reduce further the risks in the banking sector and thereby reduce the reliance on State aid and taxpayers' money in case of a crisis, and ii) to enhance the ability of institutions to channel adequate funding to the economy.

Annexes 1 and 2 of the impact assessment provide a summary of the consultations, reviews and reports.

- **Impact assessment**

The impact assessment has been discussed with the Regulatory Scrutiny Board on 7 September 2016. The Regulatory Scrutiny Board issued a positive opinion on 27 September 2016. The proposal is accompanied by the impact assessment. The proposal remains consistent with the Impact Assessment.

Impact Assessment accompanying the proposal [insert a link]

Opinion of the Regulatory Scrutiny Board [insert a link]

- **Regulatory fitness and simplification**

The retention of simplified approaches to calculate own funds requirements would ensure continued proportionality of the rules for smaller institutions. Furthermore, the additional measures to increase proportionality of some of the requirements (related to reporting, disclosure and governance) should decrease the administrative and compliance burden for those institutions.

As far as SMEs are concerned, the proposed recalibration of the own funds requirements for bank exposures to SMEs is expected to have a positive effect on bank financing of SMEs. This would primarily affect SMEs which currently have exposures beyond €1.5 million as these exposures do not benefit from the SME Supporting Factor under the existing rules.

Other proposed options in the impact assessment, particularly those aimed at improving resilience of institutions to future crises, are expected to increase sustainability of lending to SMEs.

Finally, measures aimed at reducing compliance costs for institutions, in particular the smaller and less complex institutions, are expected to reduce borrowing costs for SMEs.

On the third country dimension, the proposal will enhance the stability of EU financial markets thereby reducing the likelihood and costs of potential negative spill-overs for global financial markets. Moreover, the proposed amendments will further harmonise the regulatory framework throughout the Union thereby reducing substantially administrative costs for third country institutions operating in the EU.

In view of the ongoing review of the investment firms under the CRR and in light of the initial report delivered by EBA, it is considered reasunable that the newly introduced requirements apply only to systemically relevant investment firms, whilst other investment firms are grandfathered until the completion of the review.

The proposal is consistent with the Commission's priority for the Digital Single Market.

• **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The proposal includes a legislative financial statement indicating the additional resources required for the EBA to conduct reviews as well as to issue further technical standards and guidelines. In addition, the EBA will need to organise bilateral and multilateral meetings with stakeholders, conduct analysis and assessment of options and drafting of consultation documents, issue public stakeholder consultations, set up and manage standing expert groups composed of supervisors from Member States as well as ad hoc expert groups composed of market participants and representatives of investors, analyse responses to consultations, conduct cost-benefit analyses and draft legal texts.

5. OTHER ELEMENTS

• **Implementation plans and monitoring, evaluation and reporting arrangements**

It is expected that the proposed amendments will start entering into force in 2019 at the earliest. The amendments are tightly inter-linked with other provisions of the CRR and the CRD, which are already in effect since 2014.

The BCBS and the EBA will continue to collect the necessary data for the monitoring of the leverage ratio and the new liquidity measures in order to allow for the future impact evaluation of the new policy tools. Regular supervisory review and evaluation programmes (SREPs) and stress testing exercises will also help monitoring the impact of the new proposed measures upon affected institutions and assessing the adequacy of the flexibility and proportionality provided for to cater for the specificities of smaller institutions. Additionally, the Commission services will continue to participate in the working groups of the BCBS and the joint task force established by the European Central Bank (ECB) and by EBA, that monitor the dynamics of institutions' own funds and liquidity positions, globally and in the EU, respectively.

The set of indicators to monitor the progress of the results stemming from the implementation of the preferred options consists of the following:

On NSFR:

Indicator	NSFR for EU institutions
Target	As of the date of application, 99% of institutions taking part to the EBA Basel III monitoring exercise meet the NSFR at 100% (65% of group 1 and 89% of group 2 credit institutions meet the NSFR as of end-of December 2015)
Source of data	Semi-annual the EBA Basel III monitoring reports

On leverage ratio:

Indicator	Leverage ratio for EU institutions
Target	As of the date of application, 99% of group 1 and group 2 credit institutions have a leverage ratio of at least 3% (93,4% of group 1 institutions met the target as of June 2015)
Source of data	Semi-annual EBA Basel III monitoring reports

On SMEs

Indicator	Financing gap to SMEs in the EU, i.e. difference between the need for external funds and the availability of funds
Target	As of two years after the date of application, < 13% (last known figure - 13% as of end 2014)
Source of data	European Commission / European Central Bank SAFE Survey (data coverage limited to the euro area)

On TLAC:

Indicator	TLAC in EU G-SIIs
Target	All EU G-SIBs meet the target (>16% of risk weighted assets (RWA)/6% of the leverage ratio exposure measure (LREM) as of 2019, > 18% RWA/6.75% LREM as of 2022)
Source of data	Semi-annual EBA Basel III monitoring reports

On trading book:

Indicator	RWA for market risks for EU institutions

	Observed variability of risk-weighted assets of aggregated portfolios applying the internal models approach.
Target	- As of 2023, all EU institutions meet the own funds requirements for market risks under the final calibration adopted in the EU. - As of 2021, unjustifiable variability (i.e. variability not driven by differences in underlying risks) of the outcomes of the internal models across EU institutions is lower than the current variability* of the internal models across EU institutions. *Reference values for the "current variability" of value-at-risk (VaR) and incremental risk charge (IRC) requirements should be those estimated by the latest EBA "Report on variability of Risk Weighted Assets for Market Risk Portfolios", calculated for aggregated portfolios, published before the entry into force of the new market risk framework.
Source of data	Semi-annual EBA Basel III monitoring reports EBA Report on variability of Risk Weighted Assets for Market Risk Portfolios. New values should be calculated according to the same methodology.

On remuneration:

Indicator	Use of deferral and pay-out in instruments by institutions
Target	As of 2019, 99% of institutions that are not small and non-complex, in line with the CRD requirements, defer at least 40% of variable remuneration over 3 to 5 years and pay out at least 50% of variable remuneration in instruments with respect to their identified staff with material levels of variable remuneration.
Source of data	EBA remuneration benchmarking reports

On proportionality:

Indicator	Reduced burden from supervisory reporting and disclosure
Target	80% of smaller and less complex institutions report reduced burden
Source of data	Survey to be developed and conducted by EBA by 2022 - 2023

The evaluation of the impacts of the proposed options will be done five years after the date of application of the proposed measures on the basis of the methodology agreed before launching the evaluation. The methodology could be developed for individual options or a set of interlinked options depending on the circumstances present before launching the evaluation and depending on the output of monitoring indicators.

