Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2011/0203(COD)	Procedure completed

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

Amending Directive 2002/87/EC 2001/0095(COD)
Repealing Directive 2006/48/EC 2004/0155(COD)
Repealing Directive 2006/49/EC 2004/0159(COD)
Amended by 2011/0062(COD)
See also Regulation (EU) No 575/2013 2011/0202(COD)
Amended by 2012/0150(COD)
Amended by 2013/0264(COD)
Amended by 2016/0364(COD)
Amended by 2017/0358(COD)
See also 2017/2013(INI)
Amended by 2020/0268(COD)

Subject
2.50.03 Securities and financial markets, stock exchange, CIUTS, investments
2.50.04 Banks and credit
2.50.05 Insurance, pension funds
2.50.08 Financial services, financial reporting and auditing
2.50.10 Financial supervision

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs		20/10/2009
	PPE KARAS Othmar	
	Shadow rapporteur	
	S&D BULLMANN Udo	
	ALDE BOWLES Sharon	
	Verts/ALE LAMBERTS Philippe	
	ECR FORD Vicky	

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meeting	Date
Employment, Social Policy, Health and Consumer Affairs	3247	20/06/2013
Economic and Financial Affairs ECOFIN	3227	05/03/2013
Economic and Financial Affairs ECOFIN	3220	12/02/2013
Economic and Financial Affairs ECOFIN	3215	22/01/2013

	Economic and Financial Affairs ECOFIN	3205	04/12/2012
	Economic and Financial Affairs ECOFIN	3198	13/11/2012
	Economic and Financial Affairs ECOFIN	3189	09/10/2012
	Economic and Financial Affairs ECOFIN	3181	10/07/2012
	Economic and Financial Affairs ECOFIN	3167	15/05/2012
	Economic and Financial Affairs ECOFIN	3163	02/05/2012
	Economic and Financial Affairs ECOFIN	3129	30/11/2011
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	

Key events

20/07/2011	Legislative proposal published	COM(2011)0453	Summary
13/09/2011	Committee referral announced in Parliament, 1st reading		
30/11/2011	Debate in Council	3129	Summary
02/05/2012	Debate in Council	3163	Summary
14/05/2012	Vote in committee, 1st reading		
15/05/2012	Debate in Council	3167	Summary
30/05/2012	Committee report tabled for plenary, 1st reading	A7-0170/2012	
10/07/2012	Debate in Council	3181	Summary
09/10/2012	Debate in Council	3189	Summary
13/11/2012	Debate in Council	3198	
04/12/2012	Debate in Council	3205	
22/01/2013	Debate in Council	3215	
12/02/2013	Debate in Council	3220	
05/03/2013	Debate in Council	3227	Summary
16/04/2013	Results of vote in Parliament		
16/04/2013	Debate in Parliament		
16/04/2013	Decision by Parliament, 1st reading	T7-0114/2013	Summary
20/06/2013	Act adopted by Council after Parliament's 1st reading		
26/06/2013	Final act signed		
26/06/2013	End of procedure in Parliament		
27/06/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0203(COD)

Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2002/87/EC 2001/0095(COD) Repealing Directive 2006/48/EC 2004/0155(COD) Repealing Directive 2006/49/EC 2004/0159(COD) Amended by 2011/0062(COD) See also Regulation (EU) No 575/2013 2011/0202(COD) Amended by 2012/0150(COD) Amended by 2013/0264(COD) Amended by 2016/0364(COD) Amended by 2017/0358(COD) See also 2017/2013(INI) Amended by 2020/0268(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/06631

Documentation gateway

Legislative proposal		COM(2011)0453	20/07/2011	EC	Summary
Document attached to the procedure		SEC(2011)0952	20/07/2011	EC	
Document attached to the procedure		SEC(2011)0953	20/07/2011	EC	
Committee draft report		PE478.507	14/12/2011	EP	
European Central Bank: opinion, guideline, report		CON/2012/0005 OJ C 105 11.04.2012, p. 0001	25/01/2012	ECB	Summary
Document attached to the procedure		N7-0075/2012 OJ C 175 19.06.2012, p. 0001	10/02/2012	EDPS	Summary
Amendments tabled in committee		PE483.816	06/03/2012	EP	
Amendments tabled in committee		PE483.817	07/03/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0170/2012	30/05/2012	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0114/2013	16/04/2013	EP	Summary
Commission response to text adopted in plenary		SP(2013)338	15/05/2013	EC	
Draft final act		00015/2013/LEX	26/06/2013	CSL	
Follow-up document		COM(2014)0676	30/10/2014	EC	Summary
Follow-up document		COM(2015)0388	05/08/2015	EC	Summary
Follow-up document		COM(2016)0455	12/07/2016	EC	Summary
Follow-up document		COM(2016)0510	28/07/2016	EC	Summary

Follow-up document		SWD(2016)0265	28/07/2016	EC	
Follow-up document		SWD(2016)0266	28/07/2016	EC	
Follow-up document		COM(2016)0774	08/12/2016	EC	Summary
Follow-up document		COM(2018)0172	09/04/2018	EC	Summary
Follow-up document		SWD(2018)0089	09/04/2018	EC	
Follow-up document		COM(2023)0344	26/06/2023	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

Directive 2013/36
OJ L 176 27.06.2013, p. 0338 Summary

Corrigendum to final act 32013L0036R(01)
OJ L 208 02.08.2013, p. 0073 Summary

Corrigendum to final act 32013L0036R(02)
OJ L 020 25.01.2017, p. 0001

Corrigendum to final act 32013L0036R(06)
OJ L 203 26.06.2020, p. 0095

Final legislative act with provisions for delegated acts

Delegated acts

2014/2621(DEA)	Examination of delegated act
2014/2660(DEA)	Examination of delegated act
2014/2664(DEA)	Examination of delegated act
2014/2666(DEA)	Examination of delegated act
2014/2808(DEA)	Examination of delegated act
2014/2806(DEA)	Examination of delegated act
2015/2919(DEA)	Examination of delegated act
2016/2736(DEA)	Examination of delegated act
2016/2963(DEA)	Examination of delegated act
2021/2941(DEA)	Examination of delegated act
2021/2618(DEA)	Examination of delegated act
2021/2561(DEA)	Examination of delegated act
2022/2801(DEA)	Examination of delegated act
2022/2731(DEA)	Examination of delegated act
2022/2720(DEA)	Examination of delegated act

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

PURPOSE: to ensure the proper functioning of the banking sector and to restore confidence in it.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions have been substantially modified several times. Many of the provisions of these two directives are applicable both to credit institutions and investment firms. To ensure the consistent application of these measures, it is appropriate to merge them in order to create new legislation applicable to both types of entity.

