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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU - Presidency compromise proposal

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU

(Text with EEA relevance)

2017/0358(COD)

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,

Having regard to the opinion of the European Central Bank,[1]

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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1 OJ C […], […], p. […].

(1) Robust prudential supervision is an integral part of the regulatory conditions in which financial institutions may provide services within the Union. Investment firms are, together with credit institutions, subject to Directive 2013/36/EU of the European Parliament and of the Council[2] and to Regulation (EU) No 575/2013 of the European Parliament and of the Council[3] as regards their prudential treatment and supervision, while their authorisation and other organisational and conduct requirements are set out in Directive 2004/39/EC of the European Parliament and of the Council[4].

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of a large part of investment firms. The specific vulnerabilities and risks inherent to these investment firms should therefore be further addressed by means of effective, appropriate and proportionate prudential arrangements at Union level that help to provide a level playing field across the Union, that guarantee effective prudential supervision, while keeping compliance costs in check, and that ensure sufficient capital for the risks of investment firms.

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[2] 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).

[3] 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).

[4] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

(3) Sound prudential supervision should ensure that investment firms are managed in an orderly way and in the best interests of their clients. They should take into account the potential for investment firms and their clients to engage in excessive risk-taking and the different degrees of risk assumed and posed by investment firms. Equally, such prudential supervision should aim to avoid disproportionate administrative burden on investment firms. At the same time, such prudential supervision should make it possible to strike a balance between ensuring the safety and soundness of investment firms and avoiding excessive costs that might undermine the viability of their business activity.

(4) Many of the requirements that stem from Regulation (EU) No 575/2013 and Directive 2013/36/EU framework are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address all of the different risk-profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have detrimental impacts for overall financial stability is lower than in the case of credit institutions but they nevertheless pose a risk which it is necessary to address through a robust framework. The risks faced and posed by most investment firms are thus substantially different to the risks faced and posed by credit institutions and such difference should be clearly reflected in the prudential framework of the Union.

(5) Differences in the application of the existing framework in different Member States threaten the level playing-field for investment firms within the Union, hampering investors' access to new opportunities and better ways of managing their risks. Those differences stem from the overall complexity of the application of the framework to different investment firms based on the services they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add-ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure harmonised prudential supervision of investment firms across the Union.

(6) A specific prudential regime is therefore required for investment firms which are not systemic by virtue of their size and interconnectedness with other financial and economic actors. Systemic investment firms should, however, remain subject to the existing prudential framework under Directive 2013/36/EU and Regulation (EU) No 575/2013. Those investment firms are a subset of investment firms to which the framework laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013 currently applies and which do not benefit from dedicated exemptions from any of its principle requirements. The largest and most interconnected firms have business model and risk profiles that are similar to those of significant credit institutions. They provide "bank-like" services and underwrite risks at significant scale. Furthermore, systemic investment firms are large enough to, and have business models and risk-profiles which represent a threat for the stable and orderly functioning of financial markets on par with large credit institutions. Therefore it is appropriate that those investment firms remain subject to the provisions set out in the Directive 2013/36/EU and Regulation (EU) No 575/2013.

(6a) Investment firms which deal on own account or underwrite financial instruments or place financial instruments on a firm commitment basis on a significant scale, or which are clearing members in central counterparties, may have business models and risk profiles that are similar to those of credit institutions. Given their size and activities, they may present comparable risks to financial stability as credit institutions. Competent authorities should have the option of requiring them to remain subject to the same prudential treatment as those institutions under Regulation (EU) No 575/2013 and to compliance with the prudential supervision under Directive 2013/36/EU.

(7) There may be Member States in which the authorities competent for the prudential supervision of investment firms are different from the authorities that are competent for the supervision of market conduct. It is therefore necessary to create a mechanism of cooperation and exchange of information between those authorities in order to ensure harmonised prudential supervision of investment firms across the Union, functioning promptly and efficiently.

(7a) An investment firm may trade via a clearing member in another Member State. In such a situation, a mechanism should be put in place for sharing information between the relevant competent authorities (on the one hand, the competent authority for the prudential supervision of the investment firm and, on the other hand, either the relevant authority supervising the clearing member or the authority supervising the CCP, respectively) in the different Member States on the model and parameters used for the calculation of the margin requirements of the investment firm where this is used as the basis for the investment firm's capital requirements.

(8) To foster the harmonisation of supervisory standards and practices within the Union, the European Banking Authority (EBA) should, in close cooperation with the European Securities and Markets Authority (ESMA), retain primary competence for the coordination and convergence of supervisory practices in the area of prudential supervision over investment firms within the European System for Financial Supervision (ESFS).

(9) The required level of initial capital of an investment firm should be based on the services and activities which that investment firm is authorised to provide, and perform, respectively, according to Directive 2014/65/EU. The possibility for Member States to lower the required level of initial capital in specific situations, as provided for in Directive 2013/36/EU, on the one hand, and the situation of uneven implementation of that Directive, on the other hand, have led to a situation where the required level of initial capital diverges across the Union. To end that fragmentation, the required level of initial capital should be harmonised accordingly for all investment firms in the Union.

With a view to reduce barriers to market entry that may currently exist for the multilateral trading facilities (MTFs) or organised trading facilities (OTFs), the initial capital of investment firms that operate an MTF or OTF shall be set at the level referred to in Article 8(3) of this Directive. Where an investment firm authorised to operate an OTF has been permitted to also engage in dealing on own account under the conditions provided for in Article 20 of Directive 2014/65/EU its initial capital shall be set at the level referred to in Article 8(1) of this Directive.

(10) While investment firms are removed from the scope of Directive 2013/36/EU and Regulation (EU) No 575/2013, certain concepts used in the context of Directive 2013/36/EU and respectively, Regulation (EU) No 575/2013, shall maintain their well-established meaning. To enable and ease a consistent reading of such concepts when used, in acts of Union law, in relation to investment firms, references in such Union acts to the initial capital of investment firms, to the supervisory powers of competent authorities for investment firms, to the internal capital adequacy assessment process of investment firms, to the supervisory review and evaluation process of competent authorities for investment firms, and to governance and remuneration provisions applicable to investment firms shall be construed as referring to the corresponding provisions in this Directive.

(11) The proper functioning of the internal market requires that the responsibility for supervising the financial soundness of an investment firm, and in particular its solvency and its financial soundness, lies with the competent authority of its home Member State. To achieve an effective supervision of investment firms also in other Member States where they provide services or have a branch, close cooperation and exchange of information with the competent authorities of these Member States should be ensured.

(12) For informational and supervisory purposes, and in particular to ensure the stability of the financial system, competent authorities of host Member States should be able to carry out, on a case-by-case basis, on-the-spot checks, inspect the activities of branches of investment firms on their territory and require information about the activities of those branches. Supervisory measures for those branches should however remain the responsibility of the home Member State.

(13) To protect commercially sensitive information, competent authorities should be bound by rules of professional secrecy when conducting their supervisory tasks and when exchanging confidential information.

(14) To strengthen the prudential supervision of investment firms and the protection of clients of investment firms, auditors should carry out their verification impartially and report promptly to the competent authorities those facts which can have a serious effect on the financial situation of an investment firm or its administrative and accounting organisation.

(15) The processing of personal data for the purposes of this Directive should be carried out in accordance with Regulation (EU) No 2016/679 of the European Parliament and of the Council[5], and with Regulation (EU) No 45/2001 of the European Parliament and of the Council[6]. In particular, where this Directive allows for exchanges of personal data with third countries, the relevant provisions of Chapter V of Regulation (EU) No 2016/679 and Article 9 of Regulation (EU) No 45/2001 should apply.

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[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

[6] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

(16) To safeguard compliance with the obligations laid down in this Directive and [Regulation (EU) ---/----[IFR], Member States should provide for administrative sanctions and other administrative measures which are effective, proportionate and dissuasive. In order to ensure that administrative sanctions have a dissuasive effect they should be published except in certain welldefined circumstances. To enable clients and investors to make an informed decision about their investment options, those clients and investors should have access to information on administrative sanctions and measures imposed on investment firms.

(17) To detect breaches of national provisions transposing this Directive and breaches of [Regulation (EU)---/----[IFR], Member States should have the necessary investigatory powers and should establish effective and rapid mechanisms to report potential or actual breaches.

(18) Investment firms which are not considered small and non-interconnected should have internal capital available which is adequate in quantity, quality and distribution to cover the specific risks to which they are or may be exposed. Competent authorities should ensure that investment firms have the adequate strategies and processes in place to assess and maintain the adequacy of their internal capital. Competent authorities should be able to request also small and non-interconnected firms to apply similar requirements where appropriate.

(19) Supervisory review and evaluation powers should continue to remain an important regulatory tool allowing competent authorities to assess qualitative elements, including internal governance and controls, risk management processes and procedures and, where needed, to set additional requirements, including in particular in relation to capital and liquidity requirements notably for investment firms which are not considered small and non-interconnected, and when the competent authority deems it justified and appropriate also for small and non-interconnected firms.

(20) 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 principle needs to be applied in a consistent manner by investment firms. To align remuneration with the risk profile of investment firms and to guarantee a level-playing field, investment firms should be subject to clear principles on corporate governance arrangements and rules on remuneration that are gender neutral and that take into account the differences between credit institutions and investment firms. Small and non-interconnected investment firms should however be exempted from those rules because the provisions on remuneration and corporate governance under Directive 2014/65/EU are sufficiently comprehensive for those types of firms.

(21) Similarly, Commission report COM(2016) 510[7] demonstrated that the requirements on deferral and pay-out in instruments laid down in Directive 2013/36/EU are not appropriate for small and non-complex investment firms or for staff with low levels of variable remuneration. Clear, consistent and harmonised criteria for identifying investment firms and individuals exempted from those requirements are necessary to ensure supervisory convergence and a level-playing field.

Given the important role high earners play in directing the business and long term performance of the investment firms, an effective oversight of the remuneration practices and trends of high earners should be ensured. Therefore, competent authorities should be able to monitor the remuneration of high earners.

[7] Report from the Commission to the European Parliament and the Council, Assessment of the remuneration rules under Directive 2013/36/EU and Regulation (EU) No 575/2013 (COM(2016) 510 final).

(22) It is also appropriate to offer some flexibility to investment firms in the way they use non-cash instruments when paying variable remuneration, as long as such instruments are effective in achieving the objective of aligning the interest of staff with the interest of various stakeholders, such as shareholders and creditors, and contribute to the alignment of variable remuneration with the risk profile of the investment firm.

(23) The revenues of investment firms in the form of fees, commissions and other revenues in relation to the provision of different investment services are highly volatile. Limiting the variable component of remuneration to a portion of the fixed component of remuneration would affect the firm’s ability to reduce remuneration at times of reduced revenues and could lead to an increase of the firm's fixed cost base, leading in turn to risks for the firm’s ability to withstand times of economic downturn or reduced revenues.

To avoid those risks, a single maximum ratio between the variable and the fixed elements of remuneration should not be imposed on non-systemic investment firms. Instead, those investment firms should set appropriate ratios themselves. However, this Directive should not preclude Member States from implementing measures in national law designed to subject investment firms to stricter requirements with regard to the maximum ratio between the variable and the fixed elements of the remuneration. This Directive should also not prevent Member States from imposing a maximum ratio, as referred in the previous sentence, on all or on specific types of investment firms.

(23a) Different governance structures are used across Member States. In most cases a unitary or a dual board structure is used. The definitions used in this Directive are intended to embrace all existing structures without expressing a preference for any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competences in accordance with national company law.

(23b) A management body should be understood to have executive and supervisory functions. The competence and structure of management bodies differ across Member States. In Member States where management bodies have a one-tier structure, a single board usually performs management and supervisory tasks. In Member States with a two-tier system, the supervisory function is performed by a separate supervisory board which has no executive functions and the executive function is performed by a separate management board which is responsible and accountable for the day-to-day management of the undertaking. Accordingly, separate tasks are assigned to the different entities within the management body.

(24) In response to the growing public demand for tax transparency and to promote investment firms' corporate responsibility, it is appropriate to require that investment firms, unless they qualify as small and non-interconnected, disclose on a yearly basis certain information, including information on profits made, taxes paid and any public subsidies received.

(24a) This Directive should not prevent Member States from adopting a stricter approach with regard to the remuneration when investment firms receive extraordinary public financial support.

(25) To address risks at investment firm only group level, the prudential consolidation method required by Regulation (EU) No ---/---- [IFR] should in the case of investment firm only groups be accompanied by a group capital test for simpler group structures. The determination of the group supervisor, however, should in both cases be based on the same principles that apply in the case of supervision on a consolidated basis under Directive 2013/36/EU. To ensure proper cooperation, core elements of coordination measures, and in particular information requirements in emergency situations or cooperation and coordination arrangements should be similar to the core elements of coordination applicable in the context of the single rulebook for credit institutions.

(26) On the one hand, the Commission should be able to submit recommendations to the Council for the negotiation of agreements between the Union and third countries for the practical exercise of supervision of compliance with the group capital test for investment firms, the parent undertakings of which are established in third countries, and for investment firms operating in third countries the parent undertakings of which are established in the Union. On the other hand, Member States and EBA should also be able to set-up administrative arrangements with third countries to perform their supervisory tasks.

