



Plenary sitting

A8-0243/2018

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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (COM(2016)0854 – C8-0474/2016 – 2016/0364(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Peter Simon

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures
(COM(2016)0854 – C8-0474/2016 – 2016/0364(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0854),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0474/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 8 November 2017¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0243/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 34, 31.1.2018, p. 5.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2016/0364 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, 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 Central Bank¹

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2013/36/EU of the European Parliament and of the Council³ and Regulation (EU) No 575/2013 of the European Parliament and of the Council⁴ 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 in the

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

¹ OJ C [...], [...], p. [...].

² OJ C , , p. .

³ 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 (OJ L 176, 27.6.2013, p.338).

⁴ 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 (OJ L 176, 27.6.2013, p. 1).

Union and rendered 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 overly burdensome for certain institutions. It also contains adjustments to Directive 2013/36/EU that are necessary following either the adoption of other relevant Union legislation, such as Directive 2014/59/EU of the European Parliament and of the Council¹ 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.
- (2a) *One of the key lessons from the financial crisis in Europe was the inadequacy of its institutional and policy framework to prevent and address imbalances within the Union. In the light of the latest institutional developments in the Union, a comprehensive review of the macroprudential policy framework is warranted. It is important to streamline the coordination mechanism between authorities, simplify the activation of macroprudential policy tools and broaden the macroprudential toolbox to ensure that authorities are enabled to address systemic risks in a timely and effective manner. Legislative changes should, inter alia, include the revision of the respective powers of national and Union-level macroprudential authorities so as to better delineate responsibilities in the areas of risk assessment and policy making, including the coordination and notification procedures between authorities. The ESRB should play a key role in the coordination of macro-prudential measures, as well as the transmission of information on planned macro-prudential measures in Member States, notably through the publication of adopted macro-prudential measures on its website and through information sharing across authorities following the notifications of planned macroprudential measures.*
- (3) Financial holding companies and mixed financial holding companies could 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 Directive 2013/36/EU and of Regulation (EU) No 575/2013. A specific authorisation procedure for financial holding companies and mixed financial holding companies is therefore necessary, as well as supervision by the competent authorities. This would ensure that consolidated prudential requirements are complied

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

with directly by the holding company, which will not be subject to prudential requirements applied on a solo level.

- (4) The consolidating supervisor is entrusted with the main responsibilities as regards supervision on a consolidated basis. Therefore it is necessary that the prudential authorisation and supervision of the financial holding companies and mixed financial holding companies should also be given to the consolidating supervisor. The European Central Bank, when performing its task to carry out supervision on a consolidated basis over credit institutions' parents pursuant to Article 4(1)(g) of Council Regulation (EU) No 1024/2013¹ should also be responsible for the authorisation and supervision of financial holding companies and mixed financial holding companies.
- (5) 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 points (l) and (m) of Article 94(1) 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.
- (6a) ***The principle of equal pay for male and female workers for equal work or work of equal value is laid down in Article 157 of the Treaty on the Functioning of the European Union (TFEU). This needs to be applied in a consistent way by credit institutions and investment firms. Therefore they should operate a gender neutral remuneration policy.***
- (6) 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. At the same time, it is appropriate to offer some flexibility to competent authorities to adopt a stricter approach where they consider this necessary.
- (7) Directive 2013/36/EU 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

¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

instruments that track the value of shares. The possibility of using share-linked instruments should therefore be extended to listed institutions.

- (8) Own funds 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 own funds 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 under 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.
- (9) Own funds add-ons imposed by competent authorities should be set in relation to the specific situation of an institution and should be duly justified. These requirements should **■** be used to *cover risks incurred by individual institutions due to their activities, including those reflecting the impact of certain business models or market developments on the risk profile of an individual institution. However, they should not conflict with the specific treatments set out in Regulation (EU) No 575/2013 aimed at avoiding unintended impacts on financial stability, credit supply and the real economy.*
 - (9a) *In addition to the capital buffers, risks linked to the systemic importance of an institution should also be taken into account when calculating the leverage ratio in accordance with the Basel Committee decision on a buffer for globally systemically important banks. For that reason, a leverage ratio adjustment for global systemically important institutions (G-SIIs) should be introduced which should be set at 50% of a G-SIIs risk-weighted higher-loss absorbency requirements.*
 - (9b) *The supervisory review and evaluation should take into account the size, the structure and the internal organisation of institutions and the nature, scope and complexity of their activities. Where different institutions have similar risk profiles, for instance because they have similar business models or geographical location of exposures or they are affiliated to the same institutional protection scheme, competent authorities should be able to tailor the methodology for the review and evaluation process to capture the common characteristics and risks of institutions with such same risk profile. Such tailoring should, however, neither prevent competent authorities from duly taking into account the specific risks affecting each institution nor alter the institution-specific nature of the measures imposed.*
- (10) The leverage ratio requirement is a parallel requirement to the risk-based own funds requirements. Therefore, any own funds add-ons imposed by competent authorities to address the risk of excessive leverage should be added to the minimum leverage ratio requirement and not to the minimum risk-based own funds requirement. Furthermore, any CET1 capital that institutions use to meet their leverage-related requirements can be used to meet their risk-based own funds requirements as well, including the combined buffer 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 own funds requirements, additional own funds requirements and the combined buffers requirement that they expect such institution to hold in order to cope with forward looking and remote situations. Since this guidance constitutes a capital target, it should be thought of as being positioned above the own funds requirements and combined buffer

requirement in the sense that the failure to meet such target does not trigger the restrictions on distributions provided for in Article 141 of this Directive and this Directive and Regulation (EU) No 575/2013 should not set out mandatory disclosure obligations for the guidance. Where 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 own funds 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) No 575/2013. 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) The provisions of this Directive 2013/36/EU on interest rate risk arising from non-trading book activities are linked to the relevant provisions in [Regulation XX amending Regulation (EU) No 575/2013, which require a longer implementation period for institutions. In order to align the application of rules on interest rate risk arising from non-trading book activities, the provisions necessary to comply with the relevant provisions of this Directive should apply from the same date as the relevant provisions in Regulation (EU) No [XX].
- (14) In order to harmonise the calculation of the interest rate risk of non-trading book activities when the institutions' internal systems for measuring this risk are not satisfactory, the Commission should be empowered to adopt regulatory technical standards in respect of developing the details of a standardised approach via the regulatory technical standards set out in Article 84(4) of this Directive by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
- (15) In order to improve the competent authorities' identification of those institutions which may be subject to excessive losses in their non-trading book activities as a result of potential changes in interest rates, the Commission should be empowered to adopt regulatory technical standards in respect of specifying the six supervisory shock scenarios that all institutions have to apply in order to calculate changes in the economic value of equity as referred to in Article 98(5), the common assumptions, **based on international standards**, that institutions have to implement in their internal systems for the purpose of the same calculation and in respect of determining the potential need for specific criteria to identify the institutions for which supervisory measures may be warranted following a decrease in the net interest income attributed to changes in interest rates by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

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- (17) Public development banks and credit unions in certain Member States have been historically exempted from Union legislation on credit institutions. In order to ensure a level playing field, it should be possible to allow also other public development banks and credit unions to be exempted from Union legislation on credit institutions and to operate only under national regulatory safeguards commensurate with the risks that they incur. To provide for legal certainty it is necessary to set out clear criteria for such additional exemptions and to delegate to the Commission the power to adopt acts in

accordance with Article 290 TFEU in respect of identifying whether specific institutions or categories of institutions fulfil those defined criteria.