This new legislation will comprise two different legal instruments. In this proposal for a Directive, are the provisions concerning the authorisation of credit institutions and the exercise of the freedom of establishment and of the freedom to provide services. The accompanying proposal for a Regulation establishes uniform and directly applicable prudential requirements for credit institutions and investment firms. This new elements in this proposal comprise provisions on sanctions, effective corporate governance and provisions preventing the over-reliance on external credit ratings.

Sanctions: the sanctions applicable for key violations of the Capital Requirements Directive (CRD), such as authorisation requirements, prudential obligations and reporting obligations, vary across Member States and do not seem always appropriate to ensure sanctions are sufficiently effective, proportionate and dissuasive. Furthermore, there is a certain divergence in the level of application of sanctions in different Member States.

In its 2010 Communication "Reinforcing sanctioning regimes in the financial sector", the Commission has envisaged EU legislative action to set minimum common standards on certain key issues of sanctioning regimes, to be adapted to the specifics of the different sectors.

Corporate governance: strengthening corporate governance is a priority for the Commission, especially in the context of its financial markets reform and crisis prevention programme. The public consultation launched as a result of its Green Paper on corporate governance in financial institutions and remuneration policies demonstrated a broad consensus on the deficiencies of corporate governance standards and practices in the financial services sector. In a resolution, adopted in July 2010, the European Parliament also recognised the importance of strengthening corporate governance standards and practices in financial institutions.

Over-reliance on external ratings: overreliance on credit ratings may lead to herding behaviour of financial actors, e.g. parallel selling-off of debt instruments after that instrument has been downgraded below investment grade, which may affect financial stability. At the international level, the Financial Stability Board (FSB) recently issued principles to reduce authorities? and financial institutions? reliance on external ratings.

IMPACT ASSESSMENT: a series of options was analysed to define the legal framework for sanctioning regimes and corporate governance:

- the options on sanctioning regimes are expected to facilitate detection of violations and to empower competent authorities to apply appropriate sanctions. This is expected to ensure better enforcement of the CRD obligations by credit institutions, which would benefit all stakeholders;
- the preferred policy options improving corporate governance will help avoid excessive risk-taking by credit institutions and lower the risk of failure. It would contribute to the resilience of the banking sector and improve investor confidence The impact on credit institutions and all stakeholders (depositors, shareholders, creditors) should be positive;
- as regards over-reliance on external ratings, the impact assessment of the new initiative on credit rating agencies (planned for early July 2011) will; include a general chapter on over-reliance covered by these proposals.

LEGAL BASIS: Article 53(1) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal replaces Directives 2006/48/EC and 2006/49/EC with regard to the coordination of national provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States in this regard and the provisions governing the initial capital and the supervisory review of credit institutions and investment firms.

Its main objective is to coordinate national provisions concerning the access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervisory framework.

The proposal seeks to ensure the smooth operation of the banking sector and restoring confidence in it by:

- introducing an effective, proportionate and dissuasive sanctioning regime to ensure compliance with the CRD rules;
- development of a level playing field which minimises the opportunities for regulatory arbitrage;
- effective supervision of banking service providers;
- effective corporate governance within credit institutions which should contribute to avoid excessive risk taking.

The main features of the proposal are as follows:

1) Sanctions: with a view to reinforcing and approximating the legal framework concerning sanctions and the mechanisms facilitating detection of breaches, the Directive will require Member States to comply with the following minimum rules:

- make provision for administrative sanctions and measures that are applicable to natural and legal persons responsible for violations, which would include credit institutions, investment companies and individuals, where appropriate;
- in case of a breach, a minimum set of administrative sanctions and measures should be available to competent authorities. This includes withdrawal of authorisation, cease and desist orders, public statement, dismissal of management, administrative pecuniary sanctions;
- the maximum level of administrative pecuniary sanctions laid down in national legislation should exceed the benefits derived from the violation if they can be determined;
- sanctions and measures applied should be published.

Lastly, appropriate mechanism should be put in place to encourage reporting of breaches within credit institutions and investment firms.

2) Corporate governance: with a view to reinforcing the legislative framework regarding corporate governance, the proposal provides for: i) improving the effectiveness of management bodies to oversee risks; ii) improve the stature of the risk management function; and iii) ensure the effective follow-up of risk management by the supervisory authorities.

- The management body of a credit institution or investment firm as a whole should commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the credit institution and its main risk exposures. All members of the management body should be of sufficiently good repute and possess individual qualities and independence of mind which enable them to constructively challenge and oversee the decisions of the management. To avoid group think and facilitate critical challenge, management boards of credit institutions should be sufficiently diverse as regards age, gender, geographical provenance, educational and professional background.
- The management body should be responsible and accountable for the overall risk strategy of the credit institution or investment firm and for the adequacy of the risk management systems, taking into account the credit institution's risk profile.
- Credit institutions and investment firms should have an independent risk management function.

3) Over-reliance on external ratings: overall, the directive seeks to encourage banks to rely on internal ratings rather than external ones to calculate their regulatory capital requirements. In addition, it is proposed that EBA publicly discloses, on an annual basis, information on the steps taken by institutions and by supervisory authorities to reduce over-reliance on external ratings and reports on the degree of supervisory convergence in this regard.

4) Capital buffers: on the basis of Basel III, this proposal introduces two capital buffers on top of the requirements: a Capital Conservation Buffer and a countercyclical capital buffer.

- the Capital Conservation Buffer amounts to 2,5% of risk weighted assets, applies at all times and has to be met with capital of highest quality. It is aimed at ensuring institutions' capacity to absorb losses in stressed periods that may span a number of years;
- the Countercyclical Capital Buffer is set by national authorities for loans provided to natural and legal persons within their Member State. It can be set between 0% and 2.5% of risk weighted assets and has to be met by capital of highest quality likewise. If justified, authorities can even set a buffer beyond 2.5%. The Countercyclical Capital Buffer will be required during periods of excessive credit growth and released in a downturn.

BUDGETARY IMPACT: the proposal has no impact on the Union?s budget.

DELEGATED ACTS: the proposal contains provisions conferring on the Commission the right to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Council took note of a progress report from the presidency on proposals for a fourth amendment of the EU's rules on capital requirements for banks and investment firms ("CRD IV").

The proposals for a regulation and directive are intended to amend and replace existing capital requirement directives 2006/48/EC and 2006/49/EC.

They are aimed at transposing into EU law an international agreement approved by the G-20 in November 2010. The so-called Basel III agreement, concluded by the Basel Committee on Banking Supervision, strengthens bank capital requirements and introduces new regulatory requirements on bank liquidity and bank leverage.

General remarks: all Member States recognise the importance of quick adoption of this legislative package and are committed to working towards an agreement which would also swiftly transpose the Basel III requirements into legislative acts of the European Union. In the view of the Presidency, there is a broad measure of agreement on a number of proposed provisions to improve current prudential requirements, in particular the need to improve significantly the qualitative and quantitative capital requirements.