Compliance and enforcement will be ensured on an ongoing basis including through the Commission launching infringement proceedings for lack of transposition or for incorrect transposition or application of the legislative measures. Reporting of breaches of EU law can be channelled through the European System of Financial Supervision (ESFS), including the national competent authorities and EBA, as well as through the ECB. EBA will also continue publishing its regular reports of the Basel III monitoring exercise on the EU banking system. This exercise monitors the impact of the Basel III requirements (as implemented through the CRR and the CRD) on EU institutions in particular as regards institutions' capital ratios (risk-based and non-risk-based) and liquidity ratios (LCR, NSFR). It is run in parallel with the one conducted by the BCBS.

Clear, consistent and harmonised criteria for identifying small and non-complex institutions as well as low levels of variable remuneration are necessary to ensure supervisory convergence and to foster a level-playing field for institutions and an adequate protection of depositors, investors and consumers across the Union. It would be efficient and appropriate to entrust EBA with the elaboration of draft regulatory technical standards specifying these criteria, for submission to and adoption by the Commission.

- **Detailed explanation of the specific provisions of the proposal**

EXEMPTED ENTITIES

Article 2(5) of the CRD is amended to add institutions in Croatia that were exempted from the application of the CRD and the CRR via the Accession Treaty.

Public development banks and credit unions in certain Member States are already exempted from the CRD-CRR regulatory framework. To ensure a level playing field, all Member States should be able to benefit from the possibility of allowing such types of entities to operate only under national regulatory safeguards commensurate with the risks that they incur. To this end, the Commission has committed in its Action Plan on Building a Capital Markets Union of 30 September 2015, to explore the possibility for all Member States to authorise credit unions which operate outside the EU's capital requirements framework for banks. In line with such commitments and, at the request of The Netherlands, credit unions in The Netherlands are also included on the list of institutions in Article 2(5) of the CRD. Furthermore, to facilitate the exemption from the CRD-CRR regulatory framework of institutions in other Member States that are similar to the ones already included in the list, Articles 2(5a) and 2(5b) are added to the CRD. These Articles empower the Commission to exempt specific institutions or categories of institutions from the CRD, provided that they comply with clearly defined criteria. Such new exemptions may only be done on a case-by-case basis for public development-type of banks or for the entire credit union sector of a Member State.

Paragraph 2 of Article 9 is amended to better frame the exceptions to the prohibition in paragraph 1. It is, therefore, clarified that the taking of deposits or repayable funds from the public will not be subject to the CRD and CRR where it is an activity subject to other Union law or it falls within the exception in Article 2(5) of the CRD, thus removing the ambiguity in the current wording.

PILLAR 2 CAPITAL REQUIREMENTS AND GUIDANCE

The current wording of rules concerning additional capital requirements set by competent authorities according to Article 104 allows for different interpretations of the cases in which those requirements may be imposed and the way such requirements position themselves in relation to the minimum capital requirements set out in Article 92 of the Capital Requirement Regulation (CRR) and the combined buffer requirement (Article 128). These diverse interpretations have resulted in substantially different amounts of capital imposed on individual institutions across Member States and in different triggering points for the restrictions on distribution provided for in Article 141. Moreover, the current text is silent on the possibility for competent authorities to communicate their expectations for institutions to have own funds in excess of the minimum capital requirements, additional own funds requirements and the combined buffers requirement. The amended Article 104 lists the possibility to impose additional own funds requirements amongst other competent authorities' powers. A new Article 104a clarifies the conditions for setting additional own funds requirements and emphasises the institution-specific nature of those requirements. A new Article 104b is added to spell out the main features of capital guidance and Article 113 is amended to provide that capital guidance should also be dealt with in the framework of colleges of supervisors. A new Article 140a is inserted to better clarify, for the purposes of restrictions on distributions, the relation between the additional own funds requirements, the minimum own funds requirements, the own funds and eligible liabilities requirement, the MREL and the combined buffers requirement (so called "stacking order"). Finally, Article 141 is amended to reflect the stacking order in the calculation of the maximum distributable amount.

PILLAR 2 REPORTING AND DISCLOSURE

To provide for a more proportionate Pillar 2 reporting and disclosure regime, the proposal amends points (j) and (l) of Article 104(1) of the CRD to set out the precise grounds on which competent authorities will be entitled to use the supervisory powers referred to therein.

CONFINING THE SUPERVISORY REVIEW AND EVALUATION PROCESS (SREP) AND PILLAR 2 TO MICRO-PRUDENTIAL PURPOSES

Recent experience has shown that there would be merit in a clearer delineation of the areas of responsibility between competent and designated authorities. This applies notably to the supervisory review and evaluation process (SREP) and the corresponding supervisory requirements. Competent authorities are responsible for the SREP and the imposition of corresponding institution-specific supervisory requirements (so-called Pillar 2 requirements). In this context, they may also evaluate systemic risk stemming from a specific institution and could address such risk by imposing supervisory requirements to this institution. The use of Pillar 2 measures may in this context undermine the effectiveness and efficiency of other macro-prudential instruments. Against this background, the proposal provides that the SREP and corresponding supervisory requirements should be confined to a purely micro-prudential perspective. Articles 97, 98, 99 and 105 are amended accordingly. Article 103 is deleted and a clarification is included in the new Article 104a(1) providing that additional own funds requirements referred to in point (a) of Article 104 shall not be imposed to cover macro-prudential or systemic risk.

INTRODUCING A MODIFIED FRAMEWORK FOR INTEREST RATE RISK

Following developments at international level on the measurement of interest rate risks, Articles 84 and 98 of this Directive and Article 448 of the CRR are amended in order to introduce a revised framework for capturing interest rate risks for banking book positions. The amendments include the introduction of a common standardised approach that institutions might use to capture these risks or that competent authorities may require the institution to use when the systems developed by the institution to capture these risks are not satisfactory, improved outlier test and disclosure requirements. In addition, the EBA is mandated, in Article 84 of the CRD, to elaborate the details of the standardised methodology with regard to the criteria and conditions that institutions should follow to identify, evaluate, manage and mitigate interest rate risks. The EBA is also mandated, in Article 98 of the CRD, to define the six supervisory shock scenarios applied to interest rates and the common assumption that institutions have to implement for the outlier test.