- (17a) *The completion of the banking union is an important step forward to create well-functioning cross-border markets and to ensure that bank customers can benefit from positive effects that result from a harmonised and integrated European banking market providing a level playing field for European banks. Major progress has been made regarding the completion of the Banking Union, but some obstacles - such as in the area of options and discretions (ONDs) - remain. The harmonisation of rules remains particularly difficult in the area of large cross-border intragroup exposures as the Single Supervisory Mechanism has no single competence in this area. Furthermore, cross-border activities within the Banking Union are fully subject to the methodology used by the Basel Committee on Banking Supervision (BCBS), making it less attractive for a bank located in a Euro area country to expand its activity to another Euro area country than in its domestic market. As a consequence, the Commission should, after consulting closely with the ECB, ESRB and EBA, review the current framework, while maintaining a balanced and prudentially sound approach towards home and host countries and taking into account potential benefits and risks for Member States and regions.*
- (17b) *Sovereign bonds play a crucial role in providing high-quality liquid assets for investors and stable funding sources for governments. However, in some Member States financial institutions have overly invested in bonds issued by their own governments, resulting in excessive 'home bias'. Whereas one of the main objectives of the banking union is to break the bank-sovereign risk nexus and the Union regulatory framework on prudential treatment of sovereign debt should remain consistent with the international standard, banks should continue their effort towards more diversified sovereign bond portfolios.*
- (18) Before the adoption of acts in accordance with Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (19) Since the objectives of this Directive, namely to reinforce and refine already existing Union legislation ensuring uniform prudential requirements that apply to credit institutions and investment firms throughout the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (20) 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.

(21) Directive 2013/36/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 5 is amended as follows:

(1) point (16) is replaced by the following:

"(16) in the Netherlands, the 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'NV Noordelijke Ontwikkelingsmaatschappij', the 'NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering', the 'Overijsselse Ontwikkelingsmaatschappij NV' and kredietunies;"

(2) the following point (24) is added:

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

(b) the following paragraphs 5a and 5b are inserted:

"5a. ***Without prejudice to the institutions listed in paragraph 5***, this Directive shall not apply to an institution where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it that the institution fulfils all of the following conditions, without prejudice to the application of state aid rules:

- (a) it has been established **■** by a Member State's central government, regional government or local authority;
- (b) laws and provisions governing the institution confirm that **■** objectives ***include public interest activities, such as*** the provision of financing for promotional or development purposes to specific economic activities, or geographical areas of the relevant Member State;
- (c) it is subject to ***supervisory framework which ensures its financial stability***;
- (d) the central government, regional government or local authority, as applicable, has an obligation to protect the institution's viability or directly or indirectly guarantees at least **75%** of the institution's ***liabilities or*** own funds requirements, funding requirements or exposures;
- (e) it is precluded from accepting ***retail deposits, with the exemption of those guaranteed by the central government, the regional government or the local authority***;
- (f) ***if the institution has been established by a regional government or a local authority, the majority of*** its activities are confined to the Member State where its head office is situated;

- (g) *in the case of institutions whose own funds requirements, financing needs or exposures are guaranteed by at least 75% either directly or indirectly by a Member State's central government, regional government or local authority in accordance with point (d)*, the total value of the institution's assets is below EUR 30 billion;
- (h) the ratio of the institution's total assets over the GDP of the Member State concerned is less than 30%;

■

The Commission shall regularly review whether an institution subject to a delegated act adopted pursuant to Article 148 continues to fulfil the conditions set out in the first subparagraph.

5b. *Without prejudice to the institutions listed in paragraph 5*, this Directive shall not apply to categories of institutions in a Member State, where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it, that the institutions falling under that category qualify as credit unions under the national law of a Member State and meet all of the following conditions:

- (a) they are financial institutions of a cooperative nature;
- (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 ■ ;
- (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) their activities are confined to the Member State where their head office is situated.

The Commission shall regularly review whether a category of institutions subject to a delegated act adopted pursuant to Article 148 continues to fulfil the conditions set out in the first subparagraph."

(c) paragraph 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."

(ca) the following paragraph is inserted:

“6a. Member States shall ensure publication of a list of the entities excluded from the application of this Directive under paragraphs 5a and 5b, together with information about the extent of any deposit protection.”

(d) the following paragraph 7 is added:

“The criteria set out in paragraphs 5a and 5b under which an institution can be exempted by a delegated act pursuant to Article 148 shall not apply under any circumstances to institutions that have previously been exempted under the list in paragraph 5.

By [5 years after entry into force], the Commission *may* review **for the entities listed in accordance with paragraphs 5a and 5b**, the national legal framework and supervision applicable to **these entities** taking into account also the criteria described **in paragraphs 5a and 5b** therein.”.

(2) Article 3 is amended as follows:

(a) in paragraph 1, the following points are added:

"(60) 'resolution authority' means a resolution authority as defined in point (18) of Article 2(1) of Directive 2014/59/EU;

(61) "global systemically important institution" (G-SII) means a G-SII as defined in point (132) of Article 4(1) of Regulation (EU) No 575/2013;

(62) "non-EU global systemically important institution" (non-EU G-SII) means a non-EU G-SII as defined in point (133) of Article 4(1) of Regulation (EU) No 575/2013

(63) "group" means a group as defined in point (137) of Article 4(1) of Regulation (EU) No 575/2013.

(64) "third country group" means a group of which the parent undertaking is established in a third country.

(64a) Gender neutral remuneration policy in a credit institution or investment firm means a remuneration policy based on equal pay for women and men for equal work or work of equal value.

(b) the following paragraph 3 is added:

"3. 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 that are subject to requirements laid down in this Directive and in Regulation 575/2013 on a consolidated basis and are authorised in accordance with Article 21a.”.

(3) In Article 4, paragraph 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 of the European Parliament and of the Council¹ or in Regulation (EU) No 575/2013."

(3a) In Article 8, paragraph 1 is replaced by the following:

"Member States shall require credit institutions to obtain authorisation *from competent authorities* before commencing their activities *including those listed in Annex 1*. Without prejudice to Articles 10 to 14, *Member States* shall lay down the requirements for such authorisation and notify EBA."

(4) Article 8(2) is amended as follows:

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

"(a) the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10 and the information necessary for the requirements for authorisation laid down by Member States and notified to EBA in accordance with paragraph 1";

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

"(b) the requirements applicable to shareholders and members with qualifying holdings, or, where there are no qualifying holdings, of the 20 largest shareholders or members, pursuant to Article 14; and"

(5) In Article 9, paragraph 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) persons or undertakings the taking up and pursuit of the business of which is explicitly covered by Union law, other than this Directive and Regulation (EU) No 575/2013;
- (e) entities referred to in Article 2(5), *Article 2(5a) and Article 2(5b)*, the activity of which is governed by national law."

(6) 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

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p.190).

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."

(7) In Article 14, paragraph 2 is replaced by the following:

"2. The competent authorities shall refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members in accordance with the criteria set out in Article 23(1). Article 23(2) and (3) and Article 24 shall apply."

(8) In Article 18, point (d) is replaced by the following:

"(d) no longer meets the prudential requirements set out in Parts Three, Four or Six, except for the requirements laid down in Articles 92a and 92b, 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, and, in particular, no longer provides security for the assets entrusted to it by its depositors."

(9) The following Articles 21a and 21b are inserted:

"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 consolidating supervisor determined in accordance with Article 111.

Where the consolidating supervisor is different than the competent authority in the Member State where the financial holding company or the mixed financial holding company was set-up, the consolidating supervisor shall consult the competent authority.

2. The application for authorisation referred to in paragraph 1 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 set out in Article 13;
- (c) compliance with shareholder and member requirements set out in Article 14.