Member State concerns: in this Progress Report the Presidency aims to inform about some of those principal concerns expressed by Member States, where a solution would be needed to reach a compromise agreement at the Council. This Progress Report is without prejudice to the scope and content of other issues that would require further negotiations in the preparatory

bodies of the Council.

National discretion and the single market objective (flexibility and maximum harmonisation):

· A number of Member States have concerns about reduced national discretion and limited scope of flexibility within the framework of harmonised rules. They fear that the proposed approach might have a negative impact on Member States due to differences in their national financial systems.

· In particular, a number of delegations pointed out that they would favour additional powers for Member States to set stricter requirements within their jurisdictions (e.g. the possibility of increasing minimum level of capital ratio). They have indicated that as the ultimate (fiscal) responsibility for ensuring financial stability within its jurisdiction is borne by a Member State, Member States must have effective supervisory tools at their disposal. On the other hand, some delegations support the framework and the single rule book principle proposed by the Commission.

· Those delegations consider that the framework proposed by the Commission already provides for sufficient flexibilities, including through a strengthened "Pillar 2" measures and the countercyclical buffer.

· Lastly, the proposed Article 443 of the Regulation empowers the Commission to impose temporary more stringent prudential requirements by way of delegated acts, where this is necessary to address changes in the intensity of micro-prudential and macro-prudential risks. Some delegations oppose such powers being granted to the Commission, while other delegations generally support this idea, provided that the operational framework of these provisions is fine-tuned and delegation of powers is adequately framed.

Liquidity coverage requirement: there is agreement that a liquidity coverage requirement (LCR) should be introduced, in order to close an important gap in EU prudential requirements. In view of this general objective, a number of Member States have raised the concerns set out below:

- Article 444 of the proposed Regulation foresees that the LCR shall be implemented by a delegated act of the Commission. A number of Member States insist that, given the importance of this issue and its possible impact on the economy, the LCR should be implemented by subsequently amending the Regulation under the ordinary legislative procedure while still ensuring that the 2015 date is met. Moreover, provisions dealing with the principle of having adequate liquid assets at all times, are subject to further examination, given that many Member States wish to render the wording more precise.
- The Member States main concerns are related to the possibility of establishing single liquidity sub-groups and intra-group treatment. The proposed Regulation foresees an obligation to establish a single liquidity sub-group once certain conditions are met. There seems to be a prospect of agreement on the principle of having a single liquidity sub-group, subject to sufficient safeguards being defined, especially in terms of procedure and conditions of application. The proposed Regulation contains a requirement to apply liquidity intra-group treatment where the single liquidity sub-group has not been established. The proposed solution has very similar features to the single liquidity sub-group issue. Some Member States, however, are of the view that there are no safeguards foreseen within the suggested procedure. The structure of liquidity supervision is subject to further examination.

Leverage ratio requirement: the proposed Regulation foresees an obligation to disclose the leverage ratio from 2015, before decision is taken whether it becomes a binding measure upon amendment of the Regulation.

On this issue, some Member States are of the opinion that such disclosure might have a negative impact on market participants and should be postponed till the leverage ratio calibration requirements are completed.

Collaboration between competent authorities in cases of branch supervision: overall, the Presidency is in a position to note an agreement on the principle that supervision of branches of credit institutions should at all times remain efficient and effective.

Further work: following the discussions, the Presidency notes that some of Member States have concerns about definition of own funds, in particular the treatment of significant investments in insurers and the "substance over form" approach on Common Equity Tier I capital, and more work is required in this area. Moreover, the Presidency is of the view that further work is also needed on, inter alia, countercyclical buffers, the sanctioning regime, requirements linked to corporate governance, etc.

The Permanent Representatives' Committee is invited to recommend that the Council to invite the incoming Presidency and Member States to continue work, with a view to reaching an agreement on a compromise text to advance towards negotiations with the European Parliament, in order to reach an agreement by June 2012.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Council carried out a detailed examination of proposals to amend the EU's rules on capital requirements for banks and investment firms, the so-called "CRD 4" package, with a view to starting a negotiation with the European Parliament aimed at adoption of the texts at first reading.

The proposals set out to amend and replace the existing capital requirement directives and divide them into two new legislative instruments: a regulation establishing prudential requirements that institutions need to respect and a directive governing access to deposit-taking activities. They are aimed at transposing into EU law an international agreement approved by the G-20 in November 2010 the Basel 3 agreement which had been prepared by the Basel Committee on Banking Supervision.

Concluding the discussions, the president of the Council noted the support of a qualified majority of delegations for a provisional compromise text. With the agreement of the Council, the presidency decided to add the dossier to the agenda for its meeting on 15 May, so as to enable a technical verification to be completed prior to confirmation of the Council's agreement on the overall package.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Council unanimously agreed a general approach on two proposals - the so-called "CRD 4" package - amending the EU's rules on capital requirements for banks and investment firms, with a view to negotiations with the European Parliament.

It called on the presidency to start negotiations with the European Parliament, on the basis of the Council's general approach. The aim is to reach agreement on the texts at first reading, if possible by June 2012 as requested by the European Council.

The proposals set out to amend and replace the existing capital requirement directives and divide them into two new legislative instruments: a regulation establishing prudential requirements that institutions need to respect and this directive governing access to deposit-taking activities. They are aimed at transposing into EU law an international agreement approved by the G-20 in November 2010 the so-called Basel 3 agreement concluded by the Basel Committee on Banking Supervision.

The draft directive introduces additional requirements for a capital conservation buffer of 2.5% CET 1 identical for all banks in the EU, and an institution-specific countercyclical capital buffer, as well as the possibility for member states to introduce a systemic risk buffer of additional CET 1 capital for the financial sector or one or more subsets of it.

Member states would be able to apply systemic risk buffers of up to 3% for all exposures and up to 5% for domestic and third country exposures, without having to seek prior Commission approval, while they could impose even higher buffers with prior Commission authorisation in the form of a delegated act.

If a Member State decides to impose a buffer of up to 3% for all exposures, the buffer has to be set equally on all exposures located within the EU.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Committee on Economic and Monetary Affairs adopted the report drafted by Othmar KARAS (EPP, AT) on the proposal for a directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firm in a financial conglomerate.

It recommends that the European Parliaments position at first reading, under the ordinary legislative procedure, should amend the Commission proposal as follows:

Definitions: the text introduces the definition of 'systemic institution' which shall mean an institution which in case of failure or malfunction could lead to systemic risk at global or European or domestic level. In addition, the definition of 'systemic risk' has been included and shall mean a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

Designation and powers of the competent authorities: Member States shall ensure that the competent authorities monitor the activities of institutions, and where applicable, of financial holding companies and mixed financial holding companies, so as to assess compliance with the requirements of this Directive.

Member States shall designate one or more resolution authorities for overseeing and approving resolution plans as referenced in this Directive. They shall inform the Commission and EBA thereof, indicating any division of duties.