Financial holding companies, mixed financial holding companies

New provisions are introduced and adjustments are made to several Articles in the CRD-CRR in order to bring financial holding companies and mixed financial holding companies directly in the scope of the EU prudential framework. An authorisation requirement is introduced along with direct supervisory powers over financial holding companies and mixed financial holding companies (Article 21a of the CRD). Article 11 of the CRR is amended to clarify that - where requirements are applied on a consolidated basis at the level of such holding companies- it will be the holding company which is directly responsible for compliance, not the institutions that are subsidiaries of such holdings. The determination of the consolidating supervisor in Article 111 of the CRD and Articles 13 and 18 of the CRR are adjusted to reflect direct responsibility of the financial holding companies or mixed financial holding companies.

Remuneration

As required under Article 161(2) of the CRD, the Commission has reviewed the efficiency, implementation and enforcement of the CRD remuneration rules. The findings of this review, reflected in the Commission Report COM(2016) 510, were overall positive.

The review however showed that some of the rules, namely the rules on deferral and pay-out in instruments, are not workable for the smallest and least complex institutions and for staff with low variable remuneration. The review also showed that the proportionality wording reflected in Article 92(2) of the CRD has been interpreted in different ways, leading to an uneven implementation of the rules in the Member States. A targeted amendment is therefore proposed to cater for the problems encountered in the application of the rules on deferral and pay-out in instruments in small and non-complex institutions and towards staff members with low variable remuneration.

The amendments concerning provisions on remuneration also aim to address another need for more proportional rules identified by the Commission's review by allowing listed institutions to use share-linked instruments for meeting the CRD requirements.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2013/36/EU of the European Parliament and of the Council of 29 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC[3] and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[4] have been adopted in response to the financial crises that unfolded in 2007-2008. These legislative measures have substantially contributed to strengthening the financial system and render institutions more resilient to possible future shocks. Although extremely comprehensive, these measures did not address all identified weaknesses affecting institutions. Also, some of the initially proposed measures have been subjected to review clauses or have not been sufficiently specified to allow for their smooth implementation.

(2) This Directive aims to address issues raised in relation to provisions that proved not to be sufficiently clear and have therefore been subject to divergent interpretations or that have been found to be disproportionate for certain institutions. It also contains adjustments to Directive 2013/36/EU that are necessary following either the adoption

1 OJ C [...], [...], p. [...].
2 OJ C [...], [...], p. [...].
3 OJ L 176 of 27.6.2013, p.338
4 OJ L 176, 27.6.2013, p.1

of other relevant Union legislation, such as 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[5] or the changes proposed in parallel to Regulation (EU) No 575/2013. Finally, the amendments proposed better align the current regulatory framework to international developments in order to promote consistency and comparability among jurisdictions.

(3) Financial holding companies, mixed financial holding companies can be parent undertakings of banking groups and the application of prudential requirements is envisaged on the basis of the consolidated situation of such holding companies. As the institution controlled by such holding companies may not always comply with the requirements on a consolidated basis, it is consistent with the scope of consolidation that financial holding companies and mixed financial holding companies are brought under the direct scope of banking regulation

(4) A specific authorisation procedure is therefore necessary, as well as supervision by the competent authorities. This will ensure that consolidated prudential requirements are complied with directly by the holding company, which will not be subject to prudential requirements applied on a solo level. The rules on the designation of the consolidated supervisor should be adapted accordingly.

(5) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 requires competent authorities to ensure that institutions comply with a number of principles when establishing and applying their total remuneration policies.

(6) Commission report COM(2016) 510 of 28 July 2016 showed that, when applied to small and non-complex institutions, some of the principles, namely the requirements on deferral and pay-out in instruments set out in Article 94(1) (l) and (m) of Directive 2013/36/EU, are too burdensome and not commensurate with their prudential benefits. Similarly, it was found that the cost of applying these requirements exceeds their prudential benefits in the case of staff with low levels of variable remuneration, since such levels of variable remuneration produce little or no incentive for staff to take excessive risk. Consequently, while all institutions should in general be required to apply all the principles towards all of their staff whose professional activities have a material impact on their risk profile, it is necessary to exempt in the Directive small and non-complex institutions and staff with low levels of variable remuneration from the principles on deferral and pay-out in instruments.

(7) Clear, consistent and harmonised criteria for identifying small and non-complex institutions as well as low levels of variable remuneration are necessary to ensure supervisory convergence and to foster a level-playing field for institutions and an adequate protection of depositors, investors and consumers across the Union. It would be efficient and appropriate to entrust EBA with the elaboration of draft regulatory technical standards specifying these criteria, for submission to and adoption by the Commission.

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5 OJ L 173, 12.6.2014, p. 190

(8) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 requires that a substantial portion, and in any event at least 50%, of any variable remuneration, consist of a balance of shares or equivalent ownership interests, subject to the legal structure of the institution concerned, or share-linked instruments or equivalent non-cash instruments, in the case of a non-listed institution; and, where possible, of alternative tier 1 or tier 2 instruments which meet certain conditions. This principle limits the use of share-linked instruments to non-listed institutions and requires listed institutions to use shares. Commission report COM(2016) 510 of 28 July 2016 found that the use of shares can lead to considerable administrative burdens and costs for listed institutions. At the same time, equivalent prudential benefits can be achieved by allowing listed institutions to use share-linked instruments that track the value of shares. The possibility of using share-linked instruments should therefore be extended to listed institutions.

(9) Capital add-ons imposed by competent authorities are an important driver of an institution's overall level of own funds and are relevant for market participants since the level of additional capital imposed impacts the trigger point for restrictions on dividend payments, bonus pay-outs and the payments on Additional Tier 1 instruments. A clear definition of the conditions in which capital add-ons should be imposed should be provided to ensure that rules are consistently applied across Member States and to ensure the proper functioning of the market.

(10) Additional capital requirements should be imposed in relation to the specific situation of an institution and should be duly justified. These requirements should not be used to address macroprudential risks and should be positioned, in the stacking order of capital requirements, above the minimum capital requirements and below the combined buffers requirements.

(11) Competent authorities should have the possibility to communicate to an institution any further adjustment to the amount of capital in excess of minimum capital requirements, additional capital requirements and the combined buffers requirement that they expect such institution to hold in order to cope with forward looking and remote situations. These expectations should not be subject to mandatory disclosure obligations. When an institution repeatedly fails to meet the capital target, the competent authority should be entitled to take supervisory measures and, where appropriate, to impose additional capital requirements.