3. The consolidating supervisor may only grant an authorisation where it is satisfied that all of the following conditions are fulfilled:

- (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 575/2013 is capable of ensuring compliance with those requirements;
- (b) the financial holding company or mixed financial holding company does not obstruct the effective supervision of the subsidiary institutions or parent institutions.

4. Consolidating supervisors 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 referred to in this Article.
5. The consolidating supervisors 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;
 - (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).

Article 21b

Intermediate EU parent undertaking

1. **■** Two or more institutions in the Union, which are part of the same third country group, ***shall have a single*** intermediate EU parent undertaking that is established in the Union.
 - 1a. ***Competent authorities may allow the institutions referred to in paragraph 1 to have two intermediate EU parent undertakings where the competent authorities ascertain that the establishment of a single intermediate EU parent undertaking would:***
 - (i) ***conflict with a mandatory requirement for separation of activities in accordance with rules of the third country where the ultimate parent undertaking of the third country has its head office or***
 - (ii) ***render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the competent resolution authority of the intermediate EU parent undertaking after consulting the resolution authority of the parent undertaking of the intermediate EU parent undertaking.***
 - 1b. ***Where two or more institutions in the Union which are part of the same third country group, have two intermediate EU parent undertakings in accordance with paragraph 1a, that are authorised as credit institutions in accordance with Article 8, or approved as a financial holding company or mixed financial holding company in accordance with Article 21a, supervision on a consolidated basis shall be exercised by:***

(i) *the competent authority of the credit institution, or where there are several credit institutions, the credit institution with the largest balance sheet total;*

(ii) *the competent authority of the investment firm with the largest balance sheet total, where the group does not include any credit institution, in case that the intermediate EU parent undertaking is approved as financial holding company or mixed financial holding company in accordance with Article 21a.*

By way of derogation from point (i) of this paragraph, where a competent authority supervises on an individual basis more than one credit institution within a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more of the credit institutions within the group where the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institutions supervised on an individual basis by any other competent authority.

By way of derogation from point (ii) of this paragraph, where a competent authority supervises on an individual basis more than one investment firm within a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more of the investment firms within the group with the highest balance sheet total in aggregate.

The supervisor identified in accordance with this paragraph shall be the consolidating supervisor in accordance with Chapter 3 of Title VII.

- 1c. Where two intermediate EU parent undertakings are permitted under paragraph 1a, they shall be regarded as a group for designating a group-level resolution authority in accordance with Directive 2014/59/EU and that group-level resolution authority shall have all of the powers and authorities as regards the intermediate EU parent undertakings as it would have had they constituted a group with an EU parent.*
2. Member States shall require an intermediate EU parent *undertakings* in the Union to obtain authorisation as an institution in accordance with Article 8, or as a financial holding company or mixed financial holding company in accordance with Article 21a.
 3. Paragraphs 1, *1a* and 2 shall not apply where the total value of assets in the Union of the third country group is lower than EUR 30 billion, unless the third country group is a non-EU G-SII.
 4. For the purposes of this Article, the total value of assets in the Union of the third country group shall include the following:
 - (a) the total assets of each institution in the Union of the third country group, as resulting from their consolidated balance sheet; and
 - (b) the total assets of each branch of the third country group authorised in the Union *in accordance with Article 47.*

By way of derogation from this paragraph and upon written request by a third country group, the competent authority may waive partly or fully the requirement in point (b) on a case-by-case basis after consulting the competent resolution authority and the home authority of the third country group and an assessment considering the size and complexity of the operations of the third country group in the Union, the size of the assets in branches of the third country group and the size of the total value of assets in the Union compared to the third country group total value of assets.

Competent authorities of Member States where the third country group has registered branches shall be consulted and agree to waiving the requirement in point (b) partly or fully.

5. Competent authorities shall notify to the EBA every authorisation granted pursuant to paragraph 2 *the following information in respect of each third country group operating in their jurisdiction:*

- (a) *the names and amount of total assets of supervised institutions belonging to a third country group and the types of activities which they are authorised to carry out;*
- (b) *the names and amount of total assets corresponding to branches authorised in that Member State in accordance with Article 47;*
- (c) *the name and legal form of any intermediate EU parent undertaking set-up in that Member State and the name of the third country group of which it is part.*

6. EBA shall publish on its website the list of all intermediate EU parent undertakings that have been granted authorisation in the Union.

Competent authorities shall ensure that there is an **■** intermediate EU parent undertaking for all institutions that are part of the same third country group."

6a. *By way of derogation from paragraph 1, groups operating through more than one institution in the Union and with total value of assets equal or exceeding EUR 30 billion, or subsidiaries of a non EU G-SII, on [date of entry into force of this directive] shall have an intermediate EU parent undertaking or, in the case referred to in paragraph 1a, two intermediate EU parent undertakings, by [date of application of this Directive + three years].*

6b. *EBA shall submit a report to the European Parliament and the Council taking into account the information received under paragraph 5 until... [entry into force of this Directive + 4 years). This report shall consider at least:*

- (a) *whether the requirements of this Article are operable, necessary and proportionate and whether other measures would be more appropriate;*
- (b) *the impact of structural separation requirements in other jurisdictions.*

6c. *Within two years of the date of entry into force of this Directive, EBA shall submit a report to the the European Parliament, the Council and the Commission on the treatment of third-country branches under the relevant national law of Member States. This report shall consider at least:*

- (a) *whether and to what extent supervisory practices under national law for third-country branches differentiate between Member States;*
- (b) *whether a different treatment of third-country branches could result in regulatory arbitrage;*
- (c) *if further harmonization of national regimes for third-country branches would be necessary and appropriate, especially with regards to significant third-country branches.*

The Commission shall, if appropriate, submit a legislative proposal to the European Parliament and the Council based on the recommendations made by EBA.

- (10) In Article 23(1), point (b) is replaced by the following:
"(b) the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the credit institution as a result of the proposed acquisition;"
- (11) In Article 47, paragraph 2 is replaced by the following:
"2. The competent authorities shall notify the EBA of the following:
- (a) all authorisations for branches granted to credit institutions having their head office in a third country;
 - (b) total assets and liabilities of the authorised branches of credit institutions having their head office in a third country, as periodically reported.
- EBA shall publish on its website the list of all third country branches authorised to operate in the Member States, indicating the Member State and the total assets of each branch."
- (11a) ***In Article 56 points (fa) and (fb) are added:***
"(fa) competent authorities referred to in Article 48 of the Directive (EU) 2015/849 of the European Parliament and of the Council;
(fb) competent authorities or bodies responsible for the application of rules on structural separation within a banking group. "
- (11b) ***In Article 57(1) the introductory phrase is replaced by the following:***
"(1) Notwithstanding Articles 53, 54 and 55, Member States shall ensure that an exchange of information takes place between the competent authorities and the authorities responsible for overseeing:"
- (11c) ***In Article 63(1), the following subparagraph is added:***
"Member States shall provide that the competent authorities may, as a minimum, require the replacement of a person referred to in the first subparagraph if that person acts in infringement of their obligations under the first subparagraph."
- (11d) Article 74 is amended as follows:
- "1. Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management. ***Those remuneration policies and practices shall be gender neutral.***
2. The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities. The technical criteria established in Articles 76 to 95 shall be taken into account.
3. EBA shall issue guidelines on the arrangements, processes and mechanisms referred to in paragraph 1, in accordance ***with paragraph 2. One year after the adoption of this Directive, EBA shall issue guidelines on gender neutral remuneration policy for***

credit institutions and investment firms. Two years after the publication of these guidelines and based on the information collected by the national competent authorities, EBA shall draft a report about the application of gender neutral remuneration policies by credit institutions and investment firms.”