(27) To ensure legal certainty and avoid overlaps between the current prudential framework applicable to both credit institutions and investment firms and this Directive, Regulation (EU) No 575/2013 and Directive 2013/36/EU are amended in order to remove investment firms from their scope. However, investment firms which are part of a banking group should remain subject to those provisions in Regulation (EU) No 575/2013 and Directive 2013/36/EU which are relevant for the banking group, such as the provisions on the intermediate EU parent undertaking referred to in [Article 21b] of Directive 2013/36/EU and to the rules on prudential consolidation set out in Chapter 2 of Title 2 of Part One of Regulation (EU) No 575/2013.

(28) It is necessary to specify the steps that undertakings need to take to verify whether they fall under the definition of a credit institution as set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and therefore need to obtain authorisation as a credit institution. Because certain investment firms already carry out the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, it is also necessary to ensure clarity about the continuity of any authorisation granted for those activities. In particular, it is essential that competent authorities ensure that the transition from the current framework to the new one offers sufficient regulatory certainty for investment firms.

(29) To ensure effective supervision, it is important that undertakings meeting the conditions set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 apply for an authorisation as a credit institution. Competent authorities should therefore have the possibility to apply sanctions to undertakings that do not apply for that authorisation.

(30) The amendment to the definition of 'credit institution' in Regulation (EU) No 575/2013 by Regulation [Regulation (EU)---/----[IFR]] may as of its entry into force capture investment firms that are already operating on the basis of an authorisation issued in accordance with Directive 2014/65/EU. Those undertakings should be allowed to continue operating under their authorisation as investment firms until the authorisation of a credit institution is granted. Those investment firms should submit an application for authorisation as a credit institution at the latest when the average of their monthly total assets exceed any of the thresholds set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 over a period of twelve consecutive months. Where an investment firm exceeds any of the thresholds set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 as of the date of entry into force of this Directive, the average of their monthly total assets should be calculated taking into account the twelve consecutive months preceding that date. Those investment firms should apply for authorisation as a credit institution within one year and one day after the entry into force of this Directive.

(31) The amendment to the definition of 'credit institution' in Regulation (EU) No 575/2013 Regulation [Regulation (EU)---/----[IFR]] may also affect undertakings which have already applied for authorisation as investment firms under Directive 2014/65/EU and for which the application is still pending. Such applications should be transferred to the competent authorities under Directive 2013/36/EU and be treated in accordance with the authorisation provisions set out in that Directive if the envisaged total assets of the undertaking meet any of the thresholds set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013.

(32) Undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 should also be subject to all the requirements for access to the activity of credit institutions laid down in Title III of Directive 2013/36/EU, including the provisions on the withdrawal of authorisation in accordance with Article 18 of that Directive. Article 18 of that Directive should however be amended to ensure that competent authorities may also withdraw the authorisation granted to a credit institution where that credit institution uses its authorisation exclusively to engage in the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and has for a period of 5 consecutive years average total assets below the thresholds set out in that Article 4(1)(1)(b).

(33) Pursuant to Article 39 of Directive 2014/65/EU, third-country firms providing financial services in the EU are subject to national regimes which may require the establishment of a branch in a Member State. To facilitate the regular monitoring and assessment of activities carried out by third-country firms through branches in the Union, competent authorities should be informed about the scale and scope of the services and activities carried out through branches on their territory.

(33a) Specific cross-references in Directive 2014/59/EU, in Directive 2011/61/EU and in Directive 2009/65/EC to provisions which apply to investment firms in Regulation (EU) No 575/2013 and in Directive 2013/36/EU and which no longer apply as of the date of application of this Directive and Regulation (EU) No ---/---- [IFR] should be updated to the corresponding references in this Directive and in Regulation (EU) No ---/---- [IFR].

(34) EBA, in cooperation with ESMA, has issued a report based on thorough background analysis, data collection and consultation for a bespoke prudential regime for all non-systemic investment firms which serves as the basis for the revised prudential framework for investment firms.

(35) To ensure the harmonised application of this Directive, EBA should be charged with drafting technical standards to specify the information which home and host authorities should exchange in the context of supervision, to set out how investment firms should assess the size of their activities for the purposes of internal governance requirements and notably to assess whether they constitute a small and non-interconnected firm. Technical standards should also specify which staff members have a material impact for the risk-profile of firms for the purposes of remuneration provisions, and specify the additional Tier 1 and Tier 2 instruments which qualify as variable remuneration. Finally, technical standards should specify the elements for the assessment of the scope of application of requirements on internal governance, transparency, treatment of risks and remuneration, the application of additional capital requirements by competent authorities, and the functioning of supervisory colleges.

(36) To ensure the uniform application of this Directive and to take account of developments in financial markets, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the further specification of the definitions in this Directive, of the internal capital and risk assessments of investment firms, and of the supervisory review and evaluation powers of competent authorities. 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.

(37) To ensure uniform conditions for the implementation of this Directive, and in particular with regard to the adoption of the draft implementing technical standards drafted by EBA regarding information exchange requirements between competent authorities, and in order to take account of developments in the economic and monetary field with regard to levels of initial capital requirements for investment firms, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[8].

(38) Since the objectives of this Directive, namely to set up an effective and proportionate prudential framework to ensure that investment firms authorised to operate within the Union operate on a sound financial basis and are managed in an orderly way including in the best interests of their clients, cannot be sufficiently achieved by the Member States, but, by reason of their scale and effects, would 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.

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[8] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(39) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[9], 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.

[9] OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down rules concerning:

(a) the initial capital of investment firms;

(b) supervisory powers and tools for the prudential supervision of investment firms by competent authorities;

(c) the prudential supervision of investment firms by competent authorities in a manner that is consistent with the rules set out in [Regulation (EU) ---/----[IFR];

(d) publication requirements for competent authorities in the field of prudential regulation and supervision of investment firms.

Article 2

Scope

1. This Directive shall apply to investment firms authorised and supervised under Directive 2014/65/EU of the European Parliament and of the Council[10].

2. By way of derogation from paragraph 1, Titles IV and V of this Directive shall not apply to investment firms referred to in Article 1(2) and 1(5) of [Regulation (EU) --/----] [IFR] which shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU, in accordance with Article 1(3) of [Regulation (EU) ---/----[IFR].

Article 3

Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(1) ancillary services undertaking' means an undertaking the principal activity of which consists of owning or managing property, managing data-processing services, or a similar activity which is ancillary to the principal activity of one or more investment firms;

[10] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(2) ‘authorisation’ means authorisation of an investment firm in accordance with Article 5 of Directive 2014/65/EU;

(3) ‘branch’ means branch as defined in Article 4(1)(30) of Directive 2014/65/EU;

(4) ‘close links’ means close links as defined in Article 4(1)(35) of Directive 2014/65/EU;

(5) ‘competent authority’ means a public authority or body of a Member State that is officially recognised and empowered by national law to supervise investment firms in accordance with this Directive, as part of the supervisory system in operation in that Member State;

(6) ‘commodity and emission allowance dealers’ means commodity and emission allowance dealers as defined in Article 4(1)(145) of Regulation (EU) No 575/2013;

(7) ‘control’ means the relationship between a parent undertaking and a subsidiary, as described in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council[11], or in the accounting standards to which an investment firm is subject under Regulation (EC) No 1606/2002[12], or a similar relationship between any natural or legal person and an undertaking;

(8) ‘compliance with the group capital test’ means compliance with the requirements of Article 7 of [Regulation (EU) No ---/----[IFR] by the parent undertaking in an investment firm group;

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[11] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

[12] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

(9) ‘credit institution’ means credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013;

(10) ‘derivatives’ means derivatives as defined in Article 2(1)(29) of Regulation (EU) No 600/2014[13];

(11) ‘financial institution’ means a financial institution as defined in Article 4(1)(13) of [Regulation (EU) No ---/----[IFR];

"gender neutral remuneration policy" means a remuneration policy based on equal pay for male and female workers for equal work or work of equal value.

(12) ‘group’ means group as defined in Article 2(11) of Directive 2013/34/EU;

(13) ‘group supervisor’ means a competent authority responsible for the supervision of compliance with the group capital test of Union parent investment firms and investment firms controlled by Union parent investment holding companies or Union parent mixed financial holding companies;

(14) ‘home Member State’ means home Member State as defined in Article 4(1)(55)(a) of Directive 2014/65/EU;

(15) ‘host Member State’ means host Member State as defined in Article 4(1)(56) of Directive 2014/65/EU;

(16) ‘initial capital’ means the capital which is required for the purposes of authorisation as an investment firm, the amount and type of which are specified in Articles 8 and 9;

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[13] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

(17) 'investment firm' means investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;

(18) 'investment firm group' means investment firm group as defined in Article 4(1)(23) of [Regulation (EU) ---/----[IFR];

(19) 'investment holding company' means investment holding company as defined in Article 4(1)(21) of [Regulation (EU) ---/----[IFR];

(20) 'investment services and activities' means investment services and activities as defined in Article 4(1)(2) of Directive 2014/65/EU;

(21) 'management body' means a management body as defined in Article 4(1)(36) of Directive 2014/65/EU;

(22) 'management body in its supervisory function' means the management body acting in its role of overseeing and monitoring management decision-making;

(23) 'mixed financial holding company' means mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council[14];

(23a) 'mixed-activity holding company' means a parent undertaking, other than a financial holding company, an investment holding company, a credit institution, an investment firm, or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least an investment firm;

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[14] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 035, 11.2.2003, p. 1).

(24) ‘senior management’ means senior management as defined in Article 4(1)(37) Directive 2014/65/EU;

(25) ‘parent undertaking’ means a parent undertaking as defined in Article 4(1)(32) of Directive 2014/65/EU;

(26) ‘subsidiary’ means subsidiary as defined in Article 4(1)(33) of Directive 2014/65/EU;

(27) ‘systemic risk’ means systemic risk as defined in Article 3(1)(10) of Directive 2013/36/EU;

(28) ‘Union parent investment firm’ means a Union parent investment firm as defined in Article 4(1)(49) of [Regulation (EU) No ---/----[IFR];

(29) ‘Union parent investment holding company’ means a Union parent investment holding company as defined in Article 4(1)(50) of [Regulation (EU) No ---/----[IFR];

(30) ‘Union parent mixed financial holding company’ means a Union parent mixed financial holding company as defined in Article 4(1)(51) of [Regulation (EU) No ---/----[IFR];

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to clarify:

(a) the definitions set out in paragraph 1 to ensure uniform application of this Directive;

(b) the definitions set out in paragraph 1 to take account, in the application of this Directive, of developments on financial markets.

TITLE II

COMPETENT AUTHORITIES

Article 4

Designation and powers of the competent authorities

1. Member States shall designate one or more competent authorities that carry out the functions and duties provided for in this Directive and in [Regulation (EU) ---/---[IFR]. The Member States shall inform the Commission, EBA and ESMA of that designation, and where there is more than one competent authority, of the functions and duties of each competent authority.

2. Member States shall ensure that the competent authorities supervise the activities of investment firms, and, where applicable, of investment holding companies and mixed financial holding companies, to assess compliance with the requirements of this Directive and of [Regulation (EU) ---/----[IFR].

3. Member States shall ensure that the competent authorities have all necessary powers, including the power to conduct on-the-spot checks in accordance with Article 12, to obtain the information needed to assess the compliance of investment firms and, where applicable, of investment holding companies and mixed financial holding companies, with the requirements of this Directive and of [Regulation (EU) ---/----[IFR], and to investigate possible breaches of those requirements.

4. Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to the prudential supervision, investigations and sanctions set out in this Directive.

5. Member States shall require investment firms to provide their competent authorities with all the information necessary for the assessment of the compliance of investment firms with the national rules transposing this Directive and compliance with [Regulation (EU) ---/----[IFR]. Internal control mechanisms and administrative and accounting procedures of the investment firms shall enable the competent authorities to check their compliance with those rules at all times.

6. Member States shall ensure that investment firms register all their transactions and document systems and processes which are subject to this Directive and [Regulation (EU) ---/----[IFR] in such a manner that the competent authorities are able to assess compliance with the national rules transposing this Directive and compliance with [Regulation (EU) ---/----[IFR] at all times.

Article 4a

Discretion of competent authorities to subject certain investment firms to the requirements of Regulation (EU) 575/2013

1. Competent authorities may decide to apply the requirements of Regulation (EU) 575/2013 pursuant to point (c) of Article 1(2) of [Regulation (EU) ---/----[IFR] to an investment firm that carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU where the total value of the consolidated assets of the investment firm exceeds EUR 5 billion, calculated as an average of the last 12 consecutive months, and any of the following applies:

(a) the investment firm carries out these activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk as defined in point (10) of Article 3(1) of Directive 2013/36/EU;

(b) the investment firm is a clearing member as defined in point (1b) of Article 4(1) of Regulation [IFR];

(c) the competent authority considers it justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:

(i) the importance for the economy of the Union or of the relevant Member State;

(ii) the significance of its cross-border activities;

(iii) the interconnectedness of the investment firm with the financial system.

2. Paragraph 1 shall not apply to a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking.

3. Where a competent authority decides to apply the requirements of Regulation (EU) 575/2013 to an investment firm in accordance with paragraph 1, this investment firm shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU.

4. Where a competent authority decides to revoke a decision taken in accordance with paragraph 1 it shall inform the investment firm without delay.

Without prejudice of the discretion of a competent authority to take a decision in accordance with paragraph 1, paragraph 1 shall cease to apply where an investment firm no longer meets the threshold referred to in that paragraph calculated over a period of 12 consecutive months.

