## Basic information

| | |
|---|---|
| **2011/0203(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Directive | Procedure completed |
| Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Capital Requirements Directive (CRDIV)<br><br>Repealing Directive 2006/48/EC 2004/0155(COD)<br>Repealing Directive 2006/49/EC 2004/0159(COD)<br>Amending Directive 2002/87/EC 2001/0095(COD)<br>See also Regulation (EU) No 575/2013 2011/0202(COD)<br>Amended by 2011/0062(COD)<br>Amended by 2012/0150(COD)<br>Amended by 2013/0264(COD)<br>Amended by 2016/0364(COD)<br>Amended by 2017/0358(COD)<br>Amended by 2020/0268(COD)<br>Amended by 2021/0341(COD)<br>Amended by 2022/0404(COD)<br>See also 2017/2013(INI)<br><br>**Subject**<br><br>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments<br>2.50.04 Banks and credit<br>2.50.05 Insurance, pension funds<br>2.50.08 Financial services, financial reporting and auditing<br>2.50.10 Financial supervision | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs | KARAS Othmar (PPE) | 20/10/2009 |
| | Shadow rapporteur<br><br>BULLMANN Udo (S&D)<br><br>BOWLES Sharon (ALDE)<br><br>LAMBERTS Philippe (Verts /ALE)<br><br>FORD Vicky (ECR)<br><br>KLUTE Jürgen (GUE/NGL) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs | The committee decided not to give an opinion. | |

Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Economic and Financial Affairs ECOFIN | 3215 | 2013-01-22 |
| Economic and Financial Affairs ECOFIN | 3163 | 2012-05-02 |
| Economic and Financial Affairs ECOFIN | 3189 | 2012-10-09 |
| Economic and Financial Affairs ECOFIN | 3129 | 2011-11-30 |
| Economic and Financial Affairs ECOFIN | 3167 | 2012-05-15 |
| Economic and Financial Affairs ECOFIN | 3220 | 2013-02-12 |
| Economic and Financial Affairs ECOFIN | 3227 | 2013-03-05 |
| Economic and Financial Affairs ECOFIN | 3181 | 2012-07-10 |
| Economic and Financial Affairs ECOFIN | 3205 | 2012-12-04 |
| Economic and Financial Affairs ECOFIN | 3198 | 2012-11-13 |
| Employment, Social Policy, Health and Consumer Affairs | 3247 | 2013-06-20 |

European Commission

| Commission DG | Commissioner |
|---|---|
| Financial Stability, Financial Services and Capital Markets Union | BARNIER Michel |

**Key events**

| Date | Event | Reference | Summary |
|---|---|---|---|
| 20/07/2011 | Legislative proposal published | COM(2011)0453 | Summary |
| 13/09/2011 | Committee referral announced in Parliament, 1st reading | | |
| 30/11/2011 | Debate in Council | | |
| 02/05/2012 | Debate in Council | | |
| 14/05/2012 | Vote in committee, 1st reading | | |
| 15/05/2012 | Debate in Council | | |
| 30/05/2012 | Committee report tabled for plenary, 1st reading | A7-0170/2012 | Summary |
| 10/07/2012 | Debate in Council | | |
| 09/10/2012 | Debate in Council | | |
| 13/11/2012 | Debate in Council | | |
| 04/12/2012 | Debate in Council | | |
| 22/01/2013 | Debate in Council | | |
| 12/02/2013 | Debate in Council | | |
| 05/03/2013 | Debate in Council | | |
| 16/04/2013 | Decision by Parliament, 1st reading | T7-0114/2013 | Summary |
| 16/04/2013 | Results of vote in Parliament | | |
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|---|---|---|---|
| 16/04/2013 | Debate in Parliament |  | |
| 20/06/2013 | Act adopted by Council after Parliament's 1st reading | | |
| 26/06/2013 | Final act signed | | |
| 26/06/2013 | End of procedure in Parliament | | |
| 27/06/2013 | Final act published in Official Journal | | |