(12) In Article 75, paragraph 1 is replaced by the following:

"1. Competent authorities shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h), (i) and (k) of Article 450(1) of Regulation (EU) No 575/2013 *as well as the information provided by credit institutions and investment firms on the gender pay gap* and shall use *this information* to benchmark remuneration trends and practices. The competent authorities shall provide EBA with that information."

(13) 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 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 book 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 book activities *and that are not explained by the risks referred to in paragraph 1*.
3. Competent authorities may require *an institution* to use the standardised methodology referred to in paragraph 1 where the internal systems implemented by the institutions for the purposes of evaluating the risks referred to in paragraph 1 are not satisfactory. *In that case, competent authorities shall explain their reasoning to the institution concerned.*
4. EBA shall develop draft regulatory technical standards to specify, for the purposes of this Article, *the principles for* a standardised methodology that institutions may use for the purpose of evaluating the risks referred to in paragraph 1 *including a conservatively calibrated alternative simplified standardised methodology for institutions with total assets below EUR 5 billion*.

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 evaluation by an institution's internal system of the risks referred to in paragraph 1;
 - (b) the criteria for the identification, management and mitigation by institutions of the risks referred to in paragraph 1;

- (c) the criteria for the assessment and monitoring by institutions of the risks referred to in paragraph 2;
- (d) the criteria for determining which the internal systems implemented by the institutions for the purposes of paragraph 1 are not satisfactory as referred to in paragraph 3;

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

- (14) In Article 85, paragraph (1) is replaced by the following:

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

- (14a) *In Article 88(1), the following subparagraph is added:*

"Member States shall at least ensure that management bodies of an institution monitor loans to related parties on an ongoing basis and notify such loans to the competent authority in case they could give rise to any conflicts of interest. Competent authorities shall have the power to prohibit or limit such loans."

- (14b) *In Article 89, the following paragraph is added:*

"5a. By 1 January 2020, the Commission shall, after consulting EBA, EIOPA and ESMA, review whether the information referred to in points (a) to (f) of paragraph 1 is still adequate, while taking into account previous impact assessments, international agreements and legislative developments in the Union, and whether further relevant information may be added to paragraph 1.

By 30 June 2020, the Commission shall, on the basis of the consultation with EBA, EIOPA and ESMA, report to the European Parliament and the Council on the assessment referred to in paragraph 5a and, where appropriate, submit a legislative proposal to the European Parliament and the Council."

- (14c) *Article 91 is amended as follows:*

- (a) *paragraph 1 is replaced by the following:*

"1. Institutions, including financial holding companies and mixed financial holding companies shall have the primary responsibility for ensuring that members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. █ Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8."

- (b) *paragraphs 7 and 8 are replaced by the following:*

"7. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks. The overall composition of the management body shall reflect an adequately broad range of experience."

"8. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior

management where necessary and to effectively oversee and monitor management decision-making. *This requirement shall not lead to ban members of affiliated companies or affiliated entities from the management body in its supervisory function.*”

(c) *the following paragraph is added:*

“13a. Notwithstanding Article 13(1), competent authorities may assess, at their discretion, institutions’ compliance with the requirements according to Article 91(1) to (8) regarding the management body in its supervisory function before or after the appointment of one of its members.”

(15) Article 92 is amended as follows:

(a) paragraph 1 is deleted.

(b) in paragraph 2, the introductory phrase 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 *whose professional activities have a material impact on their risk profile*, 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 ■, 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: "

(ba) in paragraph 2, the following point is inserted:

“(aa) the remuneration policy is gender neutral: female and male workers will be equally remunerated for equal work or work of equal value.”

(bb) The following paragraph is inserted:

“(2a) Paragraph 2 of this Article and Articles 94 and 95 shall be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding shareholders’ rights and involvement and the general responsibilities of the management bodies of the institution concerned, and the rights, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and customs.”.

(16) Article 94 is amended as follows:

(a) in paragraph 1(l), point (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;"

(aa) in paragraph (1), point (m) is amended as follows:

“(m) a substantial portion, and in any event at least 40 %, of the variable remuneration component is deferred over a period which is not less than ■ five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question.

Remuneration payable under deferral arrangements shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question;”

(b) the following paragraphs are added:

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

- (a) an institution ***on an individual basis, which may also be subject to prudential consolidation or part of a banking group***, the value of the assets of which is on average equal to or less than EUR 8 billion over the four-year period immediately preceding the current financial year;
- (b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than one fourth of the staff member's annual total remuneration.

By way of derogation from point (a), a competent authority may decide that institutions ***on an individual basis, which may also be subject to prudential consolidation or part of a banking group***, whose total asset value is below the threshold referred to in point (a) are not subject to the derogation because of the nature and scope of their activities, their internal organisation or, if applicable, the characteristics of the group to which they belong.

By way of derogation from point (b), a competent authority may decide that staff members whose annual variable remuneration is below the threshold and share referred to in point (b) are not subject to the derogation because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.

4. By [four years after entry into force of this Directive], the Commission, in close cooperation with EBA, shall review and report on the application of paragraph 3 and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

5. EBA shall adopt guidelines facilitating the implementation of paragraph 3 and ensuring its consistent application."

(17) ***Article 97 is amended as follows:***

(a) in Article 97(1) point (b) is deleted;

(b) ***the following new paragraph is inserted:***

“4a. Competent authorities may tailor the methodologies for the application of the review and evaluation process referred to in paragraph 1 to take into account institutions with a similar risk profile, such as similar business models or geographical location of exposures. Such tailored methodologies may include risk-oriented benchmarks and quantitative indicators, and shall not affect the institution-specific nature of measures imposed in accordance with Article 104.

In the case that the competent authorities use tailored methodologies pursuant to this paragraph, they shall notify EBA. EBA shall monitor supervisory practices and

issue guidelines to specify how similar risk profiles shall be assessed for the purposes of this paragraph and to ensure a consistent and proportionate application of similar institutions-tailored methodologies across the Union. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.”

(18) Article 98 is amended as follows:

(a) in paragraph (1), point (j) is deleted;

(aa) The following paragraphs (3a) and (3b) are inserted:

“3a. Taking into account the experience acquired in the application of the guidelines referred to in Article 395(2) of Regulation (EU) No 575/2013, EBA shall by... [two years after the date of entry into force of this Directive] develop draft regulatory technical standards developing a methodological standard for competent authorities specifying an appropriate aggregate limit on exposures to shadow banking entities which carry out banking activities outside a regulated framework, as well as individual limits on exposures to such entities.

For the purpose of this paragraph, EBA shall develop appropriate criteria for defining the term “shadow banking entity” as an undertaking that at least carries out one or more credit intermediation activities.

EBA shall submit those draft regulatory technical standards to the Commission [by Date]

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.

3b. By 1 December 2021, competent authorities shall monitor complex structured finance transactions, as referred to in Article 449b of Regulation (EU) No 575/2013, with the aim of identifying transactions structured to potentially result in significant tax benefits.

They shall notify to the Commission any transaction so identified as posing a risk of significant tax benefits.”