(12) Respondents to the Commission's Call for Evidence on the EU regulatory framework for financial services pointed out that reporting burden is increased by systematic reporting required by competent authorities over and above the requirements set out in Regulation (EU) 575/2013. Competent authorities should only require information which is not duplicative relative to information which is or may be already available to them through other means or which has been required from the institution under a different enabling legal provision. The Commission should prepare a report identifying those additional systematic reporting requirements and assess whether they are in line with the single rulebook on supervisory reporting.

(13) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition

measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2013/36/EU is amended as follows:

(1) In point (16) of Article 2(5) referring to the Netherlands the following is added:

"and kredietunies".

(2) In Article 2(5) the following new point is added:

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

(3) In Article 2, the following paragraphs 5a and 5b are inserted after paragraph 5:

"5a. This Directive shall not apply to an institution where the Commission ascertains in a delegated act adopted pursuant to Article 145, on the basis of information available to it that the institution fulfils for the purposes of this Article all of the following conditions:

(a) it has been established under public law by a Member State's central government, regional government or local authority;

(b) its activity is limited to advancing specified objectives of financial, social or economic public policy in accordance with the laws and provisions governing that institution, on a non-competitive, not for profit basis. For these purposes, public policy objectives may include the provision of financing for promotional or development purposes to specific economic sectors, or geographical areas of the relevant Member State, such as export credit, housing, SMEs, shipping or manufacturing activities;

(c) it is subject to adequate and effective prudential requirements, including minimum capital requirements, and to an adequate supervisory framework which has similar effect as the framework established under Union law;

(d) subject to State aid rules, the central government has an obligation to protect the institution's viability or directly or indirectly guarantees at least 90% of the institution's own funds requirements, funding requirements or exposures;

(e) it is precluded from accepting covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes [6];

(f) the institution's activities are confined to the Member State where it is established;

(g) the institution shall meet all of the following conditions:

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[6] OJ L 173, 12.6.2014, p. 149-178

(i) the total value of the institution's assets is below EUR [30] billion;

(ii) the ratio of the institution's total assets over the GDP of the Member State concerned is less than 20%, unless the total value of its assets is below EUR 5 billion;

(iii) the institution is not of significant relevance with regard to the domestic economy of the Member State concerned.

5b. This Directive shall not apply to categories of institutions in a Member State, where the Commission ascertains in a delegated act adopted pursuant to Article 145, on the basis of information available to it, that for the purposes of this Article the institutions falling under that category qualify as credit unions under the national law of a Member State and meet the following conditions:

(a) they are financial institutions of a cooperative nature or similar legal form;

(b) their membership is restricted to a set of members sharing certain pre-defined common personal features or interests;

(c) they are only permitted to provide credit and financial services to their members;

(d) they are only permitted to accept deposits or repayable funds from their members and such deposits qualify as covered deposits under Directive 2014/49/EU;

(e) they are only permitted to perform the activities listed in points 1 to 6 and 15 of Annex I to this Directive;

(f) they are subject to adequate and effective prudential requirements, including minimum capital requirements, and a supervisory framework which has similar effect as the framework established under Union law;

(g) the aggregate value of the assets of this category of institutions does not exceed 3% of the GDP of the Member State concerned;

(h) the institution's activities are confined to the Member State where it is established.".

(4) Article 2(6) is replaced by the following:

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

(5) Article 4(8) is replaced by the following:

"8. Member States shall ensure that where authorities other than the competent authorities have the power of resolution, those other authorities cooperate closely and consult the competent authorities with regard to the preparation of resolution plans and in all other instances where this is required in this Directive, Directive 2014/59/EU or in Regulation (EU) No 575/2013.".

(6) Article 9(2) is replaced by the following:

"2. Paragraph 1 shall not apply to the taking of deposits or other repayable funds by any of the following:

(a) a Member State;

(b) a Member State's regional or local authority;

(c) public international bodies of which one or more Member States are members;

(d) undertakings the activity of which is governed by Union law, other than this Directive and Regulation (EU) No 575/2013;

(e) entities referred to in Articles 2(5), 2(5a) and 2(5b), the activity of which is governed by national law".

(7) Article 10 is replaced by the following:

Article 10
Programme of operations and structural organisation

Member States shall require applications for authorisation to be accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the credit institution, including indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group.

(8) The following new Article 21a is inserted after Article 21:

Article 21a
Authorisation of financial holding companies and mixed financial holding companies

1. Member States shall require financial holding companies and mixed financial holding companies to obtain authorisation from the competent authority in the Member State where they are established.

2. The application for authorisation shall contain information concerning the following:

(a) the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, clearly indicating the subsidiaries and, where applicable, parent undertakings;

(b) compliance with effective direction of the business and place of the head office requirements referred to in Article 13;

(c) compliance with shareholder and member requirements referred to in Article 14.

3. The competent authority shall only grant an authorisation shall where it is satisfied that

(a) the financial holding company or mixed financial holding company that is subject to requirements laid down in this Directive and in Regulation (EU) No is capable of ensuring compliance with those requirements;

(b) the financial holding company or mixed financial holding company does not impinge on the effective supervision of the subsidiary institutions or parent institutions.

4. Competent authorities shall require financial holding companies and mixed financial holding companies to provide them with the information they require to monitor the structural organisation of the group and compliance with the authorisation requirements.

5. The competent authorities may only withdraw the authorisation granted to a financial holding company or mixed financial holding company where such a financial holding company or mixed financial holding company:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has sold all its subsidiaries that are institutions, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

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

(c) no longer fulfils the conditions under which authorisation was granted;

(d) is subject to requirements laid down in this Directive and in Regulation (EU) No. 575/2013 on a consolidated basis and no longer meets the prudential requirements set out in Parts Three, Four or Six of Regulation (EU) No 575/2013 or imposed under Article 104(1)(a) or Article 105 of this Directive or can no longer be relied on to fulfil its obligations towards its creditors;

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

(f) commits one of the breaches referred to in Article 67(1).

6. For the purposes of applying the requirements of this Directive and of Regulation (EU) No 575/2013 on a consolidated basis and for the purposes of exercising supervision on a consolidated basis in accordance with this Directive and Regulation (EU) 575/2013, the terms "institution", "parent institution in a Member State", "EU parent institution" and "parent undertaking" shall also apply to financial holding companies and mixed financial holding companies authorised in accordance with this Article that are subject to requirements laid down in this Directive and in Regulation 575/2013 on a consolidated basis.

