

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

2011/0203(COD) - 26/06/2013 - Final act

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

LEGISLATIVE ACT: Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

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

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

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

The main provisions of the Directive are the following:

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

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

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

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

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

Moreover, the Member States may:

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

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

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

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

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

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

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

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

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

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

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

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

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

ENTRY INTO FORCE: 17/07/2013.

TRANSPOSITION: 31/12/2013

APPLICATION: from 31/12/2013.

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

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