(b) 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 book activities. Supervisory measures shall be required at least in the case of institutions whose economic value of equity referred to in Article 84(1) declines by more than 15 % of their Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of six supervisory shock scenarios applied to interest rates **or where the institution experiences a large decline in its net interest income as a result of a sudden and unexpected change in interest rates as set out in any of the supervisory shock scenarios applied to interest rates.** Supervisory measures need not be carried out if the competent authorities, based on the review and evaluation of the interest rate risk, conclude that the institution is not excessively exposed to interest rate risk arising from non-trading book activities and that the institution's management of interest rate risk arising from non-trading book activities is adequate.*

For the purpose of this Article, supervisory measures shall mean one of the following:

- (a) measures under Article 104(1) and 104a;*
- (b) common modelling and parametric assumptions, other than those identified by Paragraph (5a)(b), that institutions shall reflect in their calculation of the economic value of equity under Article 84(1)."*
- (c) the following paragraph 5a is inserted:*

"5a. EBA shall develop draft regulatory technical standards to specify for the purpose of paragraph 5:

- (a) six supervisory shock scenarios to be 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 paragraph 5;*
- (c) common modelling and parametric assumptions, that institutions shall reflect in their calculations of the net interest income and what constitutes a large decline.*

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."

(ca) The following paragraphs (7a), (7b) and 7(c) are inserted:

"7a. With a view to the proportional application of the requirements laid down in this Directive and in Regulation (EU) No 575/2013, when conducting the supervisory review and evaluation process the competent authorities shall outline in detail how they have taken account of the size and scope of the business operations of an institution as well as of the complexity of the risks stemming from the institution's business model.

7b. For the purpose of paragraph 3b of this Article, EBA shall by 1 June 2021 issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify qualitative and quantitative criteria and metrics for identifying transactions structured to potentially produce significant tax benefits.

7c. The EBA shall investigate on the introduction of technical criteria for the supervisory review and evaluation process of risks related to exposures to activities which are associated substantially with environmental, social and governance objectives (ESG) with a view to assess inter alia the possible sources and effects of such risks on institutions, taking existing sustainability reporting by institutions as well as the work on the report referred to in Article 501 d a of Regulation (EU) No 575/2013 into account.

For the purpose of the first subparagraph, the EBA report shall comprise at least the following:

- (a) the definition of ESG-related risks, physical risks and transition risks including risks related to the depreciation of assets due to regulatory change and qualitative and quantitative criteria and metrics relevant for assessing such risks as well as a*

methodology for assessing whether such risks may arise in the short, medium or long term and could have a material, financial impact on an institution;

- (b) whether significant concentrations of specific credit exposures might increase ESG-related risks, physical risks and transition risks for that institution;*
- (c) the description of the processes which an institution may use to identify, assess and manage ESG-related risks, physical risks and transition risks;*
- (d) the parameters and metrics which supervisors and institutions may use to assess the impact of short, medium and long term ESG-related risks, physical risks and transition risks on lending and financial intermediary transactions;*
- (e) whether it would be appropriate to develop specific criteria for stress test and forward-looking climate scenario analysis on the portfolios of regulated entities to assess their environmental-related risks, physical risks and transition risks, including risks related to the depreciation of assets due to regulatory change and the climate alignment of lending portfolios at Union level.*

The EBA shall submit a report on its findings to the European Parliament, the Council and the Commission by [two years after the date of entry into force of this regulation].

On the basis of this report, the EBA may, if appropriate, adopt guidelines to introduce criteria related to ESG-related risks for the supervisory review and evaluation process which take the findings of the EBA report referred to in this paragraph into account.”

(19) In Article 99(2), point (b) is deleted.

(20) Article 103 is deleted.

(21) Article 104 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

"1. For the purposes of Article 97, Article 98(4) **and (5)**, 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, including outsourced activities;

- (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;
- (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

2. For the purposes of paragraph 1(j), competent authorities may only impose additional or more frequent reporting requirements on institutions where the information to be reported is not duplicative and one of the following conditions is met:

- (a) either of the conditions referred to in points (a) and (b) of Article 102(1) has been met;
- (b) the competent authority deems reasonable to impose those requirements to gather the evidence referred in Article 102(1)(b):
- (c) the additional information is required for the duration of the institution's supervisory examination programme in accordance with Article 99.

Information that may be required from institutions shall be deemed as duplicative as referred to in the first subparagraph where the same or substantially the same information is already available to the competent authority, may be produced by the competent authority or obtained through other means than a requirement on the institution to report it. Where information is available to the competent authority in a different format or level of granularity than the additional information to be reported, the competent authority shall not require the additional information where that different format or granularity does not prevent it from producing substantially similar information.";

(b) paragraph 3 is deleted.

(22) The following Articles 104a, 104b and 104c are inserted:

"Article 104a
Additional own funds requirement

1. Competent authorities shall impose the additional own funds requirement referred to in Article 104(1)(a) where, on the basis of the reviews carried out in accordance with Articles 97 and 101, they ascertain 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 Three, Four, Five and Seven 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 *or supervisory measures may not be enough* to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;
- (c) the adjustments referred to in Article 98(4) are deemed to be insufficient to enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;
- (d) the evaluation carried out in accordance to Article 101(4) reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;
- (e) the institution repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Article 104b(1);
- (ea) other institution specific situations deemed by the competent authority to raise material supervisory concerns.*

The competent authorities shall impose the additional own funds requirement referred to in Article 104(1)(a) to cover *the risk incurred by individual institutions due to their activities, including those reflecting the impact of certain business models or market developments on the risk profile of an individual institution.*

2. For the purposes of paragraph 1(a), 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 Three, Four, Five and Seven of Regulation (EU) No 575/2013 where the amounts, types and distribution of capital considered adequate by the competent authority *taking into account* the supervisory review of the assessment carried out by institutions in accordance with the first paragraph of Article 73, are higher than the institution's own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.

For the purposes of the first subparagraph, the capital considered adequate shall cover all material risks or elements of such risks *covered or not adequately covered by the own funds requirement.* This may include risks or elements of risks that are explicitly excluded from the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013. *This may include the following:*

- (a) material institution-specific risks or elements of such risks that are explicitly excluded from the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013;*
- (b) material institution-specific risks or elements of such risks which have potentially been underestimated even though the applicable requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 have been met.*

Competent authorities shall assess the risks, to which the institution is exposed, taking into account the specific risk profile of each individual institution. Risks or

elements of risks referred to in paragraph 1a 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.

Interest rate risk arising from non-trading positions *may* be considered material *if a case* referred to in Article 98(5) *arises, unless the competent authority, in conducting the supervisory review and evaluation process, comes to the conclusion that the institution is not excessively exposed to interest rate risk arising from non-trading book activities and that the institution's management of interest rate risk arising from non-trading book activities is adequate.*

■

3. Competent authorities shall determine the level of the additional own funds required under Article 104(1)(a) as the difference between the capital considered adequate pursuant to paragraph 2 and the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.
4. *Competent authorities* shall *require institutions to* meet the additional own funds requirement referred to in Article 104(1)(a) with own funds ■ subject to the following conditions:
 - (a) ■ three quarters of the additional own funds requirement shall be met with Tier 1 capital;
 - (b) ■ three quarters of the Tier 1 capital shall be composed of CET 1 capital.

By way of derogation from the first subparagraph, the competent authority may require the institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital where necessary and having regard to the specific circumstances of the institution.

Own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) shall not be used towards meeting any of the own funds requirements set out in points (a), (b) and (c) *and* of Article 92(1) of Regulation (EU) No 575/2013 or the combined buffer requirement defined in Article 128(6) of this Directive *or the guidance on additional own funds referred to in Article 104b.*

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

5. The competent authority shall ■ justify in writing to each institution the decision to impose an additional own funds requirement under Article 104(1)(a), 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 paragraph 1(d), a specific statement of the reasons for which the imposition of capital guidance is no longer considered sufficient.