(9) Article 84 is replaced by the following:

"Article 84

Interest risk arising from non-trading book activities

1. Competent authorities shall ensure that institutions implement internal systems or use the standardised methodology referred to in paragraph 4 to identify, evaluate, manage and mitigate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading activities.

2. Competent authorities shall ensure that institutions implement systems to assess and monitor the risks arising from potential changes in credit spreads that affect both the

economic value of equity and the net interest income of an institution's non-trading activities.

3. Competent authorities may require institutions to use the standardised methodology referred to in paragraph 4 when the internal systems implemented by the institutions for the purposes of evaluating the risks referred to in paragraph 1 are not satisfactory.

4. EBA shall develop draft regulatory technical standards to specify the details of a standardised methodology that institutions may use for the purpose of evaluating the risks referred to in paragraph 1.

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

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

5. EBA shall issue guidelines to specify:

(a) the criteria for the identification, evaluation, management and mitigation by institutions of the risks referred to in paragraph 1;

(b) the criteria for the assessment and monitoring by institutions of the risks referred to in paragraph 2;

(c) the conditions according to which the systems developed by the institutions for the purposes of paragraph 1 may not be satisfactory as referred to paragraph 2;

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

(10) In Article 92, paragraph 1 is deleted.

(11) The introductory paragraph of article 92(2) is replaced by the following:

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

(12) Article 94(1)(l)(i) is replaced by the following:

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

(13) The following points are added to Article 94:

"3. By way of derogation from paragraph 1, the principles set out in points (l), (m) and the second subparagraph in point (o) of Article 94(1) shall not apply to:

(a) institutions which are both small and non-complex;

(b) staff members with low levels of variable remuneration.

4. For the purpose of paragraph 3:

(a) whether an institution is small shall be assessed based on its balance sheet total;

(b) whether an institution is non-complex shall be assessed on the basis of the nature and scope of its activities, its internal organisation and, if applicable, the characteristics of the group to which it belongs;

(c) a low level of variable remuneration is understood as not having the potential to incentivise excessive risk-taking; whether a level of variable remuneration is low shall be assessed on the basis of the amount of variable remuneration in absolute and in relative terms compared to the overall remuneration package of the staff member.

5. EBA shall develop draft regulatory technical standards setting out specific indicators and, where relevant, thresholds for assessing the criteria described in paragraph 4. EBA shall submit those draft regulatory technical standards to the Commission by [Official Journal publication date + 9 months].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in subparagraph 1 in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.".

(14) Article 97 is replaced by the following:

"Article 97

Supervisory review and evaluation

1. Taking into account the technical criteria set out in Article 98, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation (EU) No 575/2013 and evaluate:

(a) risks to which the institutions are or might be exposed;

(b) risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.

2. The scope of the review and evaluation referred to in paragraph 1 shall cover all requirements of Regulation (EU) No 575/2013 and of this Directive.

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

4. Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 99(2).".

(15) In Article 98(1), point (j) is deleted.

(16) In Article 98, paragraph 5 is replaced by the following:

"5. The review and evaluation performed by competent authorities shall include the exposure of institutions to the interest rate risk arising from non-trading activities. Supervisory measures shall be required at least in the case of institutions whose economic value of equity as referred to in the evaluation performed in accordance with Article 84(1) declines by more than 15 % of their Tier 1 capital as a result of any of the six supervisory shock scenarios applied to interest rates.".

(17) In Article 98, the following new paragraph is inserted after paragraph 5:

"5a. EBA shall develop draft regulatory technical standards to specify:

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

(b) common modelling and parametric assumptions that institutions shall reflect in their calculation of the economic value of equity under this paragraph;

(c) any other case where supervisory measures shall be required as a result of potential changes in interest rates.

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

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

(18) In Article 99, paragraph 2 is replaced by the following:

"2. Supervisory examination programmes shall include the following institutions:

(a) institutions for which the results of the stress tests referred to in points (a) and (g) of Article 98(1) and Article 100, or the outcome of the supervisory review and evaluation process under Article 97, indicate significant risks to their ongoing financial soundness or indicate breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013;

(b) any other institution for which the competent authorities deem it to be necessary.".

(19) Article 103 is deleted.

(20) Article 104 is replaced by the following:

"Article 104
Supervisory powers

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

(a) to require institutions to have additional own funds in excess of the requirements set out in Regulation (EU) No 575/2013, under the conditions laid down in Article 104a;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 73 and 74;

(c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to this Directive and to Regulation (EU) No 575/2013 and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

(f) to require the reduction of the risk inherent in the activities, products and systems of institutions;

(g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

(h) to require institutions to use net profits to strengthen own funds;

(i) to restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;

(j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions. Competent authorities may only require information which is not duplicative relative to information which is or may be available to them through other means or which has been required from the institution under a different enabling legal provision. Additional or more frequent reporting on capital or liquidity positions may only be imposed on an institution where either of the conditions referred to in points (a) and (b) of Article 102(1) has been met;

(k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

(l) to require additional disclosures on an ad hoc basis only.".

(21) The following new Articles are inserted after Article 104:

"Article 104a
Additional own funds requirement

1. The additional own funds requirement referred to in point (a) of Article 104 shall only be imposed by the competent authorities where pursuant to the reviews referred to in Articles 97 and 101 the competent authority ascertains any of the following situations for an individual institution:

(a) the institution is exposed to risks or elements of risks that are not covered or not sufficiently covered by the own funds requirements set out in Parts III to V and VII of Regulation (EU) No 575/2013 as specified in paragraph 2;

(b) the institution does not meet the requirements set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013 and the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;

(c) the review referred to in Article 98(4) or Article 101(4) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;

(d) the institution repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Article 104b.

The additional own funds requirement referred to in point (a) of Article 104 shall not be imposed to cover macroprudential or systemic risks.

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

For this purpose, the capital considered adequate shall cover all material risks or elements of such risks that are not subject to a specific own funds requirement. This may include risks or elements of risks that are explicitly excluded from own funds requirements under Regulation (EU) No 575/2013.

Interest rate risk arising from non-trading positions shall only be considered material when the economic value of equity declines by more than 15 % of the institution Tier 1 capital as a result of any of the six supervisory shock scenarios applied to interest rates in accordance with paragraph 5 of Article 98 or any other case identified by the EBA according to paragraph 5 point c) of Article 98.

The risks referred to in point (a) of paragraph 1 shall not include risks for which this Directive or Regulation (EU) No 575/2013 provide a transitional treatment, or risks which are subject to grandfathering provisions.