5. Competent authorities shall inform EBA without delay of any decision taken pursuant to paragraphs 1, 3 and 4.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify further the criteria set out in points (a) and (b) of paragraph 1, and ensure their consistent application.

EBA shall submit those draft regulatory technical standards to the Commission by [twelve month from the date of entry into force of this Directive].

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.

Article 5

Cooperation within a Member State

1. Competent authorities shall cooperate closely with the public authorities or bodies responsible in their Member State for the supervision of credit institutions and financial institutions. Member States shall require that those competent authorities and those public authorities or bodies exchange, without delay, any information which is essential or relevant to the exercise of their functions and duties.

2. Competent authorities that are different from those designated in accordance with Article 67 of Directive 2014/65/EU shall establish a mechanism for cooperation with those authorities and for the exchange of all information that is relevant for the exercise of their respective functions and duties.

Article 6

Cooperation within the European System of Financial Supervision

In the exercise of their duties, competent authorities shall take into account the convergence of supervisory tools and supervisory practices in the application of the legal provisions adopted pursuant to this Directive and to [Regulation (EU) ---/----[IFR].

Member States shall ensure that:

(a) competent authorities, as parties to the European System for Financial Supervision (ESFS), cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate, reliable and exhaustive information between them and other parties to the ESFS;

(b) competent authorities participate in the activities of EBA, and, where appropriate, in the colleges of supervisors referred to in Article 44 and in Article 116 of Directive 2013/36/EU;

(c) competent authorities make every effort to ensure compliance with the guidelines and recommendations issued by EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[15] and to respond to the warnings and recommendations issued by the European Systemic Risk Board (ESRB) pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council[16];

(d) competent authorities cooperate closely with the ESRB;

(e) tasks and powers conferred on the competent authorities do not inhibit the performance of the duties of those competent authorities as members of EBA or of the ESRB, or under this Directive and under [Regulation (EU) ---/----[IFR].

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15 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

16 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

Article 7

Union dimension of supervision

Competent authorities in each Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in other Member States concerned as well as for the Union as a whole and, in particular, in emergency situations, based on the information available at the relevant time.

TITLE III

INITIAL CAPITAL

Article 8

Initial capital

1. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for the authorisation to provide the investment services or perform the investment activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU shall be EUR 750 000.

2. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for the authorisation to provide the investment services or perform the investment activities listed in points (1), (2), (4), (5) or (7) of Section A of Annex I to Directive 2014/65/EU and which is not permitted to hold client money or securities belonging to its clients shall be EUR 75 000.

The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for investment firms other than those referred to in paragraphs 1 and 2 shall be EUR 150 000.

By way of derogation, the initial capital of an investment firm authorised to provide the investment services or perform the investment activity listed in point (9) of Section A of Annex I to Directive 2014/65/EU, where the investment firm engages in or is permitted to dealing on own account, shall be EUR 750 000.

Article 8a

References to initial capital in Directive 2013/36/EU

References to the levels of initial capital set by Article 8 of this Directive shall, as of the date of application of this Directive, be construed as replacing references to the levels of initial capital set by Directive 2013/36/EU as follows:

(a) the reference to initial capital of investment firms in Article 28 of Directive 2013/36/EU shall be construed as a reference to Article 8(1) of this Directive;

(b) the references to initial capital of investment firms in Articles 29 and 31 of Directive 2013/36/EU shall be construed as references to Article 8(2) or (3) of this Directive, depending on the type of investment services and activities of the investment firm;

(c) the reference to initial capital in Article 30 of Directive 2013/36/EU shall be construed as a reference to Article 8(1) of this Directive.

Article 9

Composition of initial capital

The initial capital of an investment firm shall be constituted in accordance with Article 9 of [Regulation (EU) ---/----[IFR].

TITLE IV

PRUDENTIAL SUPERVISION

CHAPTER 1

Principles of prudential supervision

Section 1

Competences and duties of home and host Member States

Article 10

Competences of the competent authorities of the home Member State

The prudential supervision of an investment firm shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

Article 11

Cooperation between competent authorities of different Member States

1. Competent authorities of different Member States shall cooperate closely for the purposes of their duties pursuant to this Directive and [Regulation (EU) ---/----[IFR], in particular by exchanging information about investment firms without delay, including on the following:

(a) information about the management and ownership structure of the investment firm;

(b) information about compliance with capital requirements by the investment firm;

(c) information about compliance with the concentration risk requirements and liquidity requirements of the investment firm;

(d) information about the administrative and accounting procedures and internal control mechanisms of the investment firm;

(e) any other relevant factors that may influence the risk posed by the investment firm.

2. The competent authorities of the home Member State shall immediately provide the competent authorities of the host Member State with any information and findings about any potential problems and risks posed by an investment firm to the protection of clients or the stability of the financial system in the host Member State which they have identified when supervising the activities of an investment firm.

3. The competent authorities of the home Member State shall act upon information provided by the competent authorities of the host Member State by taking all measures necessary to avert or remedy potential problems and risks as referred to in paragraph 2. Upon request, the competent authorities of the home Member State shall explain in detail to the competent authorities of the host Member State how they have taken into account the information and findings provided by the competent authorities of the host Member State.

4. Where, following the communication of the information and findings referred to in paragraph 2, the competent authorities of the host Member State consider that the competent authorities of the home Member State have not taken the necessary measures referred to in paragraph 3, the competent authorities of the host Member State may, after having informed the competent authorities of the home Member State, EBA and ESMA, take appropriate measures to protect clients to whom services are provided or to protect the stability of the financial system.

The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 TFEU, EBA may, in those situations, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010. EBA may also assist the competent authorities in reaching an agreement on the exchange of information under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

5. Competent authorities of the home Member State that disagree with the measures of the competent authorities of the host Member State may refer the matter to EBA, which shall act in accordance with the procedure laid down in Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall adopt its decision within one month.

5a. For the purposes of assessing the condition in point (c) in paragraph 1 of Article 23 of Regulation (EU) ---/----[IFR], the competent authority of an investment firm's home Member State may request to the competent authority of a clearing member's home Member State information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firm.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify requirements for the type and nature of the information referred to in paragraphs 1 and 2 of this Article.

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.

7. EBA, in consultation with ESMA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the supervision of investment firms.

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.

8. EBA shall submit the draft technical standards referred to in paragraphs 6 and 7 to the Commission by [18 months from the date of entry into force of this Directive].

Article 12

On-the-spot checking and inspection of branches established in another Member State

1. Host Member States shall provide that, where an investment firm authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot checks of the information referred to in Article 11(1) and inspect that branch.

2. The competent authorities of the host Member State shall, for supervisory purposes and where they consider it relevant for reasons of stability of the financial system in the host Member State, have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of investment firms on their territory and require information from a branch about its activities.

Before carrying out those checks and inspections, the competent authorities of the host Member State shall, without delay, consult the competent authorities of the home Member State.

As soon as possible following the completion of those checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the investment firm concerned.

Section 2

Professional secrecy and duty to report

Article 13

Professional secrecy and exchange of confidential information

1. Member States shall ensure that competent authorities and all persons working for or who have worked for those authorities, including the persons referred to in Article 76(1) of Directive 2014/65/EU, are bound by the obligation of professional secrecy for the purposes of this Directive and [Regulation (EU) ---/---[IFR].

Confidential information which such authorities and persons receive in the course of their duties may be disclosed only in summary or aggregate form provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law.

Where the investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be disclosed in civil or commercial proceedings if necessary for carrying out those proceedings.

2. Competent authorities shall only use the confidential information collected, exchanged or transmitted pursuant to this Directive and [Regulation (EU) ---/----[IFR] for the purpose of carrying out their duties, and in particular for the following purposes:

(a) the monitoring of the prudential rules set out in this Directive and in [Regulation (EU) ---/---- [IFR];

(b) to impose sanctions;

(c) in administrative appeals against decisions of the competent authorities;

(d) in court proceedings initiated under Article 21.

3. Natural and legal persons or bodies, other than competent authorities, receiving confidential information pursuant to this Directive and [Regulation (EU) ---/----[IFR] shall only use that information for the purposes for which the competent authority expressly provides or in accordance with national law.

4. Competent authorities may exchange confidential information for the purposes of paragraph 2, may expressly state how that information is to be treated and may expressly restrict any further transmission of that information.

5. The obligation referred to in paragraph 1 shall not prevent competent authorities from transmitting confidential information to the European Commission when that information is necessary for the exercise of the powers of the Commission.

6. Competent authorities may provide EBA, ESMA, the ESRB, central banks of the Member States, the ESCB and the ECB in their capacity as monetary authorities, and, where appropriate, public authorities responsible for overseeing payment and settlement systems, confidential information where that information is necessary for the performance of their tasks.

Article 14

Administrative arrangements with third countries for the exchange of information

For the purposes of performing their supervisory tasks pursuant to this Directive or [Regulation (EU) ---/----[IFR], and in order to exchange information, Member States competent authorities, EBA and ESMA in accordance with Articles 33 of Regulation (EU) No 1093/2010 and respectively Regulation (EU) No 1095/2010 may conclude administrative arrangements with the supervisory authorities of third countries as well as with third country authorities or bodies responsible for the following tasks, only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those laid down in Article 13 of this Directive:

(a) the supervision of financial institutions and financial markets, including the supervision of financial entities licensed to operate as central counterparties, where CCPs have been recognised under Article 25 of Regulation (EU) No 648/2012;

(b) the liquidation and bankruptcy of investment firms and similar procedures;

(c) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and similar procedures;

(d) the carrying out of statutory audits of financial institutions or institutions which administer compensation schemes;

(e) oversight of persons charged with carrying out statutory audits of the accounts of financial institutions ;

(f) oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;

(g) oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

Article 15

Duties of persons responsible for the control of annual and consolidated accounts

Member States shall provide that any person authorised in accordance with Directive 2006/43/EC[17] and performing in an investment firm the tasks described in Article 73 of Directive 2009/65/EC[18] or Article 34 of Directive 2013/34/EU or any other statutory task, has a duty to report promptly to the competent authorities any fact or decision concerning that investment firm, or concerning an undertaking that has close links with that investment firm which:

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[17] Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

[18] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 17.11.2009, p. 32).

(a) constitutes a material breach of the laws, regulations or administrative provisions laid down pursuant to this Directive;

(b) may affect the continuous functioning of the investment firm; or

(c) may lead to a refusal to certify the accounts or can lead to the expression of reservations.

Section 3

Penalties, investigatory powers and right of appeal

Article 16

Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory powers referred to in Section 4 of Chapter 2, including investigatory powers and powers of competent authorities to impose remedies, and the right for Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative sanctions and other administrative measures and ensure that their competent authorities may impose such sanctions and measures in respect of breaches of national provisions transposing this Directive and of [Regulation (EU)---/----[IFR], including where the following occurs:

(a) an investment firm fails to have in place internal governance arrangements as set out in Article 24;

(b) an investment firm fails to report to the competent authorities, in breach of Article 52(1)(b) of [Regulation (EU) ---/----IFR], information on compliance with the obligation to meet capital requirements as set out in Article 11 of that Regulation, or provides incomplete or inaccurate information;

(c) an investment firm fails to report to the competent authorities, in breach of Article 34 of [Regulation (EU) ---/----], information about concentration risk or provides incomplete or inaccurate information;

(d) an investment firm incurs a concentration risk in excess of the limits set out in Article 36 of [Regulation (EU) ---/----[IFR], without prejudice to Articles 37 and 38 of that Regulation;

(e) an investment firm repeatedly or persistently fails to hold liquid assets in breach of Article 42 of [Regulation (EU) ---/----[IFR], without prejudice to Article 43 of that Regulation;

(f) an investment firm fails to disclose information, or provides incomplete or inaccurate information, in breach of the provisions set out in Part Six of [Regulation (EU) ---/----[IFR];

(g) an investment firm makes payments to holders of instruments included in the own funds of the investment firm where Articles 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;

(h) an investment firm is found liable for a serious breach of national provisions adopted pursuant to Directive (EU) 2015/849[19];

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[19] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(i) an investment firm allows one or more persons not complying with Article 91 of Directive 2013/36/EU to become or remain a member of the management body.

Member States that do not lay down rules on administrative sanctions for breaches which are subject to national criminal law shall communicate to the Commission the relevant criminal law provisions.

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

2. The administrative sanctions and other administrative measures referred to in the first subparagraph of paragraph 1 shall include the following:

(a) a public statement which identifies the natural or legal person, investment firm, investment holding company or mixed financial holding company responsible and the nature of the breach;

(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from repeating that conduct;

(c) a temporary ban for members of the investment firm's management body or for any other natural persons to exercise functions in investment firms;

(d) in case of a legal person, administrative pecuniary sanctions of up to 10% of the total annual net turnover, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding business year;

(e) in the case of a legal person, administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided due to the breach where those profits or losses can be determined;

(f) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [date of entry into force of this Directive].

Where an undertaking referred to in point (d) is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Member States shall ensure that where an investment firm is in breach of national provisions transposing this Directive or in breach of [Regulation (EU) ---/----[IFR], sanctions may be applied by the competent authority to the members of the management body and to other natural persons who under national law are responsible for the breach.

