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

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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).