3. Competent authorities shall determine the level of the additional own funds required under point (a) of Article 104 as the difference between the capital considered adequate pursuant to paragraph 2 and the own funds requirements set out in Regulation (EU) No 575/2013.

4. The institution shall meet the additional own funds requirement referred to in point (a) of Article 104 with own funds instruments subject to the following conditions:

(a) at least three forth of the additional own funds requirement shall be met with Tier 1 capital;

(b) at least three quarters of the Tier 1 capital shall be composed of CET 1 capital.

Own funds used to meet the additional own funds requirement referred to in point (a) of Article 104 shall not be used towards meeting any of the own funds requirements laid down in points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2015 or the combined buffer requirement referred to in Article 128(6).

By way of derogation from the second subparagraph, own funds used to meet the additional own funds requirement referred to in point (a) of Article 104 imposed by competent authorities to address risks or elements of risks not sufficiently covered by point (d) of Article 92(1) of Regulation (EU) No 575/2013 [leverage ratio requirement] may be used to meet the combined buffer requirement referred to in Article 128(6).

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

6. EBA shall develop draft regulatory technical standards specifying how the risks and elements of risks referred to in paragraph 2 shall be measured.

EBA shall ensure the draft regulatory standards are proportionate in light of:

(a) the implementation burden on institutions and competent authorities; and

(b) the possibility that the general higher level of conservatism that apply where institutions do not use internal models may justify a less conservative approach when assessing risks and elements of risks according to the previous paragraph.

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

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

Article 104b
Guidance on additional own funds

1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority, institutions shall establish an adequate level of own funds that is sufficiently above the requirements of Regulation (EU) No 575/2013 and of this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with article 104(1)(a), in order to ensure that:

(a) cyclical economic fluctuations do not lead to a breach of those requirements; and

(b) the institution's own funds can absorb, without breaching the own funds requirements set out in Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with article 104(1)(a), potential losses identified pursuant to the supervisory stress test referred to in Article 100.

2. Competent authorities shall regularly review the level of own funds set by each institution in accordance with paragraph 1 taking into account the outcome of the reviews and evaluations carried out in accordance with Articles 97 and 101, including the results of stress tests referred to in Article 100.

3. Competent authorities shall communicate to institutions the outcome of the review provided for in paragraph 2. Where appropriate, competent authorities may

communicate to institutions any expectation for adjustments to the level of own funds established in accordance with the first paragraph.

4. Competent authorities shall not communicate to institutions any expectation pursuant to paragraph 3 in cases where additional own funds requirement shall be imposed pursuant to Article 104a.

Article 104c
Cooperation with resolution authorities

1. Competent authorities shall consult resolution authorities prior to determining any additional own funds requirement referred to in Article 104(a) and prior to communicating to institutions any expectation for adjustments to the level of own funds referred to in Article 104b. For these purposes, competent authorities shall provide resolution authorities with all available information.

2. Competent authorities shall inform the relevant resolution authorities about the additional capital requirement imposed to institutions pursuant to Article 104(a) and any expectation for adjustments to the level of own funds communicated to institutions in accordance with Article 104b.".

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

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

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

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

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

(25) Article 111 is replaced by the following

"Article 111
Determination of the consolidating supervisor

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

2. Where the parent undertaking of an institution is a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State or an EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities that granted authorisation in accordance with Article 21a.

3. Where the parent undertakings of institutions authorised in two or more Member States comprise more than one financial holding company or mixed financial holding company authorised in different Member States, supervision on a consolidated basis shall be exercised by the competent authority of the financial holding company or mixed financial holding company with the largest balance sheet total.

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

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

(26) Article 113 is replaced by the following:

"Article 113

Joint decisions on institution-specific prudential requirements

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

(a) on the application of Articles 73 and 97 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Article 104(1)(a) to each entity within the group of institutions and on a consolidated basis;

(b) on measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of this Directive;

(c) on any expectation for adjustments to the consolidated level of own funds in accordance with Article 104b(3).

2. The joint decisions referred to in paragraph 1 shall be reached:

(a) for the purposes of paragraph 1(a), within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Article 104a to the other relevant competent authorities;

(b) for the purposes of paragraph 1(b), within four months after submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Articles 86 and 105;

(c) for the purposes of paragraph 1(c), within four months after submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Article 104b.

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

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

3. In the absence of such a joint decision between the competent authorities within the time periods referred to in paragraph 2, a decision on the application of Articles 73, 86 and 97, Article 104(1)(a), Article 104b and Article 105 shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the time periods referred to in paragraph 2, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The time periods referred to in paragraph 2 shall be deemed the conciliation periods within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four month period or after a joint decision has been reached.

The decision on the application of Articles 73, 86 and 97, Article 104(1)(a), Article 104b and Article 105 shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or a EU parent financial holding company or EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of any of the time periods referred to in paragraph 2, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take their decision in conformity with the decision of EBA. The time periods referred to in paragraph 2 shall be deemed the conciliation periods within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four-month or after a joint decision has been reached.

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

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

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

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

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

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

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

(27) In Article 116, paragraph 1, the following is added after the first subparagraph:

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

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

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

(29) In Article 131, paragraph 1 is replaced by the following

" 1. Member States shall designate the authority in charge of identifying, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within their jurisdiction. That authority shall be the competent authority or the designated authority. Member States may designate more than one authority.

G-SIIs shall be any of the following:

(a) a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or

(b) an institution that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

O-SIIs can either be a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company or an institution.".

(30) The following new Article 140a is inserted after Article 140:

"Article 140a
Failure to meet the combined buffer requirement

1. An institution shall be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where it does not have own funds and eligible liabilities in an amount and of the quality needed to meet at the same time the combined buffer requirement referred to in Article 128(6) and each of the following:

(a) the requirements in point (a) of Article 92(1) of Regulation (EU) No 575/2013 and the requirement in Article 104(a) of this Directive;

(b) the requirements in point (b) of Article 92(1) of Regulation (EU) No 575/2013 and the requirement in Article 104(a) of this Directive;

(c) the requirements in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and the requirement in Article 104(a) of this Directive;

(d) the requirements in Article 92a of Regulation (EU) No 575/2013 and Articles 45c and 45d of Directive 2014/59/EU[MREL].

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

(a) the institution meets the combined buffer requirement and each of the requirements referred to in points (a) to (c) of paragraph 1;

(b) the failure to meet the requirements referred to in point (d) of paragraph 1 is exclusively due to the inability of the institution to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013 and does not last longer than 6 months."