3. Member States shall ensure that when determining the type of administrative sanctions or administrative measures referred to in paragraph 1 and the level of administrative pecuniary sanctions, competent authorities shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal persons responsible for the breach;

(c) the financial strength of the natural or legal persons responsible for the breach, including the total turnover of legal persons or the annual income of natural persons;

(d) the importance of profits gained or losses avoided by the legal persons responsible for the breach;

(e) any losses incurred by third parties as a result of the breach;

(f) the level of cooperation with the relevant competent authorities;

(g) previous breaches by the natural or legal persons responsible for the breach;

(h) any potential systemic consequences of the breach.

Article 17

Investigatory powers

Member States shall ensure that competent authorities have all information gathering and investigatory powers that are necessary for the exercise of their functions, including:

(a) the power to require information from the following natural or legal persons:

(i) investment firms established in the Member State concerned;

(ii) investment holding companies established in the Member State concerned;

(iii) mixed financial holding companies established in the Member State concerned;

(iv) mixed--activity holding companies established in the Member State concerned;

(v) persons belonging to the entities referred to in points (i) to (iv);

(vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities.

(b) the power to conduct all necessary investigations on any person referred to in point (a) that is established or located in the Member State concerned, including the right:

(i) to require the submission of documents by the persons referred to in point (a);

(ii) to examine the books and records of the persons referred to in point (a) and to make copies or extracts from those books and records;

(iii) to obtain written or oral explanations from the persons referred to in point (a) or from their representatives or staff;

(iv) to interview any other relevant person for the purposes of collecting information on the subject matter of an investigation;

(c) the power to conduct all necessary inspections at the business premises of the legal persons referred to in point (a) and any other undertakings included in the supervision of compliance with the group capital test, where the competent authority is the group supervisor, subject to the prior notification of other competent authorities concerned.

Article 18

Publication of administrative sanctions and measures

1. Member States shall ensure that competent authorities publish on their official website any administrative sanctions and measures imposed in accordance with Article 16 and which has not been appealed or can no longer be appealed, without undue delay. That publication shall include information on the type and nature of the breach and the identity of the natural or legal person on whom the sanction is imposed or against whom the measure is taken. The information shall only be published after that person has been informed of those sanctions or measures and to the extent the publication is necessary and proportionate.

2. Where Member States permit the publication of administrative sanctions or measures imposed in accordance with Article 16 against which there has been an appeal, competent authorities shall also publish on their official website information on the appeal status and on the outcome of the appeal.

3. Competent authorities shall publish the administrative sanctions or measures imposed in accordance with Article 16 on an anonymous basis in any of the following cases:

(a) the sanction has been imposed on a natural person and publication of that person's personal data is found to be disproportionate;

(b) the publication would jeopardise an ongoing criminal investigation or the stability of financial markets;

(c) the publication would cause disproportionate damage to the investment firms or natural persons involved.

4. Competent authorities shall ensure that information published pursuant to this Article remains on their official website for at least five years. Personal data may only be retained on the official website of the competent authority where permitted by the applicable data protection rules.

Article 19

Reporting sanctions to EBA

Competent authorities shall inform EBA of administrative sanctions and measures imposed pursuant to Article 16, of any appeal against those sanctions and measures and of the outcome thereof. EBA shall maintain a central database of administrative sanctions and measures communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible only to competent authorities and ESMA and it shall be updated regularly, and at least annually.

EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and measures in accordance with Article 16 and shall state the period for which each Member State publishes administrative sanctions and measures.

Article 20

Reporting of breaches

1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to enable prompt reporting of potential or actual breaches of national provisions transposing this Directive and of [Regulation (EU) ---/----[IFR] to competent authorities.

These mechanisms shall include the following:

(a) specific procedures for the reception, treatment and follow-up of such reports, including the establishment of secure communication channels;

(b) appropriate protection against retaliation, discrimination or other types of unfair treatment by the investment firm for employees of investment firms who report breaches committed within the investment firm;

(c) protection of personal data concerning both the person who reports the breach and the natural person who is allegedly responsible for that breach, in accordance with Regulation (EU) No 2016/679;

(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the investment firm, unless disclosure is required by national law in the context of further investigations or subsequent administrative or judicial proceedings.

2. Member States shall require investment firms to have in place appropriate procedures for their employees to report breaches internally through a specific and independent channel. Those procedures may be provided for by social partners provided that those procedures offer the same protection as the protection referred to in points (b), (c) and (d) of paragraph 1.

Article 21

Right of appeal

Member States shall ensure that decisions and measures taken pursuant to [Regulation (EU) ---/---- [IFR] or pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to a right of appeal.

CHAPTER 2

Review process

Section 1

INTERNAL CAPITAL ADEQUACY AND RISK ASSESSMENT PROCESS

Article 22

Internal Capital and Liquid Assets

1. Investment firms which do not meet the conditions set out in Article 12 (1) of [Regulation (EU) ---/----[IFR] shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that they consider adequate to cover the nature and level of risks which they may pose to others and to which the firms themselves are or might be exposed.

2. The arrangements, strategies and processes referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned. They shall be subject to regular internal review.

Competent authorities may request investment firms which meet the conditions set out in Article 12 (1) of [Regulation (EU) ---/----[IFR] to apply the requirements provided for in this Article to the extent the competent authorities deem it appropriate.

Section 2

Internal governance, transparency, treatment of risks and remuneration

Article 23

Scope for the purposes of the application of this Section

This Section shall not apply where, on the basis of Article 12(1) of [Regulation (EU) ---/----[IFR] , an investment firm determines that it meets all of the conditions set out therein.

2a. Where an investment firm, which has not met all of the conditions set out in Article 12(1) of [Regulation ---/---- [IFR] subsequently meets those conditions, this Section shall only cease to apply after a period of 6 months from the date when those conditions are met. This section shall cease to apply to an investment firm after a period mentioned in the previous sentence only if during this period the investment firm continued to meet the conditions set out in Article 12(1) of [Regulation ---/---- [IFR] without interruption and that it notified the competent authority accordingly.

3.Where an investment firm determines that it no longer meets all of the conditions set out in that Article 12(1) of [Regulation (EU) ---/----[IFR], it shall notify the competent authority and comply with this Section within 12 months of the date on which that assessment took place.

3a. Member States shall require investment firms to apply the provisions laid down in Article 30 to remuneration awarded for services provided for or performance in the financial year following the financial year in which the assessment referred to in Paragraph 3 took place.

Where this Section applies and Article 8 of [Regulation (EU) ---/---- [IFR] is applied, Member States shall ensure that it is applied to investment firms on an individual basis.

Where this Section applies and Article 7 of [Regulation (EU) ---/---- [IFR] is applied, Member States shall ensure that this Section is applied to investment firms on an individual and consolidated basis. As a derogation from the first sentence, this Section shall not apply to subsidiary undertakings included in the prudentially consolidated situation as defined in Article 4(1)(10) of [Regulation (EU) ---/---- [IFR] and established in third countries, where the parent undertaking in the Union can demonstrate to the competent authorities that the application of this Section is unlawful under the laws of the third country where those subsidiaries are established.

Article 24

Internal governance

1. Member States shall ensure that investment firms have robust governance arrangements, including all of the following:

(a) a clear organisational structure with well defined, transparent and consistent lines of responsibility;

(b) effective processes to identify, manage, monitor and report the risks investment firms are or might be exposed to, or pose or might pose to others;

(c) adequate internal control mechanisms, including sound administration and accounting procedures;

(d) remuneration policies and practices that are consistent with and promote sound and effective risk management.

Those remuneration policies and practices shall be gender neutral.

2. When establishing the arrangements referred to in paragraph 1, the criteria set out in Articles 26 to 31 of this Directive shall be taken into account.

3. The arrangements referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

4. EBA, in consultation with ESMA, shall issue guidelines on the application of the governance arrangements referred to in paragraph 1.

EBA, in consultation with ESMA, shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on gender-neutral remuneration policies for investment firms.

Within two years of the date of publication of those guidelines, based on the information collected by the competent authorities, EBA shall issue a report on the application of gender neutral remuneration policies by investment firms.";

Article 25

Country-by-country reporting

1. Member States shall require investment firms having a branch or a subsidiary that is a financial institution as defined in Article 4(1)(26) of Regulation (EU) No 575/2013 in a Member State or in a third country other than that in which the authorisation of the investment firm was granted, to disclose, by Member State and by third country, the following information on an annual basis:

(a) the name, nature of activities and location of any subsidiaries and branches;

(b) the turnover;

(c) the number of employees on a full time equivalent basis;

(d) the profit or loss before tax;

(e) the tax on profit or loss;

(f) the public subsidies received.

2. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of that investment firm.

Article 26

Treatment of risks

1. Member States shall ensure that the management body of the investment firm approves and periodically reviews the strategies and policies on the risk appetite of the investment firm, and on managing, monitoring and mitigating the risks the investment firm is or may be exposed to, taking into account the macroeconomic environment and the business cycle of the investment firm.

2. Member States shall ensure that the management body devotes sufficient time to ensure proper consideration of the matters referred to in paragraph 1 and that it allocates adequate resources to the management of all material risks to which the investment firm is exposed.

3. Member States shall ensure that investment firms establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.

4. Member States shall require all investment firms that do not meet the criteria set out in point (a) of Article 30(4) to establish a risk committee composed of members of the management body who do not perform any executive function in the investment firm concerned.

Members of the risk committee referred to in the first subparagraph shall have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the investment firm. They shall ensure that the risk committee advises the management body on the investment firm's overall current and future risk appetite and strategy and assists the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for the firm´s risk strategies and policies.

5. Member States shall ensure that the management body in its supervisory function and, where one has been established, the risk committee of that management body, has access to information on the risks to which the firm is or may be exposed.

Article 27

Treatment of risks

1. Competent authorities shall ensure that investment firms have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of the following:

(a) material sources and effects of risk to clients, and any material impact upon own funds;

(b) material sources and effects of risk to market and any material impact upon own funds;

(c) material sources of risks to the investment firm, in particular those which can deplete the level of own funds available;

(d) liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that the investment firm maintains adequate levels of liquid resources, including in respect of addressing material sources of risks under points (a) to (c).

The strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, scope of operation of the investment firm and risk tolerance set by the management body, and shall reflect the investment firm's importance in each Member State in which it carries out business.

For the purposes of point (a) of the first subparagraph, and the second subparagraph, national law governing segregation applicable to client money held shall be considered.

For the purposes of point (a) of the first paragraph, investment firms shall consider holding a professional indemnity insurance as an effective tool in their management of risks.

For the purposes of point (c), material sources of risk to the firm itself shall include, if relevant, material changes in the book value of assets, including any claims on tied agents, failure of clients or counterparties, positions in financial instruments, foreign currencies and commodities and obligations to defined benefit pension schemes.

Investment firms shall give due consideration to any material impact upon own funds where such risks are not appropriately captured by the capital requirements calculated under Article 11 of [Regulation (EU) ---/----[IFR].

1a. Competent authorities shall require that investment firms, by taking into account the viability and sustainability of their business models and strategies, give due consideration, should they need to wind-down or cease activities, to requirements and needed resources which are realistic, in terms of timescale and maintenance of own funds and liquid resources, throughout the process of exiting the market.

2. By way of derogation from Article 23, points (a), (c) and (d) of paragraph 1 shall apply to investment firms that meet the conditions set out in Article 12(1) of [Regulation (EU) ---/----[IFR].

3. The Commission is empowered to adopt delegated acts in accordance with Article 54 to supplement this Directive to ensure that the strategies, policies, processes and systems of investment firms are robust. The Commission shall thereby take into account developments in financial markets, and in particular the emergence of new financial products, developments in accounting standards and developments that facilitate the convergence of supervisory practices.

Article 28

Remuneration policies

1. Member States shall ensure that investment firms, when establishing and applying their remuneration policies for categories of staff including senior management, risk takers, staff engaged in control functions and for any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, and whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages, comply with the following principles:

(a) the remuneration policy is clearly documented and proportionate to the size, internal organisation and nature, as well as to the scope and complexity, of the activities of the investment firm;

(aa) the remuneration policy is a gender neutral remuneration policy;"

(b) the remuneration policy is consistent with and promotes sound and effective risk management;

(ba) the remuneration policy is in line with the business strategy and objectives of the investment firm, and also takes into account long term effects of the investment decisions taken;

(c) the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;

(d) the management body in its supervisory function adopts and periodically reviews the remuneration policy and has the overall responsibility for overseeing its implementation;

(e) the implementation of the remuneration policy is, at least annually, subject to a central and independent internal review by control functions;

(f) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, regardless of the performance of the business areas they control;

(g) the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 31 or, where such a committee has not been established, by the management body in its supervisory function;

(h) the remuneration policy, taking into account national rules on wage setting, makes a clear distinction between the criteria applied to determine the following:

(i) basic fixed remuneration, which primarily reflects relevant professional experience and organisational responsibility as set out in an employee's job description as part of his or her terms of employment;

(ii) variable remuneration, which reflects a sustainable and risk adjusted performance of the employee, as well as performance in excess of the employee's job description.

(i) the fixed component shall represent a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

2. For the purposes of point (i) of paragraph 1, Member States shall ensure that investment firms set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the investment firm and associated risks, as well as the impact that different categories of individuals referred to in paragraph 1 have on the risk profile of the investment firm.

3. Member States shall ensure that investment firms establish and apply the principles referred to in paragraph 1 in a manner that is appropriate to their size and internal organisation and to the nature, the scope and complexity of their activities.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile as referred to in paragraph 1. EBA and ESMA shall take due account of Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector as well as existing remuneration guidelines under UCITS, AIFMD and MiFID II and aim to minimise divergence from existing provisions.