Mediation powers of EBA and cooperation within the European System of Financial Supervision (ESFS): competent authorities, as parties to the ESFS shall: (i) cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS in accordance with the principle of sincere cooperation; (ii) participate in the activities of EBA and, as appropriate, in the colleges of supervisors; (iii) make every effort to comply with those guidelines and recommendations issued by EBA in accordance Regulation (EU) No. 1093/2010.

General requirements for access to the activity of credit institutions: Member States or their competent authorities may fully or partially exempt one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, from the requirements set out in the Directive.

The right of establishment of credit institutions: the financial information shall also include the consolidated financial information of the credit institution or, where the credit institution is a subsidiary of a parent institution at EU level, the consolidated financial information of that parent institution.

Collaboration concerning supervision: the competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another as well as EBA with all information concerning the management and ownership of such institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the institution, administrative and accounting procedures and internal control mechanisms.

EBA shall have the power to carry out on a case by case basis announced or unannounced on-the-spot inspections.

On-the-spot verification and inspection of branches: a new Article stipulates that the competent authorities of the host Member State shall have the power to carry out on a case by case basis on-the-spot inspections of the activities carried out by branches of institutions on their territory and require information from a branch about its activities.

Sanctions: Member States shall provide that their competent authorities may take appropriate administrative sanctions and measures where the national provisions adopted in the implementation of this Directive have not been complied with, and where the violation of these provisions, apart from certain exceptions, is not subject to national criminal law. Member States shall ensure that the sanctions are applied.

Administrative sanctions may be imposed if an institution has been found liable for a serious infringement of the national provisions adopted pursuant to Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Member States shall ensure that competent authorities inform EBA without delay and in detail about all sanctions imposed on institutions or individuals under their supervision. Where a competent authority of a Member State applies an administrative sanction to a legal person it shall notify EBA of that sanction and the circumstances under which it was applied. EBA shall monitor and maintain a list of natural persons to whom a sanction has been applied, for the duration that sanction is applicable. When a competent authority assesses the good repute of persons, they shall check for relevant information relating to sanctions with EBA. EBA shall inform them if those persons are currently recorded on their list. EBA shall cooperate in any development of international lists.

The effective and reliable mechanisms shall include at least: (a) specific procedures for the receipt of reports on breaches and their follow-up; (b) appropriate protection, including full anonymity, for employees; (c) clear rules that prohibit institutions from inquiring the identity of an individual who has reported a breach.

Procedures and internal control mechanisms: the amended text states that competent authorities shall ensure that the management body of institutions adopts comprehensive resolution plans (living wills), ensuring an effective resolution of the institution in the case of failure and limiting the negative impact on other institutions and the wider economy.

In the case of systemic Institutions and groups identified in accordance with the Directive, the management body shall develop these comprehensive resolution plans (living wills) at individual and group level within one year after inclusion in EBA's list of systemic institutions. They shall constantly be kept updated.

Supervision of remuneration policies: it is stipulated that competent authorities shall collect information on the number, names, titles and job responsibilities of individuals per institution being remunerated EUR 1 million or more per financial year.

Remuneration policy makes a clear distinction between criteria for setting:

- basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment,
- variable remuneration, which should reflect performance in excess of that required to fulfil the employee's job description as part of the terms of employment,
- any other employee benefits beyond those required by law.

For variable elements of remunerations, the text lays down the following issues :

- guaranteed bonuses are not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective compensation plans;
- guaranteed variable remuneration is exceptional and occurs only when hiring new staff and is limited to the first year of employment, provided that the institution has a sound and strong capital base;
- fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration where the variable component shall not exceed one time the fixed component of the total remuneration;

- remuneration packages related to compensation or buy out from contracts in previous employment shall not be disproportionate, shall not provide an earlier or greater payout than would have been the case in the previous employment, and must also align with the long term interests of the institution including retention, deferment, performance and claw back arrangements;
- a substantial portion, and in any event at least 60 %, of the variable remuneration component is deferred over a period which is not less than three to 5 years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question. In the case of a variable remuneration component of a particularly high amount, above EUR 100 000 at least 60 % of the amount shall be deferred.

The Commission shall come forward by the end of 2012 with a legislative proposal setting a fixed workable ratio between the fixed and variable components of the remuneration in the financial sector.

Treatment of risks: the management body should devote sufficient time to consideration of risk issues. It shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Directive as well as in the valuation of assets, the use of external ratings and internal models related to those risks. The institution must establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

Competent authorities shall ensure that institutions that are significant in terms of size, internal organisation and nature, scope and complexity of their activities establish a risk committee or equivalent body composed of members of the management body. An adequate number of members of the committee shall also be independent.

In order to ensure that credit institutions and investment firms have in place sound remuneration policies, the risk committee, or equivalent body, to assist sound compensation policies and practices, shall demonstrate that incentives provided by the compensation system take into consideration risk, capital, liquidity and the likelihood and timing of earnings. The risk management function shall ensure that all material risks are identified, measured and properly reported. The risk management function shall be able to report directly to the management body in its supervisory function when necessary, independent from senior management and to raise concerns and warn this body, where appropriate, in case of specific risk developments that affect or may affect the institution.

Internal Approaches for calculating own funds requirements: competent authorities shall ensure that internal ratings used by institutions do not rely solely or mechanistically on external credit ratings and that these do not prevail over internal assessment. Competent authorities, in cooperation with EBA, shall analyse and assess the performances of the internal ratings capacities within the institutions.

A new provisions obliges competent authorities shall design an hypothetical portfolio of instruments representing the full range of risks to which institutions are exposed and for which they are permitted to use internal models for calculating own fund requirements.

Credit and counterparty risk: competent authorities shall ensure that the development of relationship based lending, where information gleaned from a continuing business relationship with clients is used to get a better quality of due diligence and risk assessment than is available purely from standardized information and credit scores, will be encouraged.

Liquidity risk: competent authorities shall ensure that credit institutions have liquidity risk profiles that are consistent with and not in excess of that required for a well-functioning and robust system. Competent authorities shall monitor developments in, amongst other things, product design and volumes, risk management, funding policies and funding concentrations and take effective action where such developments may lead to individual institution or systemic instability. Competent authorities shall inform EBA about any measures carried out and submit a report at least once a year to EBA on developments in these matters.

Institutions should consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers and long term stable funding in order to be able to withstand a range of different short, medium and long-term stress events.

Governance: 'management body' shall mean the body or bodies of an institution, appointed in accordance with the national law, which is empowered to set the institution's strategy, objectives and overall direction, and which oversees and monitors management decision-making. This shall include persons who effectively direct the business of the institution.

In particular, the references to management body shall comprise both the managerial and supervisory functions of the body or bodies. Where, according to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall make the distinction between the responsible bodies or members of the management body in accordance with its national law, unless otherwise specified by the Directive. For the purpose of this Directive 'managerial function' means setting the institution's strategy, objectives and overall direction and 'supervisory function' means overseeing and monitoring management decision-making.