■

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 ***the competent authority is satisfied by and*** is sufficiently above the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and in this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), ***including*** to ensure that ***the institution's own funds can absorb potential losses identified pursuant to the supervisory stress test referred to in Article 100 without breaching either, :***
 - (a) ***a minimum fixed level of own funds set by competent authorities, where competent authorities may take into account credible management actions and dynamic adjustments to the balance sheet that may take place over the projection horizon; or***
 - (b) ***the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), where competent authorities shall take into account credible management actions and dynamic adjustments to the balance sheet that may take place over the projection horizon.***
 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 ***as well as the supervisory guidance on*** own funds established in accordance with paragraph 1.
-
- 4a. ***Own funds used to meet the level of additional own funds under paragraph 1 of this Article shall not be used towards meeting any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, the requirement of Article 104a of this Directive or the combined buffer requirement defined in Article 128(6) of this Directive.***
 5. An institution that fails to meet the expectations set out in paragraph 3 shall not be subject to the restrictions referred to in Article 141.
 - 5a. ***The EBA shall review and report to the Commission on the application of this Article, including paragraphs 1(a) and 1(b) within the three years following the entry into force of this Directive. On the basis of this report the Commission shall, if appropriate, submit a legislative proposal to the European Parliament and the Council.***

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(1)(a) and prior to communicating to institutions any expectation for adjustments to the level of own funds in accordance with 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 own funds requirement imposed on institutions pursuant to Article 104(1)(a) and about any expectation for adjustments to the level of own funds communicated to institutions in accordance with Article 104b."

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

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

(25) 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. ***Subsidiary undertakings, not themselves subject to this Directive, shall comply with their sector-specific requirements on solo level.***

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.

3a. For the purpose of paragraph 2, EBA shall in consultation with ESMA develop draft regulatory standards with respect to the practical aspects of the application of the remuneration rules under this Directive to subsidiary undertakings, not themselves subject to this Directive.

Taking into account the institutions' size, internal organisation and the nature, the scope and the complexity of their activities as well as that the specific sector legislation shall prevail where specific requirements of this Directive may conflict with the sectorial requirements, these draft regulatory standards shall specify the qualitative and appropriate quantitative criteria to identify categories of group risk takers as well as the classes of instruments which reflect the group's risk profile.

In this context, EBA shall assess in consultation with ESMA, and amend if necessary, the existing regulatory technical standards on criteria to identify

categories of staff whose professional activities have a material impact on an institution's risk profile under Article 92 paragraph 2 of this Directive.

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

(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;

1a. *The consolidating supervisor shall inform the competent authorities responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company in a Member State of 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 104b.

The joint decisions referred to in points (a) and (b) of paragraph 1 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 the first subparagraph of Article 116, the following sentence is added:

"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."

- (27a) *In Article 117, the following paragraph is added:*

"4a. Competent authorities, financial intelligence units and authorities entrusted with the public duty of supervising obliged entities listed in points (1) and (2) of Article 2 (1) of Directive (EU) 2015/849 for compliance with this Directive, shall cooperate closely with each other within their respective competences and shall provide one another with information relevant for this under this Directive, Regulation (EU) 575/2013 and under Directive (EU) 2015/849."

- (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 120, paragraph 2 is replaced by the following:

"2. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions of the Directive relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC."

- (29 a) *In Article 125, the following paragraph is inserted:*

"1a. Where pursuant to Article 111 the consolidating supervisor of a group with a parent mixed financial holding company is different from the coordinator determined in accordance with Article 10 of Directive 2002/87/EC, the two authorities shall cooperate for the purpose of the application of this Directive and

Regulation (EU) 575/2013 on a consolidated basis. In order to facilitate and establish effective cooperation the consolidating supervisor and the coordinator shall have written coordination and cooperation arrangements in place.”

(29 b) *Article 129 is amended as follows:*

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

“Member States which decide to apply such an exemption shall notify the **ESRB**. **The ESRB shall forward the notifications within a set timeframe to the** Commission, EBA and the competent **and designated** authorities of the Member States concerned accordingly.”

(b) *paragraph 5 is replaced by the following:*

“5. Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 1 of this Article to meet any requirements imposed under Article 104, **104a or the guidance under Article 104b**.”

(29 c) *Article 130 is amended as follows:*

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

“Member States which decide to apply such an exemption shall notify the **ESRB**. **The ESRB shall forward the notifications within a set time frame to the** Commission, EBA and the competent **and designated** authorities of the Member States concerned accordingly.”

(b) *paragraph 5 is replaced by the following:*

“Institutions shall meet the requirement imposed by paragraph 1 with Common Equity Tier 1 capital, which shall be additional to any Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92(1)(a) to (c) of Regulation (EU) No 575/2013, the requirement to maintain a capital conservation buffer under Article 129 of this Directive and any requirement imposed under Article **104a and 104b** of this Directive.”

(30) **█** *Article 131 is amended as follows:*

(a) *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."

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

"EBA, after consulting the ESRB, shall **draft regulatory technical standards** on the criteria to determine the conditions of application of this paragraph in relation to the assessment of O-SIIs **and the methodology for the design and calibration of buffer rates**. Those **regulatory technical standards** shall take into account international frameworks for domestic systemically important institutions and Union and national specificities.

EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2020.

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

(c) paragraph (5) is replaced by the following:

"5. The competent authority or designated authority may require each O-SII, on a consolidated, sub-consolidated, or individual basis, as applicable, to maintain an O-SII buffer of up to 3% of the total risk exposure amount calculated, **which** shall consist of and shall be supplementary to Common Equity Tier 1 capital; **in that connection, the criteria for the identification of the O-SII shall be taken into account.**"

(d) the following paragraph (5a) is inserted:

"5a. The competent authority or designated authority may require an O-SII buffer higher than 3% of the total risk exposure amount calculated subject to the approval by the Commission.

Within two months of notification referred to in paragraph 7, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

Within two months of notification, the Commission, taking into account the assessment of the ESRB and EBA, if relevant, and if it is satisfied that the O-SII buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole which create an obstacle to the proper functioning of the internal market, shall adopt an implementing act authorising the competent authority or the designated authority to adopt the proposed measure."

(e) in paragraph 7 the introductory part is replaced by the following:

"7. Before setting or resetting an O-SII buffer, the competent authority or the designated authority shall notify the **ESRB** one month before the publication of the decision referred to in paragraph 5. **The ESRB shall forward the notifications to the Commission, the EBA and the competent and designated authorities of the Member States within a set timeframe.** That notification shall describe in detail."

(f) paragraph 8 is replaced by the following:

“8. Without prejudice to Article 133 and paragraph 5 of this Article, where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the O-SII shall not exceed *the lower of:*

(a) *The sum of the higher of the G-SII or O-SII buffer rate applicable to the group at consolidated level and 1% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and*

(b) *3% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, or the rate the Commission has authorized to be applied to the group at consolidated level.”*

(g) *paragraph 9 is replaced by the following:*

“9. There shall be **■** five subcategories of G-SIIs. The lowest boundary and the boundaries between each subcategory shall be determined by the scores under the identification methodology. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category. For the purposes of this paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market. The lowest sub-category shall be assigned a G-SII buffer of 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the buffer assigned to each sub-category shall increase in gradients of 0,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 up to and including the fourth sub-category. The highest sub-category of the G-SII buffer shall be subject to a buffer of 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

If an institution is placed in the highest sub-category of the G-SII buffer, a further, new sub-category shall immediately be added. The buffer assigned to each following sub-category shall increase in gradients of 1% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.”