EBA shall submit those draft regulatory technical standards to the Commission by [18 months from the date of entry into force of this Directive].

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

Article 29

Investment firms that benefit from extraordinary public financial support

Member States shall ensure that where an investment firm benefits from extraordinary public financial support as defined to in Article 2(1)(28) of Directive 2014/59/EU:

(a) it does not pay any variable remuneration to members of the management body;

(b) where variable remuneration paid to staff other than members of the management body would be inconsistent with the maintenance of a sound capital base of an investment firm and its timely exit from extraordinary public financial support, variable remuneration shall be limited to a portion of net revenue

Article 30

Variable remuneration

1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm to categories of staff referred to in Article 28(1) complies with all of the following requirements under the same conditions as those set out in Article 28(3):

(a) where variable remuneration is performance related, the total amount of variable remuneration shall be based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;

(b) when assessing the performance of the individual, both financial and non-financial criteria shall be taken into account;

(c) the assessment of the performance referred to in point (a) shall be based on a multi-year period, taking into account the business cycle of the investment firm and its business risks;

(d) the variable remuneration shall not affect the investment firm's ability to ensure a sound capital base;

(e) there shall be no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and when the investment firm has a strong capital base;

(f) payments relating to the early termination of an employment contract shall reflect performance achieved over time by the individual and shall not reward failure or misconduct;

(g) remuneration packages relating to compensation or buy out from contracts in previous employment shall be aligned with the long-term interests of the investment firm;

(h) the measurement of performance used as a basis to calculate pools of variable remuneration shall take into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) ---/----[IFR];

(i) the allocation of the variable remuneration components within the investment firm shall take into account all types of current and future risks;

(j) at least 50% of the variable remuneration shall consist of any of the following instruments:

(1) shares, or subject to the legal structure of the investment firm concerned, equivalent ownership interests;

(2) share-linked instruments, or subject to the legal structure of the investment firm concerned, equivalent non-cash instruments;

(3) additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;

(4) non-cash instruments which reflect the instruments of the portfolios managed;

(ja) by way of derogation from point (j), where an investment firm does not issue any of the instruments referred to in that point, national competent authorities may approve the use of alternative arrangements fulfilling the same objectives;

(k) at least 40% of the variable remuneration shall be deferred over a three to five year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of a variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60%;

(l) up to 100% of the variable remuneration shall be contracted where the financial performance of the investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question:

(i) participated in or was responsible for conduct which resulted in significant losses for the investment firm;

(ii) is no longer considered fit and proper;

(m) discretionary pension benefits shall be in line with the business strategy, objectives, values and long-term interests of the investment firm.

2. For the purposes of paragraph 1, Member States shall ensure the following:

(a) individuals referred to in Article 28(1) shall not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles referred to in paragraph 1;

(b) variable remuneration shall not be paid through financial vehicles or methods that facilitate the non-compliance with this Directive or Regulation (EU) ---/----[IFR].

3. For the purposes of point (j) of paragraph 1, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.

For the purposes of point (k) of paragraph 1, the deferral of the variable remuneration shall vest no faster than on a pro-rata basis.

For the purposes of point (m) of paragraph 1, where an employee leaves the investment firm before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in point (j). Where an employee reaches retirement age, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j), subject to a five-year retention period by that employee.

4. Points (j) and (k) of paragraph 1 and the third subparagraph of paragraph 3 shall not apply to:

(a) an investment firm, the value of on- and off-balance sheet assets of which is on average equal to or less than EUR 100 million over the four-year period immediately preceding the given financial year;

(b) an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of this individual's total annual remuneration.

4a. By way of derogation from point (a) of paragraph 4, a Member State may increase the threshold referred to therein provided that the investment firm meets the following criteria:

(a) the investment firms in relation to which the Member State makes use of this provision are not, in the Member State in which they are established, one of the three largest investment firms in terms of total value of assets

(b) the investment firm is subject to no obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;

(c) the size of the investment firms' on- and off-balance sheet trading-book business is equal to or less than EUR 150 Million;

(d) the size of the investment firms' on- and off-balance sheet derivative business is equal to or less than EUR 100 Million;

(e) the threshold does not exceed EUR 300 Million; and

(f) it is appropriate to increase the threshold taking into account the nature and scope of the firm's activities, their internal organisation, or, where applicable, the characteristics of the group to which they belong.

4b. By way of derogation from point (a) of paragraph 4, a Member State may lower the threshold referred to therein provided that it is appropriate to lower the threshold taking into account the nature and scope of the firm's activities, their internal organisation, or, where applicable, the characteristics of the group to which they belong.

4c. By way of derogation from point (b) of paragraph 4, a Member State may decide that staff members entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein 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.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in paragraph 1(j)(3) as well as to specify possible alternative arrangements set out in paragraph 1(ja).

EBA shall submit those draft regulatory technical standards to the Commission by [18 months from the date of entry into force of this Directive].

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

7. EBA, in consultation with ESMA, shall adopt guidelines facilitating the implementation of paragraphs 4, 4a and 4b and ensuring their consistent application.

Article 31

Remuneration committee

1. Member States shall ensure that investment firms which do not meet the criteria set out in point (a) of Article 30(4) establish a remuneration committee. That remuneration committee shall be gender balanced and exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee may be established at group level.

2. Member States shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the investment firm concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm concerned. Where employee representation in the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.

3. When preparing the decisions referred to in paragraph 2, the remuneration committee shall take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the investment firm.

Article 32

Oversight of remuneration policies

1. Member States shall ensure that competent authorities collect the information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of [Regulation (EU) ---/----[IFR] as well as the information provided by investment firms on the gender pay gap and use that information to benchmark remuneration trends and practices.

Competent authorities shall provide that information to EBA.

2. EBA shall use the information received from the competent authorities in accordance with paragraph 1 and paragraph 4 to benchmark remuneration trends and practices at Union level.

3. EBA, in consultation with ESMA, shall issue guidelines on the application of sound remuneration policies. Those guidelines shall take into account at least the requirements referred to in Articles 28 to 31 and principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC[20].

4. Member States shall ensure that investment firms provide competent authorities with information on the number of natural persons per investment firm that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including information on their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution.

Member States shall ensure that investment firms provide competent authorities, upon demand, the total remuneration figures for each member of the management body or senior management.

Competent authorities shall forward the information referred to in the first and second subparagraphs to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA, in consultation with ESMA, may elaborate guidelines to facilitate the implementation of this paragraph and to ensure the consistency of the information collected.

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[20] Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

Article 32a

EBA report on ESG-related risks

EBA shall prepare a report on the introduction of technical criteria related to exposures to activities associated substantially with environmental, social, and governance (ESG) objectives for the supervisory review and evaluation process of risks, with a view to assessing the possible sources and effects of such risks on investment firms, taking into account the ESG taxonomy [add reference to legal text when available].

The EBA report referred to in the first subparagraph shall comprise at least the following:

(a) a definition of ESG-related risks, physical risks, and transition risks related to the transition into a more sustainable economy; including risks related to the depreciation of assets due to regulatory change, 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 investment firm;

(b) an assessment whether significant concentrations of specific assets might increase ESG-related risks, physical risks, and transition risks for an investment firm;

(c) a description of the processes which an investment firm may use to identify, assess, and manage ESG-related risks, physical risks and transition risks;

(d) the criteria, parameters and metrics which supervisors and investment firms may use to assess the impact of short, medium and long term ESG-related risks for the purposes of the supervisory review and evaluation process.

EBA shall submit the 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 Directive].

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

Section 3

Supervisory review and evaluation process

Article 33

Supervisory review and evaluation

1. Competent authorities shall review, to the extent relevant and necessary, taking into account the investment firm's size, risk profile and business model, the arrangements, strategies, processes and mechanisms implemented by investment firms to comply with this Directive and [Regulation (EU) ---/----[IFR] and evaluate the following as appropriate and relevant, so as to ensure a sound management and coverage of their risks:

(a) the risks referred to in Article 27;

(b) the geographical location of an investment firm's exposures;

(c) the business model of the investment firm;

(d) the assessment of systemic risk, taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 or recommendations of the ESRB;

(da) the risks posed to the security of investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes and data and assets;

(e) the exposure of investment firms to the interest rate risk arising from non-trading book activities;

(f) governance arrangements of investment firms and the ability of members of the management body to perform their duties.

For the purposes of this paragraph, competent authorities shall duly take into account whether investment firms hold a professional indemnity insurance.

2. Member States shall ensure that competent authorities establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, nature, scale and complexity of the activities of the investment firms concerned and, where relevant, its systemic importance, and taking into account the principle of proportionality.

Competent authorities shall decide on a case-by-case basis whether and in which form the review and evaluation shall be carried out with regard to investment firms that meet the conditions set out in Article 12(1) of [Regulation (EU) ---/---- [IFR]], only where they deem it necessary due to the size, nature, scale and complexity of the activities of those firms.

For the purposes of the first subparagraph, national law governing segregation applicable to client money held shall be considered.

5. When conducting the review and evaluation referred to in point (f) of paragraph 1, competent authorities shall have access to agendas, minutes and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

6. The Commission is empowered to adopt delegated acts in accordance with Article 54 to supplement this Directive to ensure that the arrangements, strategies, processes and mechanisms of investment firms ensure a sound management and coverage of their risks. The Commission shall thereby take into account developments in financial markets, and in particular the emergence of new financial products, developments in accounting standards and developments that facilitate the convergence of supervisory practices.

Article 34

Ongoing review of the permission to use internal models

1. Member States shall ensure that competent authorities review on a regular basis, and at least every 3 years, investment firms' compliance with the requirements for the permission to use internal models as referred to in Article 22 of [Regulation (EU) ---/----]. Competent authorities shall in particular have regard to changes in an investment firm's business and to the implementation of those models to new products, and review and assess whether the investment firm uses well developed and up-to-date techniques and practices for those models. Competent authorities shall ensure that material deficiencies identified in the coverage of risk by an investment firm's internal models are rectified, or take steps to mitigate their consequences, including by imposing capital add-ons or higher multiplication factors.

2. Where, for internal risk-to-market models, numerous overshootings as referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the models are not or are no longer accurate, competent authorities shall revoke the permission to use the internal models or impose appropriate measures to ensure that the models are improved promptly and within a set timeframe.

3. Where an investment firm that has been granted permission to use internal models no longer meets the requirements for applying those models, competent authorities shall require either demonstration that the effect of non-compliance is immaterial or presentation of a plan and a deadline to comply with those requirements. Competent authorities shall require improvements to the presented plan where that plan is unlikely to result in full compliance or where the deadline is inappropriate.

Where it is unlikely that the investment firm shall comply by the prescribed deadline or has not satisfactorily demonstrated that the effect of non-compliance is immaterial, Member States shall ensure that competent authorities revoke the permission to use internal models or limit it to compliant areas or to those areas where compliance can be achieved by an appropriate deadline.

4. EBA shall analyse internal models across investment firms and shall analyse how investment firms using internal models treat similar risks or exposures. It shall inform ESMA thereof.

In order to promote consistent, efficient and effective supervisory practices, EBA shall, on the basis of that analysis and in accordance with Article 16 of Regulation (EU) No 1093/2010, develop guidelines with benchmarks on how investment firms should use internal models and how those internal models should treat similar risks or exposures.

Member States shall encourage competent authorities to take into account that analysis and those guidelines for the review referred to in paragraph 1.

Section 4

Supervisory measures and powers

Article 35

Supervisory measures

Competent authorities shall require investment firms to take, at an early stage, the measures necessary to address the following problems:

(a) the investment firm does not meet the requirements of this Directive or of [Regulation (EU) ---/----[IFR];

(b) competent authorities have evidence that the investment firm is likely to breach [Regulation (EU) ---/----[IFR] or the provisions transposing this Directive within the next 12 months.

Article 36

Supervisory powers

1. Member States shall ensure that competent authorities have the necessary supervisory powers to intervene in the exercise of their functions into the activity of investment firms in an effective and proportionate way.

2. For the purposes of Article 33, Article 34(3) and Article 35 and of the application of [Regulation (EU)---/----[IFR], competent authorities shall have the following powers:

(a) to require investment firms to have additional capital in excess of the requirements set out in Article 11 of [Regulation (EU) ---/----[IFR], under the conditions laid down in Article 37 of this Directive, or to adjust the capital and liquid assets required in case of material changes in the business of those investment firms;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 22 and 24;

(c) to require investment firms to present, within one year, a plan to comply with supervisory requirements pursuant to this Directive and to [Regulation (EU) ---/----[IFR], to set a deadline for the implementation of that plan and require improvements to that plan regarding scope and deadline;

(d) to require investment firms to apply a specific provisioning policy or treatment of assets in terms of capital requirements;

(e) to restrict or limit the business, operations or network of investment firms or to request the divestment of activities that pose excessive risks to the financial soundness of an investment firm;

(f) to require the reduction of the risk inherent in the activities, products and systems of investment firms, including outsourced activities;

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

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

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

(j) to impose additional or more frequent reporting requirements to those set out in this Directive and [Regulation (EU) ---/----[IFR], including reporting on capital and liquidity positions;

(k) to impose specific liquidity requirements in accordance with the provisions set out in Article 38a";

(l) to require additional disclosures;

(la) to require investment firms to reduce the risks posed to the security of investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes, data and assets;

For the purposes of point (j), competent authorities may only impose additional or more frequent reporting requirements on investment firms 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) or (b) of Article 35 has been met;

(b) the competent authority considers it necessary to gather the evidence referred to in Article 35(b).