Moreover, the management body shall ensure the integrity of the accounting and financial reporting systems, including the independent audit, financial and operational control and compliance with the law and relevant standards. It shall also oversee the process of disclosure and communications.

The chairman of the management body of an institution which is responsible for the supervisory function shall not exercise simultaneously the functions of a chief executive officer within the same institution, except in certain circumstances.

Capital buffer rate: the buffer rate should be based on the buffer guidance of the ESRB. The buffer guidance by the ESRB should take into account the growth of credit levels and changes to the ratio of credit to GDP in Member States. EBA should specify the common rules for implementation of the countercyclical buffer. The ESRB should also provide guidance on which other variables could potentially be relevant for the setting of the countercyclical buffer rates or which otherwise could be relevant indicators for financial stability in one or more Member States, based on discussions with designated authorities and own analysis.

Identification of Systemic Institutions: the text states that competent authorities shall indicate Systemic Institutions within their jurisdiction to EBA. Systemically important financial institutions may also be identified by the ESRB. This identification shall be based on quantitative and qualitative analysis on global, Union or domestic level in particular taking into account certain elements specified in the Directive.

Requirement to Maintain a Systemic Buffer: systemic institutions at global or Union level al well as domestic systemic institutions shall be assigned to one of five categories of systemic relevance with regard to their relevance for the European or an individual domestic financial market respectively. In the lowest category, systemic financial institutions shall be required to maintain a supplementary Core-Tier 1 capital buffer of 1.0% of total risk exposure, increasing by 0.5% with each of the following categories.

Review: by 31 December 2014, the Commission shall review and report on the application of Articles 103 and 104 and shall submit this report to the European Parliament and the Council, and if appropriate, a legislative proposal.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Council was briefed by the Presidency on progress in negotiations with the European Parliament on two proposals amending the EU's rules on capital requirements for banks and investment firms ("CRD 4").

The proposals set out to amend and replace the existing Capital Requirement Directives and divide them into two new legislative instruments:

- a Regulation establishing prudential requirements that institutions need to respect and
- a Directive governing access to deposit-taking activities.

The Cypriot Presidency stated its objective of finalising negotiations as soon as possible. As the incoming presidency, it has held its first "trilogues" and scheduled further meetings with the Parliament on 11 and 12 July.

Work under the previous Danish Presidency was almost completed on the Directive, with only a few key open issues remaining, and talks are now focused on the Regulation.

The negotiations with the Parliament are aimed at adoption of the Regulation and Directive at first reading.

Outstanding issues include a proposed flexibility package, bankers' remuneration, crisis management, sanctions, the balance of power between the authorities of "home" and "host" countries, corporate governance, and powers to be given to the European Banking Authority (EBA).

General approach: the Council agreed a general approach on the two proposals on 15 May with a view to negotiations with the European Parliament.

The draft Directive introduces:

- additional requirements for a capital conservation buffer of 2.5% CET 1 identical for all banks in the EU, and an institution-specific countercyclical capital buffer, as well as
- the possibility for Member States to introduce a systemic risk buffer of additional CET 1 capital for the financial sector or one or more subsets of it.

Member States would be able to apply systemic risk buffers of up to 3% for all exposures and up to 5% for domestic and third country exposures, without having to seek prior Commission approval, while they could impose even higher buffers with prior Commission authorisation in the form of a delegated act.

If a Member State decides to impose a buffer of up to 3% for all exposures, the buffer has to be set equally on all exposures located within the EU.

The proposed CRD-IV package would also strengthen requirements in terms of governance and surveillance and provide for the application of sanctions by the surveillance authorities in the event that the EU rules are transgressed and seek to reduce the dependence of credit establishments on credit ratings produced by external entities by favouring approaches based on internal ratings or internal models.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Council was informed by the Presidency of the state of negotiations with the European Parliament on two proposals the so-called "CRD 4" package amending the EU's rules on capital requirements for banks and investment firms.

The two proposals set out to amend and replace the existing capital requirement directives1 by two new legislative instruments: i) a Regulation establishing prudential requirements that institutions need to respect, and ii) a directive governing access to deposit-taking activities.

The Council held an exchange of views and confirmed its intention to reach a political agreement on the package before the end of the year. A number of issues have yet to be resolved in the negotiations with the Parliament.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Council broadly endorsed the outcome of the most recent political trilogue with the European Parliament on the CRD 4 package of legislation amending the EU's rules on capital and liquidity requirements for banks and investment firms.

The package sets out to amend and replace existing capital requirements Directives with two new legislative instruments: (i) a Regulation establishing prudential requirements that institutions must fulfil, and (ii) a Directive governing access to deposit-taking activities.

As far as the Directive is concerned, the Presidency of the Council and Parliament reached agreement on the following key issues:

Capital buffers: the Directive will introduce additional requirements for a capital conservation buffer of CET 1 capital of 2.5% of total risk exposure, identical for all banks in the EU, and an institution-specific countercyclical capital buffer1 of up to 2.5%. Moreover, Member States will have the possibility to:

- introduce a systemic risk buffer of additional CET 1 capital for the financial sector or one or more subsets of it, or buffers for systemically important institutions;
- apply systemic risk buffers of 1% to 3% for all exposures and up to 5% for domestic and third country exposures, without having to seek prior approval from the Commission;
- impose even higher buffers with prior Commission authorisation in the form of an implementing act. If a Member State decides to impose a buffer of up to 3% for all exposures, the buffer has to be set equally on all exposures located within the EU.

The buffer requirements specific to systemic institutions will be mandatory for global systemically important institutions (G-SIIs), but voluntary for other (i.e. EU or domestic) systemically important institutions (O-SIIs).

G-SIIs will be assigned to one of five sub-categories, depending on their systemic importance. They will be subject to progressive additional CET 1 capital requirements, ranging from 1% to 2.5% for the first four groups, while a buffer of 3.5% will apply to the highest sub-category.

The systemic risk buffer and buffers for G-SIIs and O-SIIs will generally not be cumulative; only the highest of the three buffers will apply.

Bankers' bonuses: bonuses will be capped at a ratio of 1:1 fixed to variable remuneration, i.e. bonuses are equal to fixed salary. This ratio can be raised to a maximum of 2:1, if a quorum of shareholders representing 50% of shares participates in the vote and a 66% majority of them supports the measure. If the quorum cannot be reached, the measure can also be approved if it is supported by 75% of shareholders present. For the purposes of applying this ratio, variable remuneration may include long-term deferred instruments that can be appropriately discounted.

These provisions will also apply to the staff of subsidiaries of European companies operating outside the European Economic Area and the European Free Trade Area.

The Commission will review and report on the impact of this provision, in close cooperation with the EBA, taking into account its impact on competitiveness and financial stability.