## Technical information

| | |
|---|---|
| **Procedure reference** | 2011/0203(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Directive |
| **Amendments and repeals** | Repealing Directive 2006/48/EC 2004/0155(COD)<br>Repealing Directive 2006/49/EC 2004/0159(COD)<br>Amending Directive 2002/87/EC 2001/0095(COD)<br>See also Regulation (EU) No 575/2013 2011/0202(COD)<br>Amended by 2011/0062(COD)<br>Amended by 2012/0150(COD)<br>Amended by 2013/0264(COD)<br>Amended by 2016/0364(COD)<br>Amended by 2017/0358(COD)<br>Amended by 2020/0268(COD)<br>Amended by 2021/0341(COD)<br>Amended by 2022/0404(COD)<br>See also 2017/2013(INI) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 053-p1 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | ECON/7/06631 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE478.507 | 14/12/2011 | |
| Amendments tabled in committee | | PE483.816 | 06/03/2012 | |
| Amendments tabled in committee | | PE483.817 | 07/03/2012 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0170/2012 | 30/05/2012 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0114/2013 | 16/04/2013 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Draft final act | 00015/2013/LEX | 26/06/2013 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2011)0453 | 20/07/2011 | Summary |
| Document attached to the procedure | SEC(2011)0952 | 20/07/2011 | |
| Document attached to the procedure | SEC(2011)0953 | 20/07/2011 | |
| Commission response to text adopted in plenary | SP(2013)338 | 15/05/2013 | |
| Follow-up document | COM(2014)0676 | 30/10/2014 | Summary |
| Follow-up document | COM(2015)0388 | 05/08/2015 | Summary |
| Follow-up document | COM(2016)0455 | 12/07/2016 | Summary |
| Follow-up document | COM(2016)0510 | 28/07/2016 | Summary |
| Follow-up document | SWD(2016)0265 | 28/07/2016 | |
| Follow-up document | SWD(2016)0266 | 28/07/2016 | |
| Follow-up document | COM(2016)0774 | 08/12/2016 | Summary |
| Follow-up document | COM(2018)0172 | 09/04/2018 | Summary |
| Follow-up document | SWD(2018)0089 | 09/04/2018 | |
| Follow-up document | COM(2023)0344 | 26/06/2023 | |

**National parliaments**

| Document type | Parliament/Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | DE_BUNDESRAT | COM(2011)0453 | 28/09/2011 | |
| Contribution | RO_CHAMBER | COM(2011)0453 | 07/11/2011 | |
| Contribution | PT_PARLIAMENT | COM(2011)0453 | 15/11/2011 | |
| Contribution | BG_PARLIAMENT | COM(2011)0453 | 18/01/2012 | |
| Contribution | DK_PARLIAMENT | COM(2011)0453 | 22/01/2012 | |
| Contribution | IE_HOUSES-OF-OIREACHTAS | COM(2011)0453 | 24/02/2012 | |

| | | | | |
|---|---|---|---|---|
| Contribution | IT_CHAMBER | COM(2011)0453 | 20/03/2012 | |
| Contribution | IT_SENATE | COM(2011)0453 | 06/06/2012 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| ECB | European Central Bank: opinion, guideline, report | CON/2012/0005<br>OJ C 105 11.04.2012, p. 0001 | 25/01/2012 | Summary |
| EDPS | Document attached to the procedure | N7-0075/2012<br>OJ C 175 19.06.2012, p. 0001 | 10/02/2012 | Summary |

## Additional information

| Source | Document | Date |
|---|---|---|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |

## Final act

Corrigendum to final act 32013L0036R(02)
OJ L 020 25.01.2017, p. 0001

Corrigendum to final act 32013L0036R(06)
OJ L 203 26.06.2020, p. 0095

Corrigendum to final act 32013L0036R(01)
OJ L 208 02.08.2013, p. 0073 Summary

Directive 2013/0036
OJ L 176 27.06.2013, p. 0338 Summary

## Delegated acts

| Reference | Subject |
|---|---|
| 2014/2621(DEA) | Examination of delegated act |
| 2014/2660(DEA) | Examination of delegated act |
| 2014/2664(DEA) | Examination of delegated act |
| 2014/2666(DEA) | Examination of delegated act |
| 2014/2808(DEA) | Examination of delegated act |
| 2014/2806(DEA) | Examination of delegated act |
| 2015/2919(DEA) | Examination of delegated act |
| 2016/2736(DEA) | Examination of delegated act |
| 2016/2963(DEA) | Examination of delegated act |
| 2021/2941(DEA) | Examination of delegated act |

| | |
|---|---|
| 2021/2618(DEA) | Examination of delegated act |
| 2021/2561(DEA) | Examination of delegated act |
| 2022/2801(DEA) | Examination of delegated act |
| 2025/2614(DEA) | Examination of delegated act |
| 2022/2731(DEA) | Examination of delegated act |
| 2025/2678(DEA) | Examination of delegated act |
| 2022/2720(DEA) | Examination of delegated act |
| 2026/2889(DEA) | Examination of delegated act |
| | |

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

2011/0203(COD) - 25/01/2012

**OPINION OF THE EUROPEAN CENTRAL BANK** on a **proposal for a Directive** on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and a proposal for a Regulation on prudential requirements for credit institutions and investment firms.