(ba) the additional information is required for the purpose of the supervisory review and evaluation process referred to in Article 33.

Information shall be deemed as duplicative where the competent authority already has the same or substantially the same information, where that information may be produced by the competent authority or may be obtained by the same competent authority through other means than a requirement on the investment firm to report it. A competent authority shall not require additional information where the information is available to the competent authority in a different format or level of granularity than the additional information to be reported and that different format or granularity does not prevent it from producing substantially similar information.

Article 37

Additional capital requirement

1. Competent authorities shall impose the additional capital requirement referred to in Article 36(2)(a) only where, on the basis of the reviews carried out in accordance with Articles 33 and 34 , they ascertain any of the following situations for an investment firm :

(a) the investment firm is exposed to risks or elements of risks, or poses risks to others that are material and are not covered or not sufficiently covered by the capital requirement, and especially K-factor capital requirements, set out in Part Three or Four of [Regulation (EU) ---/----[IFR];

(b) the investment firm does not meet the requirements set out in Articles 22 and 24 and other supervisory measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;

(c) the adjustments in relation to the prudent valuation of the trading book are insufficient to enable the investment firm 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 with Article 34 shows that noncompliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital;

(e) the investment firm repeatedly fails to establish or maintain an adequate level of additional capital as set out in Article 38.

2. For the purpose of paragraph 1(a), risks or elements of risk shall only be considered as not covered or not sufficiently covered by the capital requirements set out in Parts Three and Four of [Regulation (EU) ---/----[IFR] where the amounts, types and distribution of capital considered adequate by the competent authority following the supervisory review of the assessment carried out by investment firms in accordance with Article 22(1) are higher than the investment firm's capital requirement set out in Part Three or Four of [Regulation (EU) ---/---[IFR].

For the purpose of the first subparagraph, the capital considered adequate may include risks or elements of risks that are explicitly excluded from the capital requirement set out in Parts Three or Four of [Regulation (EU) ---/----[IFR].

3. Competent authorities shall determine the level of the additional capital required pursuant to Article 36(2)(a) as the difference between the capital considered adequate pursuant to paragraph 2 of this Article and the capital requirement set out in Part Three or Four of [Regulation (EU) ---/---- [IFR].

4. Competent authorities shall require investment firms to meet the additional capital requirement referred to in Article 36(2)(a) with own funds subject to the following conditions:

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

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

(c) those own funds shall not be used to meet any of the capital requirements set out in points (a), (b) and (c) of Article 11 of [Regulation (EU) ---/----[IFR].

5. Competent authorities shall substantiate in writing their decision to impose an additional capital requirement as referred to in Article 36(2)(a) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 4 of this Article. That includes, in the case set out in paragraph 1(d) of this Article, a specific statement of why the level of capital established in accordance with Article 38(1) is no longer considered sufficient.

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify how the risks and elements of risks referred to in paragraph 2 shall be measured, including risks or elements of risks that are explicitly excluded from the capital requirement set out in Parts Three or Four of [Regulation (EU) ---/---[IFR].

EBA shall ensure that the draft regulatory technical standards include indicative qualitative metrics for the amounts of additional capital referred to in Article 36(2)(a), taking into account the range of different business models and legal forms that investment firms may take, and are proportionate in light of:

(a) the implementation burden on investment firms and competent authorities;

(b) the possibility that the higher level of capital requirements that apply where investment firms do not use internal models may justify the imposition of lower capital requirements when assessing risks and elements of risks in accordance with paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by [18 months from the date of entry into force of this Directive].

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

7. Competent authorities may impose an additional capital requirement in accordance with paragraphs 1 to 6 to investment firms that meet the conditions set out in Article 12 (1) of [Regulation (EU) ---/----[IFR] on the basis of a case-by-case assessment and when the competent authority deems justified.

Article 38

Guidance on capital adequacy

1. Taking into account the principle of proportionality and commensurate with the size, systemic importance, nature, scale and complexity of activities performed by investment firms that do not meet the conditions set out in Article 12 (1) of [Regulation (EU) ---/----[IFR], competent authorities may require such firms to have levels of capital which, based on Article 22, are sufficiently above the requirements set out in Part Three of [Regulation (EU) --/----[IFR] and in this Directive, including the additional capital requirements referred to in Article 36(2)(a), to ensure that:cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the investment firm to wind-down and cease activities in an orderly manner;

2. Competent authorities shall, where appropriate, review the level of capital that has been set by each investment firm that does not meet the conditions set out in Article 12 (1) of [Regulation (EU) ---/----[IFR], in accordance with paragraph 1 and, where relevant, communicate the conclusions of that review to the investment firm concerned, including any expectation for adjustments to the level of capital established in accordance with paragraph 1. Such a communication shall include the date by which the competent authority requires the adjustment to be completed.

Article 38a

Specific liquidity requirements

1. Competent authorities shall impose the specific liquidity requirements referred to in Article 36(2)(k) only where, on the basis of the reviews carried out in accordance with Articles 35 and 36, they conclude that an investment firm, that does not meet the criteria set out in Article 12(1) of [Regulation (EU) ---/---[IFR] or that meets the criteria set out in Article 12(1) of [Regulation (EU) ---/---[IFR] but has not been exempted from liquidity requirement as per Article 42(1) of [Regulation (EU) ---/---[IFR], is in one of the following situations:

(a) the investment firm is exposed to liquidity risk or elements of liquidity risk that are material and not covered or not sufficiently covered by the liquidity requirement set out in Part Five of [Regulation (EU) ---/----[IFR];

(b) the investment firm does not meet the requirements set out in Articles 22 and 24 and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;

2. For the purpose of paragraph 1(a), liquidity risk or elements of liquidity risk shall only be considered as not covered or not sufficiently covered by the liquidity requirement set out in Part Five of [Regulation (EU) ---/----[IFR] where the amounts and types of liquidity considered adequate by the competent authority following the supervisory review of the assessment carried out by investment firms in accordance with Article 22(1) are higher than the investment firm's liquidity requirement set out in Part Five of [Regulation (EU) ---/---[IFR].

3. Competent authorities shall determine the level of the specific liquidity required pursuant to Article 36(2)(k) as the difference between the liquidity considered adequate pursuant to paragraph 2 of this Article and the liquidity requirement set out in Part Five of [Regulation (EU) ---/----[IFR].

3. Competent authorities shall determine the level of the specific liquidity required pursuant to Article 36(2)(k) as the difference between the liquidity considered adequate pursuant to paragraph 2 of this Article and the liquidity requirement set out in Part Five of [Regulation (EU) ---/----[IFR].

5. Competent authorities shall substantiate in writing their decision to impose a specific liquidity requirement as referred to in Article 36(2)(k) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 3 of this Article.

6. EBA, in consultation with ESMA, shall draft regulatory technical standards to specify in a manner that is appropriate to the size, the structure and the internal organisation of investment firms and the nature, scope and complexity of their activities how the liquidity risk and elements of liquidity risk referred to in paragraph 2 shall be measured.

EBA shall submit those draft regulatory technical standards to the Commission by [18 months from the date of entry into force of this Directive]. Power is conferred on the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 39

Cooperation with resolution authorities

Competent authorities shall inform the relevant resolution authorities about the additional capital required pursuant to Article 36(2)(a) for an investment firm that falls under the scope of Directive 2014/59/EU and about any expectation for adjustments as referred to in Article 38(2) in respect to such investment firm.

Article 40

Publication requirements

Member States shall empower the competent authorities to:

(a) require investment firms that do not meet the criteria set out Art. 12 (1) of [Regulation (EU) ---/----[IFR] and investment firms referred to in Article 45(2) of Regulation (EU) ---/----[IFR] to publish the information referred to in Article 45 of [Regulation (EU) ---/----[IFR] more than once per year and to set deadlines for that publication;

(b) require investment firms that do not meet the criteria set out Art. 12 (1) of [Regulation (EU) ---/----[IFR] and investment firms referred to in Article 45(2) of Regulation (EU) ---/----[IFR] to use specific media and locations and in particular their websites for publications other than the financial statements;

(c) require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of investment firms in accordance with Article 24(1) of this Directive and Article 10 of Directive 2014/65/EU.

Article 41

Obligation to inform EBA

1. Competent authorities shall inform EBA of:

(a) their review and evaluation process referred to in Article 33;

(b) the methodology used for decisions referred to in Articles 36 to 38.

EBA shall transmit the information referred to in this paragraph to ESMA.

(c) the level of sanctions laid down by Member States, referred to in Article 16.

2. EBA, in consultation with ESMA, shall assess the information provided by competent authorities to develop consistency in the supervisory review and evaluation process. To complete its assessment, EBA, after consulting ESMA, may request additional information from competent authorities on a proportional basis and in accordance with Article 37 of Regulation (EU) No 1093/2010.

EBA shall publish on its website the aggregated information referred to in point (c) of the first paragraph.

EBA shall report to the European Parliament and the Council on the degree of convergence of the application of this Chapter among Member States. EBA shall conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1093/2010 where necessary. It shall inform ESMA thereof.

EBA and ESMA shall issue guidelines for the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 and Article 16 of Regulation (EU) No 1095/2010 respectively, to further specify, in a manner that is appropriate to the size, the structure and the internal organisation of investment firms and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraph 1 and the assessment of the treatment of the risks referred to in Article 27.

CHAPTER 3

Supervision of investment firm groups

SUPERVISION OF INVESTMENT FIRM GROUPS ON A CONSOLIDATED BASIS AND SUPERVISION OF COMPLIANCE WITH THE GROUP CAPITAL TEST

Article 42

Determination of the group supervisor

1. Member States shall ensure that, where an investment firm group is headed by a Union parent investment firm, supervision on a consolidated basis or supervision of compliance with the group capital test respectively is exercised by the competent authority of that Union parent investment firm.

2. Member States shall ensure that, where the parent undertaking of an investment firm is a Union parent investment holding company or a Union parent mixed financial holding company, supervision on a consolidated basis or supervision of compliance with the group capital test respectively is exercised by the competent authority of that investment firm.

3. Member States shall ensure that, where two or more investment firms authorised in two or more Member States have as their parent the same Union parent investment holding company or the same Union parent mixed financial holding company, supervision on a consolidated basis or supervision of compliance with the group capital test respectively is exercised by the competent authority of the investment firm authorised in the Member State in which the investment holding company or mixed financial holding company was set up.

4. Member States shall ensure that, where the parent undertakings of two or more investment firms authorised in two or more Member States comprise more than one investment holding company or mixed financial holding company with head offices in different Member States and where there is an investment firm in each of those Member States, supervision on a consolidated basis or supervision of compliance with the group capital test respectively shall be exercised by the competent authority of the investment firm with the largest balance sheet total.

5. Member States shall ensure that, where two or more investment firms authorised in the Union have as their parent the same Union investment holding company or Union mixed financial holding company and none of those investment firms has been authorised in the Member State in which the investment holding company or mixed financial holding company was set up, supervision on a consolidated basis or supervision of compliance with the group capital test respectively is exercised by the competent authority of the investment firm with the largest balance sheet total.

6. Competent authorities may, by common agreement, waive the criteria referred to in paragraphs 3 to 5 where their application would not be appropriate for the effective supervision on a consolidated basis or supervision of compliance with the group capital test respectively, taking into account the investment firms concerned and the importance of their activities in the relevant Member States, and designate a different competent authority to supervise compliance with the group capital test. Competent authorities shall in those cases, before adopting any such decision, give the Union parent investment holding company or Union parent mixed financial holding company or investment firm with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that intended decision. Competent authorities shall notify the Commission and EBA of any decision thereof.

Article 43

Information requirements in emergency situations

Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of an investment firm group have been authorised the group supervisor determined pursuant to Article 42 shall, subject to Section 2, Chapter 1 of this Title, alert as soon as practicable, EBA, ESRB and any relevant competent authorities and shall communicate all information essential for the pursuance of their tasks.

Article 44

Colleges of supervisors

1. Member States shall ensure that the group supervisor determined pursuant to Article 42 may, if appropriate, establish colleges of supervisors to facilitate the exercise of the tasks referred to in this Article and to ensure coordination and cooperation with relevant third-country supervisory authorities in particular where this is needed for the purposes of applying paragraphs (1) (c) and (2) of Article 23 of [Regulation (EU) ---/----[IFR] to exchange and update relevant information on the margin model with the supervisory authorities of the QCCPs.

2. Colleges of supervisors shall provide a framework for the group supervisor, EBA and the other competent authorities to carry out the following tasks:

(a) the tasks referred to in Article 43;

(a1) coordination of information requests where this is necessary for facilitating supervision on consolidated basis, in accordance with Article 7 of [Regulation (EU) ---/----[IFR];

(a2) coordination of information requests, in cases where several competent authorities of investment firms that are part of the same group need to request either to the competent authority of a clearing member's home Member State or to the competent authority of the QCCP information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firms;

(b) the exchange of information between all competent authorities and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010 and with ESMA in accordance with Article 21 of Regulation (EU) No 1095/2010;

(c) reaching an agreement on the voluntary delegation between competent authorities of tasks and responsibilities, where appropriate;

(d) increasing the efficiency of supervision by seeking to avoid the unnecessary duplication of supervisory requirements.