Governance and transparency:

- from 1 January 2014, institutions will be required to make public the number of employees per institution in the group and net banking income;
- all European G-SIIs and O-SIIs have to report to the Commission on profits made, taxes paid and subsidies received;
- from 2015, banks would have to publicly disclose the data unless the Commission, by delegated act, either delays or amends the relevant provisions.

A "sunset" clause provides for expiry of this provision, if/when it has been dealt with in other forthcoming legislation (i.e. accounting directive).

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The European Parliament adopted by 608 votes to 33 with 67 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firm in a financial conglomerate.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise agreement between Parliament and Council. They amend the Commissions proposal as follows:

Merger of provisions applicable both to credit institutions and investment firms: in order to ensure a coherent application of those provisions, the text stresses the need to merge these provisions into new legal acts: a Regulation and this Directive.

Extension of tasks for EBA: given the inevitable extension of powers and tasks for the EBA set out by the directive and Regulation, the

European Parliament, the Council and the Commission should see to it that adequate human and financial resources are made available without delay.

The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The range of situations in which EBA can mediate on its own initiative and have binding mediation powers has been extended in order to contribute to consistency in supervisory practices.

Harmonised supervisory practices: the text states that transparent, predictable and harmonised supervisory practices and decisions are necessary for conducting business and steering cross-border-groups of credit institutions. The EBA will enhance harmonization of supervisory practices. Cooperation between home and host supervisor will be strengthened through a higher degree of transparency and information sharing.

Transparency: the Directive provides that from 1st January 2015 Member States shall require each institution to disclose annually, specifying by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year: (a) name(s) nature of activities and geographical location; (b) turnover; (c) number of employees on a full time equivalent basis; (d) Profit or loss before tax; (e) tax on profit or loss; (f) public subsidies received.

On-the-spot verification and inspection of branches: the competent authorities of the host Member State shall have the power to carry out on a case by case basis on-the-spot inspections of the activities carried out by branches of institutions on their territory and require information from a branch about its activities and for supervisory purposes, where they consider it relevant for reasons of financial stability.

Supervisory powers and sanctions: competent authorities shall be given all supervisory powers to intervene in the activity of institutions that are necessary for the exercise of their function, including in particular the right to withdraw the authorisation. The administrative sanctions and measures shall be effective, proportionate and dissuasive. Furthermore, competent authorities will have all the necessary powers for collecting information and investigation.

For the purposes of assessing the good repute of directors and members of a management body, the Directive establishes an efficient system of exchange of information. The EBA, subject to strict professional secrecy and data protection requirements, will be entitled to hold a central database of administrative sanctions including the status of appeals, which would be accessible to competent authorities only.

Recovery and resolution plans: competent authorities shall ensure that recovery plans for the restoration of institutions' financial situation, following a significant deterioration, as well as resolution plans are put in place. Institutions shall cooperate closely and exchange all information necessary for the preparation and drafting of viable resolution plans.

Pending further coordination at Union level, the EBA should assess and coordinate initiatives on recovery and resolution plans with a view to promote convergence in this area.

Governance: the amended text states that a management body should be understood to have executive and supervisory functions. The management body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks as well as in the valuation of assets, the use of external ratings and internal models related to those risks.

The role of non-executive members of the management body within an institution should include: (i) constructively challenging the strategy of the; (ii) scrutinising the performance of management in meeting agreed goals and objectives; (iii) satisfying themselves that financial information is accurate; (iv) scrutinising the design and implementation of the institutions remuneration policy.

When appointing members of the management body, the shareholders or members of an institution should consider whether the candidates have the knowledge, qualifications and skills necessary to safeguard proper and prudent management of the institution.

These principles should be exercised and manifested through transparent and open appointment procedures, in regard to members of the management body.

To facilitate independent opinions and critical challenge, management bodies of institutions should be sufficiently diverse as regards age, gender, geographical provenance, educational and professional background to present a variety of views and experiences. Employees reporting breaches committed within their own institutions should be fully protected.

Remuneration policy: remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting:

- basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and

-variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

The text states that guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective remuneration plans.

Ceiling: the variable component shall not exceed 100 % of the fixed component of the total remuneration for each individual. Members States may allow shareholders or owners or members of the institution to approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual.

Any approval of a higher ratio must be carried out in accordance with the procedure set out in the Directive, requiring especially that shareholders shall act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented, or failing that, shall act by a majority of 75% of the ownership rights represented.

Member States may allow institutions to apply the discount rate referred to in paragraph IIIa to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than 5 years.

The principles and rules on remuneration should be ensured by competent authorities for institutions on a consolidated basis, that is at group, parent company and subsidiary levels, including the branches and subsidiaries established in third countries.

Reduce excessive reliance on external credit ratings: the new legislation requires credit institutions and investment firms to put in place sound credit granting criteria and credit decision processes. External credit ratings may be used as one factor among others in this process but they should not rely solely or mechanistically on external ratings and these should not prevail.

Institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own fund requirements except for operational risk submit the results of their calculations together with an explanation of the methodologies used to produce them to the competent authority at an appropriate frequency which shall not be less than once a year.

Global systemically important institutions: relevant authorities are expected to impose higher own funds requirements on global systemically important institutions in order to compensate for the higher risk that the latter represent for the financial system and the potential impact of their failure on taxpayers.

Global systemically Important Institutions will be assigned to one of five sub-categories, depending on their systemic importance. They will be subject to progressive additional CET 1 capital requirements, ranging from 1% to 2.5% for the first four groups, while a buffer of 3.5% will apply to the highest sub-category.

Requirement to maintain a capital conservation buffer: the new Directive establishes additional requirements for a capital conservation buffer of CET 1 capital of 2.5% of total risk exposure.

Member States may require credit institutions to hold, in addition to a Capital Conservation Buffer and a Countercyclical Capital Buffer, a Systemic Risk Buffer in order to prevent and mitigate long term non cyclical systemic or macroprudential risks not covered by Regulation, signifying a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State.

The systemic risk buffer and buffers for global systemically important institutions and other systemically important institutions will generally not be cumulative. Only the highest of the three buffers will apply.

Review: by 30 June 2016 the Commission, in close cooperation with EBA, shall review and report on the provisions on remuneration, taking into account international developments.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

PURPOSE : Corrigendum to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Directive first published in OJ L 176 of 27.6.2013)

The corrigendum concerns the application of the Directive (Article 162): the date of 31 December is replaced by the date 1 January 2014.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

PURPOSE: to coordinate national provisions concerning access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervisory framework.

LEGISLATIVE ACT: Directive 2013/36/EU 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.

CONTENT: this Directive, together with Regulation (EU) No 575/2013 of the European Parliament and of the Council, constitute the legal framework governing access to the activity of credit institutions and investment firms in the internal market and the applicable supervisory framework and prudential rules.