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

"1. An institution that meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its

Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

2. An institution that fails to meet the combined buffer requirement shall calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 4 and shall notify the competent authority of that MDA.

Where the first subparagraph applies, the institution shall not undertake any of the following actions before it has calculated the MDA:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;

(c) make payments on Additional Tier 1 instruments.

3. While an institution fails to meet or exceed its combined buffer requirement, it shall not distribute more than the MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of paragraph 2. An institution shall not take any action referred to in points (a) or (b) before having made the payments due on Additional Tier 1 instruments.

4. Institutions shall calculate the MDA by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The MDA shall be reduced by any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2.

5. The sum to be multiplied in accordance with paragraph 4 shall consist of:

(a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

plus

(a) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

minus

(b) (amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

6. The factor shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013, under Article 104(1)(a) of this Directive and under Article 92a of Regulation (EU) No 575/2013 and Articles

45c and 45d of Directive 2014/59/EU, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 capital maintained by the institution which is not used tn meet any of the own funds requirements under points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013, under Article 104(1)(a) of this Directive and under Article 92a of Regulation (EU) No 575/2013 and Articles 45c and 45d of Directive 2014/59/EU, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;

(c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013, under Article 104(1)(a) of this Directive and under Article 92a of Regulation (EU) No 575/2013 and Articles 45c and 45d of Directive 2014/59/EU, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;

(d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under points (a) to (c) of Article 92(1) of Regulation (EU) No 575/2013, under Article 104(1)(a) of this Directive and under Article 92a of Regulation (EU) No 575/2013 and Articles 45c and 45d of Directive 2014/59/EU, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$Lower\ bound\ of\ quartile = \frac{\begin{matrix}Combined\ buffer\\ requirement\end{matrix}}{4} \times (Qn - 1)$$

$$Upper\ bound\ of\ quartile = \frac{\begin{matrix}Combined\ buffer\\ requirement\end{matrix}}{4} \times Qn$$

"Q_n" indicates the ordinal number of the quartile concerned.

(32) In Article 145 the following new points are inserted after point (i):

"(j) to ascertain that a specific institution or category of institutions in a Member State is exempted from this Directive under Article 2(5a) or Article 2(5b), provided that the conditions set out, respectively, in those Articles; or is not anymore exempted from this Directive where it has ceased to meet the conditions laid down in those Articles;

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(k) to amend the list established in Article 2(5) by deleting institutions or categories of institutions, where:

(i) the relevant institution or category of institutions has ceased to exist:

(ii) the name of the relevant institution has changed."

(33) In Article 146 point (a) is deleted.

(34) In Article 161, the following new paragraph 10 is inserted:

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

(35) The following new Article 161a is inserted after Article 161:

"Article 161a
Compliance tool

1. The EBA shall develop an electronic tool aimed at facilitating institutions' compliance with this Directive and Regulation (EU) No 575/2013. as well as with regulatory technical standards, implementing technical standards, guidelines and templates adopted to implement this Directive and Regulation (EU) No 575/2013.

2. For this purposes, the tool shall at least enable each institution to:

(a) rapidly identify the relevant provisions to comply with in relation to the institution's size and business model;

(b) follow the changes made in the legislation and in the related implementing provisions, guidelines and templates."

Article 2
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [one year after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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.

Member States shall apply those provisions from [one year after entry into force], with the exception of Articles 84 and 98 as amended, which shall apply from [two years after entry into force].

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

Article 3
Entry into force

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

Article 4
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. **FRAMEWORK OF THE PROPOSAL/INITIATIVE**

   1.1. Title of the proposal/initiative

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LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for Directive of the European Parliament and of the Council amending Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

1.2. Policy area(s) concerned in the ABM/ABB structure[7]

N.A

1.3. Nature of the proposal/initiative

☐ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action[8]**

☒ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

A Deeper and Fairer Economic and Monetary Union. See the Strategic Plan 2016 – 2020 of Directorate-General for Financial Stability, Financial Services and Capital Markets Union.

General objective of the proposal is to contribute to financial stability, reduce the likelihood and the extent of taxpayers' support in bank resolution as well as contribute to sustainable financing of the economy. For further details, see the Impact Assessment to the proposal.

For more information, see the Impact Assessment accompanying the proposal.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

1) increase proportionality of rules in order to reduce administrative burden and compliance costs;

2) improve consistency on the use of Pillar 2 capital instruments.

For more information, see the Impact Assessment accompanying the proposal.

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[7] ABM: activity-based management; ABB: activity-based budgeting.

[8] As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Regarding Pillar 2 decisions, amendments to CRD IV and EBA technical standards are expected to promote consistency in the application of rules, improve transparency and legal certainty on the use of Pillar 2 capital instruments.

On remuneration, new RTS for the identification of institutions and staff exempted from the most burdensome requirements will make the rules more proportionate and will lead to alleviated compliance costs and administrative burden for the institutions and staff that do not pose significant threats to financial stability. They will also provide a much-needed harmonisation in the application of the remuneration rules across the EU.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

On remuneration,

Indicator: Use of deferral and pay-out in instruments by institutions

Target: As of 2019, 99% of institutions that are not small and non-complex, in line with the CRD requirements, defer at least 40% of variable remuneration over 3 to 5 years and pay out at least 50% of variable remuneration in instruments with respect to their identified staff with material levels of variable remuneration.

Source of data: EBA remuneration benchmarking reports

On Pillar 2 decision,

Indicator: Complaints from banks regarding the clarity and consistency of Pillar 2 decisions taken by supervisors

Target: No complaints received by the Commission on the inappropriate use of Pillar 2 decisions taken by supervisors since 2018

Source of data: the Commission

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

Rules should be proprotionate to their objectives and ensure a level playing field

1.5.2. *Added value of EU involvement*

The prudential requirements for institutions are accordingly already dealt with at EU level. The legal bases are Article 114 TFEU for the CRR and Article 53(1) TFEU for the CRDIV.

The objectives pursued by these measures can be better achieved at EU level rather than by different national initiatives. National measures would not be as effective. On the contrary, national measures could distort competition and affect capital flows.

Moreover, adopting national measures would be legally challenging, given that the CRD already regulates rules on the remuneration and Pillar 2 decision taking.