3. Where appropriate, colleges of supervisors may also be established where subsidiaries of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company are located in a third country.

4. EBA shall, in accordance with Article 21 of Regulation (EU) No 1093/2010 participate in the meetings of the colleges of supervisors.

5. The following authorities shall be members in the college of supervisors:

(a) the competent authorities responsible for the supervision of subsidiaries of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company;

(b) where appropriate, third countries' supervisory authorities, subject to confidentiality requirements that are equivalent in the opinion of all competent authorities to the requirements laid down in Section 2, Chapter I of this Title.

6. The group supervisor determined pursuant to Article 42 shall chair the meetings of the college and adopt decisions. That group supervisor shall keep all members of the college fully informed in advance of the organisation of those meetings, of the main issues to be discussed and of the activities to be considered. The group supervisor shall also keep all the members of the college fully informed, in a timely manner, of the decisions adopted in those meetings or the measures carried out.

The group supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated by the authorities referred to in paragraph 5 when adopting decisions.

The establishment and functioning of the colleges shall be formalised by written arrangements.

7. In the event of disagreement with a decision adopted by the group supervisor on the functioning of supervisory colleges, any of the competent authorities concerned may refer the matter to EBA and request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the functioning of supervisory colleges under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

8. EBA shall, in consultation with ESMA, develop draft regulatory technical standards to further specify the conditions under which the colleges of supervisors exercise their tasks referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by [18 months from the date of entry into force of this Directive].

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.

Article 45

Cooperation requirements

1. Member States shall ensure that the group supervisor and the competent authorities referred to in Article 44(5) shall provide each other with all relevant information as required, including the following:

(a) identification of the investment firm group's legal and governance structure, including its organisational structure, covering all regulated and non-regulated entities, non-regulated subsidiaries and the parent undertakings, and of the competent authorities of the regulated entities in the investment firm group;

(b) procedures for the collection of information from the investment firms in an investment firm group, and the procedures for the verification of that information;

(c) any adverse developments in investment firms or in other entities of an investment firm group, which could seriously affect those investment firms;

(d) any significant sanctions and exceptional measures taken by competent authorities in accordance with national provisions transposing this Directive;

(e) the imposition of a specific capital requirement under Article 36 of this Directive.

2. Competent authorities and the group supervisor may refer to EBA, in accordance with Article 19(1) of Regulation (EU) No 1093/2010, where relevant information has not been communicated pursuant to paragraph 1 without undue delay or where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable period of time.

EBA may, in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010 and on its own initiative assist competent authorities in developing consistent cooperation practices.

3. Member States shall ensure that competent authorities, before adopting a decision that may be important for other competent authorities' supervisory tasks, consult each other on the following:

(a) changes in the shareholder, organisational or management structure of investment firms in the investment firm group, which require the approval or authorisation of competent authorities;

(b) significant sanctions imposed on investment firms by competent authorities or any other exceptional measures taken by those authorities;

(c) specific capital requirements imposed in accordance with Article 36.

4. The group supervisor shall be consulted where significant sanctions are to be imposed or any other exceptional measures are to be taken by competent authorities as referred to in point (b) of paragraph 3.

5. By way of derogation from paragraph 3, a competent authority is not obliged to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision, in which case the competent authority shall inform the other competent authorities concerned of that decision not to consult without delay.

Article 46

Verification of information concerning entities located in other Member States

1. Member States shall ensure that where competent authorities in one Member State need to verify information about investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings, mixed-activity holding companies or subsidiaries that are located in another Member State, including subsidiaries which are insurance companies, the competent authorities of that other Member State carry out that verification in accordance with paragraph 2.

2. Competent authorities that have received a request pursuant to paragraph 1 shall do any of the following:

(a) carry out the verification themselves within the framework of their competence;

(b) allow the competent authorities who made that request to carry out the verification;

(c) request an auditor or expert to carry out the verification impartially and report the results promptly;

For the purposes of points (a) and (c), the competent authorities that made the request shall be allowed to participate in the verification.

Section 2

Investment holding companies, mixed financial holding companies and mixed-activity holding companies

Article 47

Inclusion of holding companies in supervision of compliance with the group capital test

Member States shall ensure that investment holding companies and mixed financial holding companies are included in the supervision of compliance with the group capital test.

Article 48

Qualifications of directors

Member States shall require that the members of the management body of an investment holding company or mixed financial holding company are of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties taking into account the specific role of an investment holding company or mixed financial holding company.

Article 49

Mixed activity holding companies

1. Member States shall provide that, where the parent of an investment firm is a mixed-activity holding company, the competent authorities responsible for the supervision of the investment firm may:

(a) require that the mixed-activity holding company supply them with any information that may be relevant for the supervision of that investment firm;

(b) supervise transactions between the investment firm and the mixed-activity holding company and its subsidiaries, and require the investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify the information received from mixed-activity holding companies and their subsidiaries.

Article 50

Sanctions

In accordance with Section 3, Chapter 2 of this Title, Member States shall ensure that administrative sanctions or other administrative measures aimed at ending or mitigating breaches or to address the causes of such breaches may be imposed on investment holding companies, mixed financial holding companies and mixed-activity holding companies, or their effective managers, that breach laws, regulations or administrative provisions transposing this Chapter.

Article 51

Assessment of third countries' supervision and other supervisory techniques

1. Member States shall ensure that, where two or more investment firms that are subsidiaries of the same parent undertaking, the head office of which is in a third country, are not subject to effective supervision at group level, the competent authority assesses whether the investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in this Directive and in Part One of [Regulation (EU) ---/---[IFR].

2. Where the assessment referred to in paragraph 1 concludes that no such equivalent supervision applies, Member States shall allow for appropriate supervisory techniques which achieve the objectives of supervision in accordance with Articles 7 or 8 of [Regulation (EU) ---/---- [IFR]. Those supervisory techniques shall be decided by the competent authority which would be the group supervisor had the parent undertaking been established in the Union, after consultation with the other competent authorities involved. Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to EBA and to the Commission.

3. The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Articles 7 or 8 of [Regulation (EU) ---/----[IFR] to that investment holding company or mixed financial holding company.

Article 52

Cooperation with supervisory authorities of third countries

The Commission may submit recommendations to the Council either at the request of a Member State or on its own initiative for the negotiation of agreements with one or more third countries regarding the means of supervising compliance with the group capital test by the following investment firms:

(a) investment firms the parent undertaking of which has its head office in a third country;

(b) investment firms located in third countries, the parent undertaking of which has its head office in the Union.

TITLE V

PUBLICATION BY COMPETENT AUTHORITIES

Article 53

Publication requirements

1. Competent authorities shall make public all of the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State pursuant to this Directive;

(b) the manner of exercise of the options and discretions available pursuant to this Directive and [Regulation (EU) ---/----[IFR];

(c) the general criteria and methodologies they use in the supervisory review and evaluation referred to in Article 33;

(d) aggregate statistical data on key aspects of the implementation of this Directive and [Regulation (EU) ---/----[IFR] in their Member State, including the number and nature of supervisory measures taken in accordance with Article 36(2)(a) and of administrative sanctions imposed in accordance with Article 16.

2. The information published in accordance with paragraph 1 shall be sufficiently comprehensive and accurate to enable a meaningful comparison of the application of points (b), (c) and (d) of paragraph 1 by the competent authorities of the different Member States.

3. The publications shall follow a common format and be updated regularly. They shall be accessible at a single electronic location.

4. EBA, in consultation with ESMA, shall develop draft implementing technical standards to determine the format, structure, content lists and annual publication date of the information listed in paragraph 1.

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.

5. EBA shall submit the draft implementing technical standards referred to in paragraph 4 to the Commission by [18 months from the date of entry into force of this Directive].

TITLE VI

DELEGATED AND IMPLEMENTING ACTS

Article 54

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 27(3) and 33(6) shall be conferred on the Commission for a period of five years from [date of entry into force of this Directive].

3. The delegation of power referred to in Articles 3(2), 27(3) and 33(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(2), 27(3) and 33(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 55

Implementing Acts

The establishment of standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the supervision of investment firms prescribed in Article 11(7) shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 56(2).

Article 56

Committee procedure

1. The Commission shall be assisted by the European Banking Committee established by Commission Decision 2004/10/EC[21]. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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[21] Commission Decision 2004/10/EC of 5 November 2003 establishing the European Banking Committee (OJ L 3, 7.1.2004, p. 36).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

TITLE VII

AMENDMENTS TO OTHER DIRECTIVES

Article 57

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) in the title, the words ‘and investment firms’ are deleted;

(2) Article 1 is replaced by the following:

‘‘Article 1

Subject matter

This Directive lays down rules concerning:

(a) access to the activity of credit institutions;

(b) supervisory powers and tools for the prudential supervision of credit institutions by competent authorities;

(c) the prudential supervision of credit institutions by competent authorities in a manner that is consistent with the rules set out in Regulation (EU) No 575/2013;

(d) publication requirements for competent authorities in the field of prudential regulation and supervision of credit institutions.'';

(3) Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. This Directive shall apply to institutions.";

(b) paragraphs 2 and 3 are deleted;

(c) in paragraph 5, point (1) is deleted;

(d) paragraph 6 is replaced by the following:

6. The entities referred to in points (3) to (24) of paragraph 5 of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3.'';

(4) Article 3(1) is amended as follows:

(a) point (3) is replaced by the following:

(3) ‘institution’ means institution as referred to in Article 4(1)(3) of Regulation No 575/2013.

(b) point (4) is deleted;

(5) Article 5 is replaced by the following:

“Article 5

Coordination within Member States

Member States that have more than one competent authority for the prudential supervision of credit institutions and financial institutions shall take the requisite measures to organise coordination between those authorities.’’;

(6) the following Article 8a is inserted:

‘‘Article 8a

Specific requirements for authorisation of credit institutions referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013

1. Member States shall require the undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU to submit an application for authorisation in accordance with Article 8, at the latest on the following dates:

(a) when the average of monthly total assets, calculated over a period of twelve consecutive months, exceeds EUR 30 billion; or

(b) when the average of monthly total assets calculated over a period of twelve consecutive months is below EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU and have total assets below EUR 30 billion, calculated as an average over a period of twelve consecutive months, exceeds EUR 30 billion.

2. The undertakings referred to in paragraph 1 may continue carrying out the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 until they obtain the authorisation referred to in that paragraph.

3. By way of derogation from paragraph 1, undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 that on [date of entry into force of Directive (EU) ---/----[IFD] - 1 day] are carrying out activities as investment firms authorised under Directive 2014/65/EU, shall apply for authorisation in accordance with Article 8 within [1 year + 1 day after entry into force of Directive (EU) ---/----[IFD].

4. Where the competent authority, after receiving the information in accordance with Article [95a] of Directive 2014/65/EU, determines that an undertaking is to be authorised as a credit institution in accordance with Article 8 of this Directive, it shall notify the undertaking and the competent authority as defined in Article 4(1)(26) of Directive 2014/65/EU and shall take over the authorisation procedure from the date of that notification.

4a. In cases of re-authorisation, the authorising authority shall ensure that the process is as streamlined as possible and that information from existing authorisations is taken into account.

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

(a) the information to be provided by the undertaking to the competent authorities in the application for the authorisation, including the programme of operations provided for in Article 10;

(b) the methodology for calculating the thresholds referred to in paragraph 1.

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

EBA shall submit those draft technical standards to the Commission by ~~st~~ [twelve months from the date of entry into force of this Directive].

(7) in Article 18 the following point (aa) is inserted:

"(aa) uses its authorisation exclusively to engage in the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and has for a period of 5 consecutive years average total assets below the thresholds set out in that Article;";

(7a) Article 20 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. EBA shall publish on its website, and shall update at least annually, a list of the names of all credit institutions that have been granted authorisation.";

(b) the following paragraph is inserted:

"3a. The list referred to in paragraph 2 of this Article shall include the names of undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and shall identify those credit institutions as such. That list shall also outline any changes in comparison with the previous version of the list."

(8a). in Article 21b, paragraph (5) is replaced by the following:

5. For the purposes of this Article:

(a) the total value of assets in the Union of the third-country group shall be the sum of the following:

(i) the amount of total assets of each institution in the Union of the third country-group, as resulting from their consolidated balance sheet or as resulting from their individual balance sheets, where an institution's balance sheet is not consolidated; and

(ii) the amount of total assets of each branch of the third-country group authorised in the Union in accordance with this Directive, Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council*.

(b) the term ‘’institution’’ shall also include investment firms.’’

(8) Title IV is deleted;

(9) in Article 51(1), the first subparagraph is replaced by the following:

“The competent authorities of a host Member State may request the consolidating supervisor, where Article 112(1) applies, or the competent authorities of the home Member State, that a branch of a credit institution shall be considered as significant.’’;

(10) in Article 53, paragraph 2 is replaced by the following:

“2. Paragraph 1 shall not prevent the competent authorities from exchanging information with each other or transmitting information to the ESRB, EBA, or the European Supervisory Authority (European Securities and Markets Authority) ("ESMA") established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council* in accordance with this Directive, with Regulation (EU) No 575/2013, with [Directive (EU) ---/----[IFD] on the prudential supervision of investment firms], with [Regulation (EU) ___/____[IFR] and with other Directives applicable to credit institutions, with Article 15 of Regulation (EU) No 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010. That information shall be subject to paragraph 1.”;

* Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(11) in Article 66(1), the following point (aa) is inserted:

"(aa) carrying out at least one of the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and exceeding the threshold indicated in that Article without being authorised as a credit institution.";

(12) in Article 76(5), the last sentence is deleted.