The two instruments amend existing Directives concerning own funds requirements. Their objective is to transpose into EU law an international agreement adopted by the G20 in November 2010. The so-called Basel III agreement, concluded by the Basel Committee on Banking Supervision, strengthens requirements on banks on capital adequacy, introduces rules requiring the maintenance of capital conservation and countercyclical capital buffers, and provides for a framework for new regulatory requirements concerning liquidity and the leverage ratio, as well as additional own funds requirements for systemically important institutions.

This Directive contains, among other things, provisions governing: (i) the authorisation of the business, the acquisition of qualifying holdings; (ii) the exercise of the freedom of establishment and of the freedom to provide services; (iii) the powers of supervisory authorities of home and host Member States in this regard; as well as (iv) the provisions governing the initial capital and the supervisory review of credit institutions and investment firms.

The main provisions of the Directive are the following:

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

The role of non-executive members of the management body within an institution shall include (i) constructively challenging the strategy of the institution; (ii) scrutinising the performance of management in achieving agreed objectives; (iii) satisfying themselves that financial information is accurate; (iv) scrutinising the design and implementation of the institution's remuneration policy.

When appointing members of the management body, the shareholders or members of an institution shall consider whether the candidates have the knowledge, qualifications and skills necessary to safeguard proper and prudent management of the institution.

Transparency: from 1 January 2015, Member States shall require each institution to disclose annually, specifying, by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year: (a) name(s), nature of activities and geographical location; (b) turnover; (c) number of employees on a full time equivalent basis; (d) profit or loss before tax; (e) tax on profit or loss; (f) public subsidies received.

Requirement for the maintenance of capital conservation: the new Directive establishes additional requirements concerning the maintenance of a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount, identical for all banks in the EU, as well as a countercyclical capital buffer specific to each institution not exceeding 2.5%.

Moreover, the Member States may:

- introduce an additional systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector, or buffers for systemically important institutions;
- apply, without requiring the Commissions prior approval, systemic risk buffers from between 1 and 3% for all exposures, and up to 5% for national exposures and exposures located in third countries;
- impose larger buffers requiring the prior approval of the Commission, in the form of an implementing act.

Requirements as regards buffers specific to institutions of systemic importance shall be compulsory for institutions of systemic importance at global level but optional for other systemically important institutions (at EU or national levels).

Globally systemically important institutions will be assigned to one of five sub-categories, depending on their systemic importance. They will be subject to progressive additional CET 1 capital requirements, ranging from 1% to 2.5% for the first four groups, while a buffer of 3.5% will apply to the highest sub-category.

The systemic risk buffer and buffers for global systemically important institutions and other systemically important institutions will generally not be cumulative. Only the highest of the three buffers will apply.

Remuneration policy: remuneration policy shall draw a clear distinction between criteria for setting basic fixed remuneration and criteria for setting variable remuneration, the latter of which should reflect a sustainable and risk-adjusted performance.

The variable component shall not exceed 100 % of the fixed component of the total remuneration for each individual. This ratio may rise to 200% if shareholders or owners or members of the institution act by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, by a majority of 75% of the ownership rights represented.

Member States may allow institutions to apply the discount rate referred to in this Directive to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

Enlargement of the tasks of the European Banking Authority (EBA): EBA is entrusted with developing draft technical standards and guidelines and recommendations to ensure supervisory convergence and consistency of supervisory outcomes within the Union. The range of situations in which the EBA may play a mediation role on its own initiative and have binding mediation powers has been extended with a view to enhancing the consistency of supervisory practices.

Harmonisation of supervisory practices: transparent, predictable and harmonised supervisory practices and decisions are necessary for conducting business and steering cross-border groups of credit institutions. EBA shall therefore enhance harmonisation of supervisory practices. Cooperation between the competent authorities of the home and host Member States should be strengthened through a higher degree of transparency and information sharing.

Supervisory powers and powers to impose penalties: Competent authorities shall be given all supervisory powers to intervene in the activity of institutions that are necessary for the exercise of their function, including in particular the right to withdraw an authorisation.

The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

The new Directive introduces an information exchange system for the purposes of assessing the good repute of directors and members of a management body. In this context, EBA, subject to professional secrecy and data protection requirements, shall be entitled to maintain a central database containing details of administrative penalties, including any appeals in relation thereto, which is accessible to competent authorities only.

Review: by 30 June 2016, the Commission shall, in close cooperation with EBA, review the provisions on remuneration in this Directive, taking into account international developments.

ENTRY INTO FORCE: 17/07/2013.

TRANSPOSITION: 31/12/2013

APPLICATION: from 31/12/2013.

DELEGATED ACTS: the Commission shall adopt regulatory technical standards developed by EBA in the areas of authorisations and acquisitions of significant holdings in credit institutions, information exchanges between competent authorities, the exercise of the freedom of establishment and the freedom to provide services, supervisory collaboration, remuneration policies of credit institutions and investment firms and the supervision of mixed financial holding companies by means of delegated acts.

The power to adopt delegated acts is conferred on the Commission for an indeterminate period of time from 17 July 2013. The European Parliament or the Council may express an objection to a delegated act within three months of its notification (this period may be extended by a further three months). The delegated act does not enter into force if Parliament or the Council expresses an objection.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Commission presented a report on the general assessment of economic consequences of country-by-country disclosure requirements set out in Article 89 of Directive 2013/36/EU of the European Parliament and of the Council (CRD).

The CRD Directive introduces a new country-by-country public reporting (CBCR) obligation for banks and investment firms. Institutions will have to report annually, for each country in which they have an establishment, data on (a) their name(s), activities, geographical location, (b) turnover, (c) staff numbers, (d) profit or loss before tax, (e) tax on profit or loss and (f) public subsidies received.

Institutions are required to report the data under a), b) and c) as from 1 July 2014. In the next phase, i.e. as from 1 January 2015 all institutions that fall within the scope of Article 89 are required to disclose all information set out in Article 89, unless the Commission decides to defer the CBCR obligations.

The Commission consulted EBA, EIOPA and ESMA in order to draft its report. It also directly consulted with stakeholders, including inter alia the 14 of the most important European institutions and several civil society organisations interested in the matter.

Evaluation: since the country-by-country public reporting provisions have not yet fully entered into force, this assessment is essentially a forward looking exercise focussed on determining whether CBCR is expected to have significant negative economic effects.

Most stakeholders expect that CBCR will have some positive impact on the transparency and accountability of, and on public confidence in the European financial sector. Nevertheless, various stakeholder groups consider that additional guidance on the exact contents of the items to be reported would improve transparency and consistency in all the Member States.

Impact on competitiveness, investment and credit availability and the stability of the financial system: the balance of opinions among stakeholders is that CBCR will have no significant impact on competitiveness, investment, credit availability or the stability of the financial system.