(h) *paragraph 12 is replaced by the following:*

“12. The competent authority or the designated authority shall notify the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, to the *ESRB*. The *ESRB shall forward the notifications to the Commission* and EBA *within a set timeframe*, and shall disclose their names to the public. The competent authorities or designated authorities shall disclose to the public the sub-category to which each G-SII is allocated.

The competent authority or the designated authority shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the *ESRB which shall forward the results to the Commission* and EBA *within a set timeframe. The competent authority or the designated authority shall publicly disclose the updated list of identified systemically important institutions to the public*

and shall disclose to the public the sub-category into which each identified G-SII is allocated.”

(i) **paragraph 13 is replaced by the following:**

13. Systemically important institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirements under paragraphs 4 and 5 to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013 and Articles 129 and 130 of this Directive and any requirements imposed under Articles 102 and 104 of this Directive.

(j) **paragraph 14 is replaced by the following:**

“14. Where a group, on a consolidated basis, is subject to **■** a G-SII buffer and an O-SII buffer, **the higher buffer shall apply.**

Where an institution, on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with Article 133, the *sum* of the two shall apply.

Where a group, on a consolidated basis, is subject to a G-SII buffer, an O-SII buffer and a systemic risk buffer in accordance with Article 133, **the sum** of the following shall apply:

(a) **the greater of the G-SII buffer and the O-SII buffer;**

(b) **the systemic risk buffer in accordance with Article 133.”**

(30a) **Article 133 is amended as follows:**

(a) **paragraph 1 is replaced by the following:**

“1. Each Member State may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector, **on all or a subset of exposures** in order to prevent and mitigate **■** systemic or macroprudential risks not covered by Regulation (EU) No 575/2013 **and by Article 131 of this Directive**, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State.”

(b) **paragraphs 3 and 4 are replaced by the following:**

“3. For the purpose of paragraph 1 of this Article, institutions may be required to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirements imposed by Article 92 of Regulation (EU) No 575/2013, a systemic risk buffer of Common Equity Tier 1 capital **■** based on the exposures to which the systemic risk buffer applies in accordance with paragraph 8 of this Article, on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

The overall systemic risk buffer rate of an institution shall be calculated as the sum of the amounts specified in points (a) and point (b) divided by the amount specified in point (c), expressed as a percentage:

(a) any systemic risk buffer applied on all exposures for all institutions or, where relevant, to all exposures for subsets of institutions;

(b) any systemic risk buffer applied to exposures to individual sectors or sub-sectors; and

(c) the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

The relevant competent or designated authority may require institutions to maintain the systemic risk buffer on an individual, consolidated *or sub-consolidated* level. *The systemic risk buffer shall be applied to risks not covered by the G-SII buffer or the O-SII buffer in accordance with Article 131.*

4. Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 3 to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013 and Articles 129, **130 and 131** of this Directive and any requirements imposed under Articles 102, **104, 104a and the guidance under 104b** of this Directive.”

(c) paragraph 6 is replaced by the following:

“6. Where ■ an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the *sum* of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.”

(d) paragraph 9 is replaced by the following:

9. The systemic risk buffer shall apply to all institutions, or one or more subsets of those institutions, for which the authorities of the Member State concerned are competent in accordance with this Directive and shall be set in gradual or accelerated steps of adjustment ■ Different requirements may be introduced for different subsets of *a sector, sectorial exposures or, where relevant, to sub-sets of sectorial exposure. The systemic risk buffer shall not address risks that are covered by the framework as set out in Article 131.*

(e) paragraph (1 is amended as follows:

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

“11. Before setting or resetting a systemic risk buffer rate of up to 3 %, the competent authority or the designated authority shall notify ■ the ESRB ■ one month before the publication of the decision referred to in paragraph 16. *The ESRB shall forward the notifications to the Commission, EBA and the competent and designated authorities of the Member States concerned within a set timeframe.* If the buffer applies to exposures located in third countries the competent authority or the designated authority shall also notify *the ESRB. The ESRB shall forward the notification to* the supervisory authorities of those third-countries. That notification shall describe in detail:”

(ii) point (e) is deleted.

(f) paragraph 12 is amended as follows:

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

“12. Before setting or resetting a systemic risk buffer rate of above 3 %, the competent authority or the designated authority shall notify *the ESRB. The ESRB*

shall forward the notifications to the Commission, EBA and the competent and designated authorities of the Member States concerned *within a set timeframe*. If the buffer applies to exposures located in third-countries the competent authority or the designated authority shall also notify *the ESRB. The ESRB shall forward the notification* to the supervisory authorities of those third-countries. That notification shall describe in detail.”

(ii) *point (e) is deleted.*

(g) *paragraph 14 is replaced by the following:*

“14. ■ Where one subset of the financial sector is a subsidiary whose parent is established in another Member State, the competent authority or the designated authority shall notify the authorities of that Member State, the Commission and the ESRB. Within *30 working days* of the notification, the Commission and the ESRB shall issue a recommendation on the measures taken in accordance with this paragraph. Where the authorities disagree and in the case of a negative recommendation of both the Commission and the ESRB, the competent authority or the designated authority may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the buffer for those exposures shall be suspended until EBA has taken a decision.”

(h) *in paragraph 15, the first subparagraph is replaced by the following:*

“15. Within *30 working days* of the notification referred to in paragraph 12, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.”

(i) *the first subparagraph of paragraph 16 is amended as follows:*

(i) *point (a) is replaced by the following:*

“(a) the systemic risk buffer rate *or rates*;”

(ii) *the following point (is inserted:*

“(ba) *the exposures on which the systemic risk buffer rate applies*;”

(30b) *In Article 134, paragraph 2 is replaced by the following:*

“2. If Member States recognise the systemic risk buffer rate for domestically authorised institutions they shall notify the *ESRB. The ESRB shall forward the notifications to the* Commission, EBA and the Member State that sets that systemic risk buffer rate *within a set timeframe*.”

(30c) *Article 136 is amended as follows:*

(a) *in paragraph 3 the introductory part is replaced by the following:*

“3. Each designated authority shall assess *the intensity of cyclical, macroprudential or systemic risk on a quarterly basis and, in the event of changes, set or adjust* the appropriate countercyclical buffer rate for its Member State, and in so doing, *each designated authority* shall take into account.”

(b) *paragraph 7 is replaced by the following:*

"7. Each designated authority shall announce the quarterly *applicable* countercyclical buffer rate by publication on its website. The announcement shall include at least the following information:

- (a) the applicable countercyclical buffer rate;
- (b) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;
- (c) the buffer guide calculated in accordance with paragraph 2;
- (d) a justification for that buffer rate;
- (e) where the buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- (f) where the date referred to in point (e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;
- (g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period;

Designated authorities shall notify the *applicable* countercyclical buffer rate and the information specified in points (a) to (g) to the ESRB *quarterly*. The ESRB shall publish on its website all such notified buffer rates and related information.

Designated authorities of participating Member States, as defined by Council Regulation (EU) No 1024/2013, shall also notify the applicable countercyclical buffer rate and the information specified in points (a) to (g) to the ECB quarterly.

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

"1. Without prejudice to any measures under Article 104 of this Directive and Chapter II and III of Directive 2014/59/EU, competent authorities shall prohibit any institution that meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital *or make payments on Additional Tier 1 instruments* 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. Without prejudice to any measure under Article 104 of this Directive and Chapter II and III of Directive 2014/59/EU, designated authorities shall require institutions that fail to meet the combined buffer requirement to calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 4 and to notify the competent authority of that MDA.