(13) in Article 86, paragraph 11 is replaced by the following:

"11. Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 8, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. Those operational steps shall include holding collateral immediately available for central bank funding. This includes holding collateral in the currency of another Member State where necessary, or the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.'';

(14) in Article 110, paragraph 2 is deleted;

(14a) Article 111 is replaced by the following:

Determination of the consolidating supervisor

1. Where a parent undertaking is a parent credit institution in a Member State or an EU parent credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent or the EU parent credit institution on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm, and at least one of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution, or where there are several credit institutions, the credit institution with the largest balance sheet total.

2. Where the parent of an institution is a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authority that supervises the institution on an individual basis.

3.Where two or more institutions authorised in the Union have the same parent financial holding company in a Member State, parent mixed financial holding company in a Member State, EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by:

(a) the competent authority of the credit institution where there is only one credit institution within the group;

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

4. Where consolidation is required pursuant to Article 18(3) or (6) of Regulation (EU) No 575/2013, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.

5. By way of derogation from the second subparagraph of paragraph 1, from point (b) of paragraph 3 and from paragraph 4, 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 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.

6. In particular cases, the competent authorities may waive by common agreement the criteria referred to in paragraphs 1, 3 and 4 and appoint a different competent authority to exercise supervision on a consolidated basis where the application of the criteria referred to therein would be inappropriate, taking into account the institutions concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision on a consolidated basis by the same competent authority. In such cases, the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the institution with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.

7. The competent authorities shall notify the Commission and EBA without delay of any agreement falling within paragraph 6.";

(15) in Article 114, paragraph 1 is replaced by the following:

“1. Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches as referred to in Article 51 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Section 2 of Chapter I of Title IV of [Directive (EU) ---/----[IFD] of the European Parliament and of the Council]*, alert as soon as is practicable, EBA and the authorities referred to in Article 58(4) and Article 59 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities.

* [Directive (EU) ---/---- of the European Parliament and of the Council of …… on ……..];”

(16) Article 116 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Title VII, Chapter 1, Section II of this Directive, and, where applicable, Section 2 of Chapter I of Title IV of [Directive (EU) ---/----[IFD] shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive and under Regulation (EU) No 575/2013.";

(b) paragraph 6 is replaced by the following:

"6. 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 and the competent authorities of a host Member State where significant branches as referred to in Article 51 are established, ESCB central banks as appropriate, and third countries' supervisory authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Title VII, Chapter 1, Section II of this Directive and, where applicable, under Section 2 of Chapter I of Title IV of [Directive (EU) ---/---[IFD] Directive 20xx/xx/EU may participate in colleges of supervisors.";

(c) paragraph 9 is replaced by the following:

"9. The consolidating supervisor, subject to the confidentiality requirements under Title VII, Chapter 1, Section II, of this Directive, and where applicable, under Section 2 of Chapter I of Title IV of [Directive (EU) ---/---[IFD], shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.";

In the event of a disagreement between competent authorities on the functioning of supervisory colleges, any of the competent authorities concerned may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the functioning of supervisory colleges under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation. ”

(17) in Article 125, paragraph 2 is replaced by the following:

“2. Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive for credit institutions or under Article 13 of [Directive (EU) ---/----[IFD].”;

(18) in Article 128, the second subparagraph is deleted;

(19) in Article 129, paragraphs 2, 3 and 4 are deleted;

(20) in Article 130, paragraphs 2, 3 and 4 are deleted;

(21) in Article 143(1), point (d) is replaced by the following:

“(d) without prejudice to the provisions set out in Title VII, Chapter 1, Section II of this Directive and where applicable, the provisions set out in Title IV, Chapter 1, Section 2 of [Directive (EU) ---/----[IFD], aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with Article 102(1)(a) and of administrative penalties imposed in accordance with Article 65.”;

Article 57a

Amendment to Directive 2014/59/EU

In Article 2(1), point (3) is replaced by the following:

“(3) ‘investment firm’ means an investment firm as defined in point (20) of Article 4(1) of Regulation [Regulation (EU) ---/----* [IFR] which is subject to the initial capital requirement laid down in Article 8(1) of [Directive (EU) ---/----[IFD].’’.

In Article 45, paragraph 3 is replaced as follows:

3. In accordance with Article 63(3) of Regulation (EU) [----/----IFR], references to Article 92 of Regulation (EU) No 575/2013 in this Directive as regards the own funds requirements of investment firms referred to in point 3 of Article 2(1) of this Directive shall be construed in the following way:

- References to Article 92(1)(c) of Regulation (EU) No 575/2013 as regards the total capital ratio in this Directive shall refer to Article 11(1) of Regulation (EU) [----/----IFR];

- References to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this Directive shall refer to the applicable requirement in Article 11(1) of Regulation (EU) [----/----IFR] multiplied by 12.5.

In accordance with Article 63(3) of Regulation (EU) [----/----IFR], references to Article 104a of Directive 2013/36/EU in this Directive as regards additional own funds requirement of investment firms referred to in point 3 of Article 2(1) of this Directive shall be construed as referring to Article 37 of Directive ---/---/EU [IFD.

Article 58

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 8, point (c) is replaced by the following:

"(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in [Regulation (EU) ---/---[IFR];";

(2) Article 15 is replaced by the following:

"Article 15

Initial capital endowment

"Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Article 8 of [Directive (EU) ---/----[IFD], having regard to the nature of the investment service or activity in question.";

(3) Article 41 is replaced by the following:

Article 41

Granting of the authorisation

"1. The competent authority of the Member State where the third-country firm has established or intends to establish its branch shall only grant authorisation where the competent authority is satisfied that:

(a) the conditions under Article 39 are fulfilled; and

(b) the branch of the third-country firm will be able to comply with the provisions referred to in paragraphs 2 and 3.

The competent authority shall inform the third-country firm, within six months of submission of a complete application, whether or not the authorisation has been granted.

2. The branch of the third-country firm authorised in accordance with paragraph 1, shall comply with the obligations laid down in Articles 16 to 20, 23, 24, 25 and 27, Article 28(1), and Articles 30, 31 and 32 of this Directive and in Articles 3 to 26 of Regulation (EU) No 600/2014 and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.

Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive and shall not treat any branch of third-country firms more favourably than Union firms.

Member States shall ensure that competent authorities notify ESMA on an annual basis of the list of branches of third-country firms active on their territory.

ESMA shall publish on annual basis a list of third-country branches active in the Union, including the name of the third-country firm to which the branch belongs.

3. The branch of the third-country firm that is authorised in accordance with paragraph 1 shall report to the competent authority referred to in paragraph 2 the following information on an annual basis:

(a) the scale and scope of the services and activities carried out by the branch in that Member State;

(aa) for firms performing activity (3) of Section A of Annex I to Directive 2014/65/EU, their monthly minimum, average and maximum exposure to EU counterparties;

(ab) for firms providing service (6) of Section A of Annex I to Directive 2014/65/EU, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the last 12 months;

(b) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);

(c) a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in Article 39(2)(f);

(d) their risk management policy and arrangements applied by the branch for the services and activities referred to in point (a).

(e) the governance arrangements, including key function holders for the activities of the branch;

(f) any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.

Upon request, the competent authorities shall communicate the following information to ESMA:

(a) All the authorisations for branches authorised in accordance with paragraph 1 and any subsequent changes to such authorisations;

(b) the scale and scope of the services and activities carried out by an authorised branch in the Member State ;

(c) the turnover and the total assets corresponding to the services and activities referred to in point (b);

(d) the name of the third country group to which an authorised branch belongs.

4. The competent authorities referred to in paragraph 2, the competent authorities of entities that are part of the same group to which branches of third-country firms authorised in accordance with paragraph 1 belong, and ESMA and EBA shall cooperate closely to ensure that all activities of that group in the Union are subject to comprehensive, consistent and effective supervision in accordance with this Directive, Regulation 600/2014, Directive 2013/36/EU, Regulation (EU) No 575/2013, Directive [Directive (EU) ---/----* [IFD], and Regulation [Regulation (EU) ---/----* [IFR].

6. ESMA shall develop draft implementing technical standards to specify the format in which the information referred to in paragraph 3 is to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by [nine months from the date of entry into force of this Regulation]

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.".

(4) Article 42 is replaced by the following:

1. Member States shall ensure that where a retail client or professional client within the meaning of Section II of Annex II established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, the requirement for authorisation under Article 39 shall not apply to the provision of that service or activity by the third country firm to that person including a relationship specifically relating to the provision of that service or activity.

Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the Union, it shall not be deemed as a service provided at the own exclusive initiative of the client.

2. An initiative by such clients referred to in paragraph 1 shall not entitle the third-country firm to market otherwise than through the branch, where one is required in accordance with national law, new categories of investment products or investment services to that client.

(4a) in Article 49, paragraph 1 is replaced by the following:

Member States shall require regulated markets to adopt tick size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with paragraph 4. Application of tick sizes shall not prevent regulated markets from matching orders large in scale at mid-point within the current bid and offer prices.

(5) in Article 81(3), point (a) is replaced by the following:

“(a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;”;

(6) the following Article 95a is inserted:

‘‘Article 95a

Transitional provision on the authorisation of credit institution referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013

Competent authorities shall inform the competent authority referred to in Article 8 of Directive 2013/36/EU where the envisaged total assets of an undertaking which has applied for authorisation pursuant to Title II of this Directive before [date of entry into force of Directive (EU) ---/--- [IFD] in order to carry out the activities referred to in points (3) and (6) of Section A of Annex I exceeds EUR 30 billion, and notify the applicant thereof.”.

Article 58b

Amendment to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) In Article 9 of Directive 2011/61/EU paragraph 5 is replaced by the following:

"5. Irrespective of paragraph 3, the own funds of the AIFM shall never be less than the amount required under Article 13 of Regulation (EU) ---/----*[IFR].

Article 58c

Amendment to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) In Article 7 of Directive 2009/65/EC paragraph 1, point (a), sub-point (iii) is replaced by the following:

"(iii). irrespective of the amount of those requirements, the own funds of the management company must at no time be less than the amount prescribed in Article 13 of Regulation (EU) --/----*[IFR].

Article 58d

Amendment to Directive 2002/87/EC

1. Point 7 of Article 2 is replaced by the following:

(7) 'sectoral rules' means Union legislation relating to the prudential supervision of regulated entities, in particular Directives 2014/65/EU, 2013/36/EU, Regulation (EU) No 575/2013, 2009/138/EC, Regulation [---IFR---], and Directive [---IFD---].

TITLE VIII

FINAL PROVISIONS

Article 60

Review

By [three years after the date of application of this Directive and Regulation (EU) ---/----[IFR]] the Commission, in close cooperation with EBA and ESMA, shall submit a report, together with a legislative proposal if appropriate, to the European Parliament and to the Council, on the following:

(a) the provisions on remuneration in this Directive and in Regulation (EU) ---/---- [IFR] as well as in UCITS and AIFMD with the aim of achieving a level playing field for all investment firms active in the Union, including the application of these provisions;

(aa) the appropriateness of the reporting and disclosure requirements in this Directive and in Regulation (EU) ---/---- [IFR], taking into account the principle of proportionality;

(aa) an assessment, which shall take into account the EBA report referred to in Article 32a and the taxonomy on sustainable finance [add reference to legal text once available], on whether any:

(i) environmental, social or governance (ESG) risks are to be considered for an investment firm's internal governance;

(ii) ESG risks are to be considered for an investment firm's remuneration policy;

(iii) ESG risks are to be considered for the treatment of risks; and

ESG risks are to be included in the supervisory review and evaluation process.

(b) the effectiveness of information-sharing arrangements under this Directive;

(c) the cooperation of the Union and Member States with third countries in the application of this Directive and of Regulation (EU) ---/---- [IFR];

(d) the implementation of this Directive and Regulation (EU) ---/----[IFR] to investment firms on the basis of their legal structure or ownership model.

(e) the potential for investment firms to pose a risk of disruption in the financial system with serious negative consequences to the financial system and the real economy and appropriate macroprudential tools to address such a risk and replace the requirements of point (d) of Article 33(1) of this Directive.

(f) the conditions under which the competent authorities may apply to investment firms, in accordance with Article 4a, the requirements of Regulation (EU) 575/2013.

Article 61

Transposition

1. By [18 months after the date of entry into force of this Directive], Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive.

2. Member States shall apply those provisions from [date of application of Regulation (EU) No ---/----[IFR].

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

Where the documents accompanying notification of transposition measures provided by Member States are not sufficient to fully assess the compliance of the transposing provisions with certain provisions of this Directive, the Commission may, upon EBA's request, with a view to carrying out its tasks under Regulation (EU) No 1093/2010, or on its own initiative, require Member States to provide more detailed information regarding the transposition and implementation of those provisions and this Directive.

4. Provisions referred to in paragraph 1 shall refer to this Directive or be accompanied by such a reference on the occasion of their official publication.

Article 62

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.

For the purposes of prudential supervision and resolution of investment firms, references to Directive 2013/36/EU in other Union acts shall be construed as references to this Directive.

Article 63

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament The President

For the Council The President