Opponents mostly refer to a risk of public misunderstanding of the data and to an increased administrative burden. Supporters of CBCR point to a number of positive effects: (i) investors will be able to make more informed investment decisions and be more able to hold banks to account; (ii) CBCR will lead to better risk management by reporting institutions, thus reducing the risk of scandals and increasing stability in the financial sector; (iii) CBCR will attract investors and customers that value the increased transparency and in general lead to increased trust in the European financial sector.

Improved disclosure quality would lead to a number of positive outcomes:

- reduction of the cost of equity capital which may be passed on to businesses and households in the form of lower lending rates and thus benefit credit availability and investment;
- reduction in the ability of reporting institutions to mask their true performance (earnings management) and an increased accounting quality.

Commissions position: it is the assessment of the Commission, notably based on the results of the study and the views expressed by the stakeholders, that at this stage, the public country-by-country reporting of information under Article 89 of Directive 2013/36/EU is not expected to have significant negative economic impact, in particular on competitiveness, investment, credit availability or the stability of the financial system.

On the contrary, it seems that there could be some limited positive impact; however the beneficial effects of Article 89 could be increased by addressing some elements related to the implementation of that provision.

The Commission considers that, as no significant negative effects have been identified in relation to the public country-by-country reporting of information, the obligations under Article 89 of Directive 2013/36/EU should not be deferred and should apply, as foreseen, in full from 1 January 2015 onwards.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

In accordance with Article 161(9) of Directive 2013/36/EU (CRD) and after consulting the European Central Bank (ECB), the European Commission has prepared this report to the European Parliament and Council on the use and benefits of longer-term refinancing operations and similar funding support measures provided by European System of Central Banks (ESCB) to credit institutions between 2011 and 2013.

The central bank funding operations were expected to have a positive impact on the real economy as a whole through increased lending to corporates and households. The longer-term refinancing operations and similar central bank funding support measures assessed by the Commission in this report are refinancing operations with low rates of interest and exceptionally long maturities entailing generally the acceptance of a wider range of eligible collateral. The context of these measures was severe stress on bank funding markets in Europe at that time.

Operations examined: the longer-term refinancing operations and similar central bank funding support measures assessed by the Commission in this report are refinancing operations with low rates of interest and exceptionally long maturities entailing generally the acceptance of a wider range of eligible collateral.

In their mandate the co-legislators also invited the Commission to submit legislative proposals, if appropriate. These proposals would be aimed at limiting the possible opportunistic use of central banks' funding support measures by credit institutions.

The Commission analysed four long-term funding support measures:

- (two) 3-year long-term refinancing operations (LTRO) by the European Central Bank;
- Denmarks National Bank's 3-year loan facilities;
- the Hungarian Central Banks 2-year variable rate collateralised loans and;
- the 'Funding for Lending Scheme' by the Bank of England.

In total, the ESCB central banks granted approximately the equivalent of EUR 1080 billion of funding between December 2011 and December 2013. The two ECB 3-year LTROs in December 2011 and March 2012 represented more than 95% of the total longer-term refinancing measures in this period.

Conclusion: the report concluded that the theoretical and practical limits posed by the "fungibility" of funding sources does not allow a reliable identification of the use of ESCB funding support measures by banks.

The methodological problem due to the fungibility of funding relates to the fact that it is not possible to "track the money" borrowed by banks from central banks to its ultimate use. The borrowed funding is not earmarked for any specific purpose but is used interchangeably with other sources of funding to support a range of activities.

EBA explained in its report that the "fungibility" problem precluded a precise quantification of the use and benefits of the central banks funding. Although this method has its merits, unfortunately it does not allow robust conclusions to be drawn on the use and benefits of these long-term refinancing operations.

In order to overcome this "fungibility" constraint, the Commission attempted to develop a more quantitative analysis of changes in the balance sheets of national banking systems during the period when funding support was provided. However, this proved unsuccessful in delivering more detailed reliable insights into the actual use of the LTRO funding support measures by banks in the Eurozone.

Under these condition, the Commission stated that this renders it impossible to identify and quantify with any degree of confidence the profits attributable to possible opportunistic behaviour by credit institutions facilitated by such funding support.

In conclusion, there is no sound empirical basis to justify a legislative proposal from the Commission to the European Parliament and Council on this subject.

Lastly, the Commission notes and indeed welcomes the fact that the more recent ECB Targeted LTRO program provides incentives for banks to lend to the non-financial private sector.

Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)

The Commission presented a report on the benchmarking of diversity practices in connection with Directive 2013/36/EU, the Capital Requirements Directive (CRD).

To recap, the CRD Directive introduced a requirement for the diversity of the management bodies of credit institutions. This is to ensure that the composition of management bodies is sufficiently diversified.

Under the CRD, Member States must require institutions to take into account a wide range of qualifications and competences when recruiting members of their governing bodies. In addition, institutions of 'significant importance' must establish a nomination committee to set a target for the representation of the under-represented gender in the governing body.

The European Banking Authority (EBA) analysed the diversity practices of a representative sample of institutions covered by the CRD for which the competent national authorities had collected data.

Key findings: a review of the results of the benchmarking exercise shows that significant improvements can still be made in terms of diversity policies as well as strengthening the diversity of the governing bodies of institutions.

The majority of sampled institutions do not currently meet the requirement for diversity-friendly policies in the governing bodies.

On the basis of the data collected in 2015, the EBA found that only about 35% of the sampled establishments had adopted a diversity policy. Denmark was the only Member State in which all the sampled establishments had adopted such a policy. The percentage was 93.3% in Sweden and was over 60% in only three other Member States: Spain, Ireland and Latvia.

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It has not been possible to assess the extent to which institutions of significant importance have met the requirement to set a target for gender representation.

However, comparative analysis has shown that most institutions that have set a gender goal have not yet achieved this goal and/or have not set a target date for achieving this goal.

The data show that there is insufficient gender diversity in the governing bodies, with only 13.63% of executive functions performed by women in the institutions sampled. As regards the supervisory function, the percentage of women performing non-executive functions in governing bodies is 18.90%, and in 39.18% of the institutions sampled, no woman exercises a non-executive function.

As regards age and geographical origin, numerical targets for diversity are currently being met in fewer than one third of the cases in which they have been set. In terms of the educational and vocational background, the targets were met in approximately 42% and 52% of the cases respectively.

These results demonstrate the need for institutions and supervisory authorities to intensify their efforts to ensure that the required diversity policies are put in place properly.

Points for improvement: the Commission considers that the comparative analysis and the presentation of the results should enable a better understanding of the extent to which institutions of "significant importance" meet the requirement of setting a target for the representation of women. It should also cover the aspect of staff representation and be carried out at regular intervals, and at least every three years.

However, the comparative analysis of diversity practices is considered a useful tool for assessing the impact and effectiveness over time of CRD diversity requirements. Regular benchmarking exercises should monitor compliance with the relevant provisions and observe future trends in the area of diversity.

The Commission does not therefore consider it desirable at this time to consider submitting a legislative proposal to amend these provisions.