The amendment of existing CRD IV is thus considered to be the best alternative, as it would promote a uniform application of banking regulatory standards, the convergence of supervisory practices and ensure a level playing field throughout the EU banking system. These objectives cannot be sufficiently achieved by Member States alone. This is particularly important in the banking sector where many banks operate across the EU single market. Full cooperation and trust within the single supervisory mechanism (SSM) but also within the colleges of supervisors and competent authorities outside the SSM is essential for banks to be effectively supervised on a consolidated basis. National rules would not achieve these objectives.

1.5.3. *Lessons learned from similar experiences in the past*

N.A.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

N.A.

1.6. **Duration and financial impact**

☐ Proposal/initiative of **limited duration**

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY.
- followed by full-scale operation.

1.7. **Management mode(s) planned**[9]

☐ **Direct management** by the Commission

- ☐ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
- ☐ international organisations and their agencies (to be specified);
- ☐the EIB and the European Investment Fund;
- ☒ bodies referred to in Articles 208 and 209 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

N.A.

[9] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Article 81 of the Regulation establishing the European Banking Authority (EBA) requires the Commission every 3 years to publish a general report on the experience acquired as a result of the operation of EBA.

The proposal foresees that the Commission will evaluate the effectiveness of the proposed measures in five years since the entry into force of the measures.

2.2. Management and control system

2.2.1. Risk(s) identified

In relation to the legal, economical, efficient and effective use of appropriations resulting from the proposal it is expected that the proposal would not bring about new risks that would not be currently covered by an EBA existing internal control framework.

2.2.2 Information concerning the internal control system set up

N.A.

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

N.A.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to EBA without any restriction.

EBA is subject to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) which required the adoption of appropriate provisions for all EBA staff.

Articles 64 and 65 of the Regulation establishing the European Banking Authority (EBA) set out the provisions on implementation and control of EBA budget and applicable financial rules.

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3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...][Heading.................................... ......]	Diff./Non-diff.[10]	from EFTA countries[11]	from candidate countries[12]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1a	12.02.04 EBA	Diff.	YES	YES	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...][Heading.................................... ......]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[...][XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

10 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
11 EFTA: European Free Trade Association.
12 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

[This section should be filled in using the **spreadsheet on budget data of an administrative nature** (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	1a

DG: <…….>			2018	2019	2020	**TOTAL**
• Operational appropriations						
Number of budget line	Commitments	(1)	0.188	0.173	0.144	**0.505**
	Payments	(2)	0.188	0.173	0.144	**0.505**
Appropriations of an administrative nature financed from the envelope of specific programmes[13]						
Number of budget line		(3)				
TOTAL appropriations for DG <…….>	Commitments	=1+1a +3	0.188	0.173	0.144	**0.505**
	Payments	=2+2a +3	0.188	0.173	0.144	**0.505**

[13] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research

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• TOTAL operational appropriations	Commitments	(4)				
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)				
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+6				
	Payments	=5+6				

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)				
	Payments	(5)				
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)				
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+6	0.188	0.173	0.144	**0.505**
	Payments	=5+6	0.188	0.173	0.144	**0.505**

Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
DG: <…….>							
• Human resources							
• Other administrative expenditure							
TOTAL DG <…….>	Appropriations						

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)						

EUR million (to three decimal places)

		2018	2019	2020	TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.188	0.173	0.144	**0.505**
	Payments	0.188	0.173	0.144	**0.505**

3.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type[14]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[15]...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

[14] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[15] As described in point 1.4.2. 'Specific objective(s)…'

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3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- ☒ The proposal/initiative does not require the use of appropriations of an administrative nature

☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N[16]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5[17] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

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16 Year N is the year in which implementation of the proposal/initiative starts.

17 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

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3.2.3.2. Estimated requirements of human resources

- ☒ The proposal/initiative does not require the use of human resources.
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• **Establishment plan posts (officials and temporary staff)**								
XX 01 01 01 (Headquarters and Commission's Representation Offices)								
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• **External staff (in Full Time Equivalent unit: FTE)**[18]								
XX 01 02 01 (AC, END, INT from the 'global envelope')								
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)								
XX 01 04 yy[19]	- at Headquarters							
	- in Delegations							
XX 01 05 02 (AC, END, INT - Indirect research)								
10 01 05 02 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL								

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

18 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

19 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

Officials and temporary staff

External staff

3.2.4. *Compatibility with the current multiannual financial framework*

- ☒ The proposal/initiative is compatible the current multiannual financial framework.
- ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. [...]

- ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. [...]

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[20]						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ………								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[…]

Specify the method for calculating the impact on revenue.

[…]

[20] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

ANNEX

to the Legislative Financial Statement for a proposal for the Directive of the European Parliament and of the Council amending Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

The Commission proposal does not assign new supervisory competences to the EBA, but it includes provisions requiring the EBA to issue the following technical standards and guidelines:

- New RTS on remuneration (art. 92, 94 CRD);
- New RTS on additional own fund requirements (art. 104a CRR);
- New RTS on the standardised approach for IRRBB (CRD art. 84);
- New RTS on the calculation of NII for reporting purposes (CRR art. 448);
- Update guidelines (CRD art. 84) for the capture of IRRBB.

Regarding the timing, the additional EBA resources are required for 2018 to start the implementation of the Directive. The successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment.

The work requires bilateral and multilateral meetings with stakeholders, analysis and assessment of options and drafting of consultation documents, public consultation of stakeholders, setting up and management of standing expert groups composed of supervisors from Member States, setting up and management of ad hoc expert groups composed of market participants and representatives of investors, analysis of the responses to consultations, drafting of cost/benefit analysis and drafting of the legal text.

To conduct these tasks, 2.5 fte will be required for 2018 and 2019 and 2 fte for 2020.

Assumptions for additional resources:

- Additional 2.5 posts for temporary agent (2 posts for 2020) required to conduct new tasks listed above are assumed to be of functional group and grade AD7.
- Average salary costs for personnel are based on DG BUDG guidance. No salary correction coefficient is applied as the location of EBA in 2018 is currently unknown.
- Mission costs estimated at €10,000 per staff member.
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) estimated at €12,700 per staff member.

Cost type	Calculation	Amount (in thousands)			
		2018	2019	2020	Total
Staff expenditure					
Salaries and allowances	=3x134 (2.5x134 for 2020)	402	402	335	1139
Expenditure related to	=3x12.7 (2.5x12.7 for	38.1	0	0	38.1

recruitment	2020)				
Mission expenses	=3x10 (2.5x10 for 2020)	30	30	25	85
Total		470.1	432	360	1262.1
Of which Community contribution (40%)		188.04	172.8	144	504.84
Of which Member State contribution (60%)		282.06	259.2	216	757.26