

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

2011/0203(COD) - 16/04/2013 - Text adopted by Parliament, 1st reading/single reading

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

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

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

Extension of tasks for EBA: given the inevitable extension of powers and tasks for the EBA set out by the directive and Regulation, the European Parliament, the Council and the Commission should see to it that adequate human and financial resources are made available without delay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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