Where the first subparagraph applies, *competent authorities shall prohibit any such institution from undertaking* 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. **Competent authorities shall prohibit any institution that fails to meet or exceed its combined buffer requirement to distribute more than the MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2.** ■

4. **Competent authorities shall require institutions to 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 **net of any amount paid following** any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

plus

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 **net of any amount paid following** any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

(c) **retained earnings, interim and year-end profits already included in the Common Equity Tier 1 capital to the extent that they are generated on a recurring basis and provided that:**

(i) distributions are limited to an amount that prevents the institution from decreasing its Common Equity Tier 1 capital to a lower quartile of the combined buffer requirement;

(ii) the institution demonstrates to the satisfaction of the competent authority that it is able to generate such profits in the 12 months following the breach and

(iii) the competent authority approves the capital conservation plan referred to in Article 142;

minus

(d) (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 Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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 to meet any of the own funds requirements under Article 92a and points

- (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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 Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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 Article 92a and points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, under Articles 45c and 45d of Directive 2014/59/EU and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, 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:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

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

- (32) The following Article 141a is inserted:

"Article 141a

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 requirement defined in Article 128(6) and each of the following requirements in:
 - (a) Article 92(1)(a) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;
 - (b) Article 92(1)(b) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;

- (c) Article 92(1)(c) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;
- (ca) **Articles 92(1)(d) and 92(1)(da) of Regulation (EU) No 575/2013, if applicable, and the requirement in Article 104a of this Directive;**
- (d) Article 92a of Regulation (EU) No 575/2013 and in Articles 45c and 45d of Directive 2014/59/EU.

Own funds maintained to meet the requirement under Article 128(6) shall not be used to also meet the requirements defined in Article 45c, 45d and 45e of Directive 2014/59/EU).

2. By way of derogation from paragraph 1, 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 defined in Article 128(6) ***when considered in addition to*** each of the requirements referred to in points (a), (b) and (c) of paragraph 1;
- (b) the failure to meet the ***requirement defined in Article 128(6) when considered in addition to the requirement*** referred to in point (d) of paragraph 1 is exclusively due to the inability of the institution to ***issue or*** replace liabilities that ***do not or*** no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013;
- (c) the failure to meet the requirements referred to in point (d) of paragraph 1 does not last longer than 6 months.

(ca) the institution referred to is not a G-SII.

(32a) Article 142 is amended as follows:

(a) paragraph (1) is replaced by the following:

“Where an institution fails to meet ***either:***

(a) its combined buffer requirement; or

(b) the combined requirement for the leverage ratio adjustment, which consists of an institution-specific leverage ratio adjustment and an O-SII leverage ratio adjustment,

it shall prepare a capital conservation plan and submit it to the competent authority no later than five working days after it identified that it was failing to meet that requirement, unless the competent authority authorises a longer deadline of up to 10 days.

Competent authorities shall grant such authorisations only on the basis of the individual situation of a credit institution and taking into account the scale and complexity of the institution's activities.

(b) paragraph 2(c) is replaced by the following:

“(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the ***requirements the institution has failed to meet under paragraph 1.***”

(c) paragraph 3 is replaced by the following:

“The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet *the requirement it has failed to meet under paragraph 1* within a period which the competent authority considers appropriate.”

(33) In Article 145, the following points (j) and (k) are added:

"(j) supplementing Articles 2(5a) and 2(5b) by establishing, on the basis of the information available to it

- (i) whether institutions or categories of institutions, meet the conditions set out in those Articles; or
- (ii) whether institutions or categories of institutions, have ceased to meet the conditions laid down in those;

(k) amendments to the list set out in Article 2(5):

- (i) by deleting institutions or categories of institutions, where the relevant institution or category of institutions has ceased to exist;
- (ii) by making the necessary changes where the name of the relevant institution or category of institutions has changed."

(34) In Article 146, point (a) is deleted.

(35) In Article 161, the following paragraph 10 is added:

"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."
".

Article 2 Transposition

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

They shall apply those provisions from [one year + 1 day after entry into force of this Directive]. However, the provisions necessary to comply with the amendments set out in points (13) and (18) of Article 1 containing amendments to Articles 84 and 98 of Directive 2013/36/EU shall apply from [two years after entry into force of this Directive].

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

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

Article 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
The President

For the Council
The President

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures			
References	COM(2016)0854 – C8-0474/2016 – 2016/0364(COD)			
Date submitted to Parliament	23.11.2016			
Committee responsible Date announced in plenary	ECON 19.1.2017			
Rapporteurs Date appointed	Peter Simon 24.11.2016			
Discussed in committee	28.2.2017	25.4.2017	3.5.2017	11.12.2017
	22.2.2018			
Date adopted	18.6.2018			
Result of final vote	+: –: 0:	44 5 8		
Members present for the final vote	Gerolf Annemans, Burkhard Balz, Hugues Bayet, Pervenche Berès, David Coburn, Thierry Cornillet, Esther de Lange, Markus Ferber, Jonás Fernández, Sven Giegold, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Cătălin Sorin Ivan, Petr Ježek, Barbara Kappel, Wolf Klinz, Georgios Kyrtos, Philippe Lamberts, Werner Langen, Olle Ludvigsson, Ivana Maletić, Fulvio Martusciello, Marisa Matias, Gabriel Mato, Alex Mayer, Bernard Monot, Caroline Nagtegaal, Stanisław Ożóg, Sirpa Pietikäinen, Anne Sander, Alfred Sant, Martin Schirdewan, Pedro Silva Pereira, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Ernest Urtezar, Marco Valli, Miguel Viegas, Jakob von Weizsäcker, Marco Zanni			
Substitutes present for the final vote	Andrea Cozzolino, Ashley Fox, Doru-Claudian Frunzuliță, Syed Kamall, Alain Lamassoure, Thomas Mann, Luigi Morgano, Michel Reimon, Joachim Starbatty			
Substitutes under Rule 200(2) present for the final vote	Christofer Fjellner, Agnieszka Kozłowska-Rajewicz, Rupert Matthews			
Date tabled	28.6.2018			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

44	+
ALDE	Thierry Cornillet, Petr Ježek, Wolf Klinz, Caroline Nagtegaal, Ramon Tremosa i Balcells
ECR	Ashley Fox, Syed Kamall, Rupert Matthews, Stanisław Ozóg, Joachim Starbatty, Joachim Starbatty
ENF	Barbara Kappel
PPE	Burkhard Balz, Markus Ferber, Christofer Fjellner, Brian Hayes, Gunnar Hökmark, Agnieszka Kozłowska-Rajewicz, Georgios Kyrtos, Alain Lamassoure, Esther de Lange, Werner Langen, Ivana Maletić, Thomas Mann, Fulvio Martusciello, Gabriel Mato, Sirpa Pietikäinen, Anne Sander, Theodor Dumitru Stolojan
S&D	Hugues Bayet, Pervenche Berès, Andrea Cozzolino, Jonás Fernández, Doru-Claudian Frunzuliță, Neena Gill, Roberto Gualtieri, Cătălin Sorin Ivan, Olle Ludvigsson, Alex Mayer, Luigi Morgano, Pedro Silva Pereira, Peter Simon, Paul Tang, Jakob von Weizsäcker

5	-
EFDD	David Coburn, Bernard Monot
ENF	Gerolf Annemans, Marco Zanni
S&D	Alfred Sant

8	0
EFDD	Marco Valli
GUE/NGL	Marisa Matias, Martin Schirdewan, Miguel Viegas
VERTS/ALE	Sven Giegold, Philippe Lamberts, Michel Reimon, Ernest Urtasun

Key to symbols:

+ : in favour

- : against

0 : abstention