For reasons of efficiency and clarity, the ECB has decided to issue a single opinion on these two legislative proposals.

**General observations**: the ECB welcomes the Union's strong commitment to implement international standards and agreements in the field of financial regulation, while taking into consideration, where relevant, specific features of the Union's legal and financial system. Furthermore, the ECB strongly supports the timely and effective implementation of the Basel capital and liquidity standards.

***Reform of Union banking legislation***: the ECB welcomes the innovative approach taken by the Commission, in particular with regard to the proposed regulation, which incorporates most of the technical Annexes to Directives 2006/48/EC and 2006/49/EC and limits Member State options and discretion. As regards future reviews of the proposed regulation and as pointed out in previous opinions, the ECB recommends ensuring that only framework principles contained in the proposed regulation reflecting basic political choices and substantive matters remain subject to the ordinary legislative procedure. Technical rules, including those in the proposed regulation, should be adopted as delegated or implementing acts in accordance with Articles 290 and 291 of the Treaty, which will thereby emerge as the main body of rules applying to Union financial institutions.

***Single European rulebook in the financial sector***: the ECB strongly supports the development of a single European rulebook for all financial institutions as it promotes the smooth functioning of the single market within the Union and facilitates greater financial integration in Europe. Furthermore, harmonised rules improve transparency and reduce regulatory and compliance costs.

***ECB's advisory role regarding draft delegated and implementing acts***: against the backdrop of Court of Justice rulings, and in order to deploy the full benefits of the exercise by the ECB of its advisory role, the ECB should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence. The ECB will exercise its advisory role on matters within the ECB's competence taking into utmost account the timelines for adoption of these acts and the need to ensure the smooth adoption of implementing legislation.

**Specific observations**

***1) Macro-prudential supervision and scope for stricter rules:*** the ECB strongly supports the Commission's approach, which effectively establishes a single European rulebook for financial institutions. It fully supports the aim of addressing targeted risk exposures concerning, inter alia, certain sectors, regions or Member States through delegated acts.

- Nonetheless, the delegated acts the Commission can adopt should extend to prudential requirements on large exposures and disclosure requirements as well as to leverage and liquidity requirements, once leverage and liquidity requirements effectively become part of the applicable Union regulatory framework. The ECB notes, however, that a timeframe of six months or less for the imposition of stricter requirements to address such risks will be insufficient in many cases and would require a much longer timeframe, e.g. two years or more, to be effective and to achieve the desired objective.

- The ECB considers it important that the proposed regulation makes it possible for Member States to apply more stringent prudential requirements where systemic risks to financial stability arise. The scope of the proposed framework could be extended to cover stricter requirements for: (a) capital; (b) limits on large exposures; (c) liquidity requirements and leverage ratio, once introduced into the Union regulatory framework.

- With a view to maintaining transparency and ensuring the consistency of measures adopted within the Union, the ECB recommends that the possible application of more stringent requirements by national authorities be subject to safeguards. In this regard, the ESRB could play an important coordinating role. Moreover, the EBA and the ESRB should publish regular updates on their respective websites of measures adopted by Member States that are more stringent than those in the proposed regulation.

***2) Own funds***: the ECB strongly supports the proposed strengthening of the eligibility criteria for regulatory own funds as well as the further harmonisation of deductions.

- In line with the Basel III agreement, the 'capital instruments' referred to in the proposed regulation should consist solely of shares in companies as defined under the respective national laws in the Member States (with the exception of capital instruments issued by mutuals, cooperative societies and similar institutions) and should qualify as common equity tier 1 items only if they meet all the conditions defined in the proposed regulation.

The ECB also recommends that the Commission, through the adoption of an implementing act, endorse the list of forms of the shares eligible as common equity tier 1 capital established by the EBA in order to give the list a binding effect.

- As regards significant investments in insurance undertakings, reinsurance undertakings and insurance holding companies, the Basel III agreement requires that, over a certain threshold, these investments be deducted from common equity tier 1 capital, i.e. the corresponding deduction approach.

The proposed regulation maintains the possibility, already present in Directive 2006/48/EC, for competent authorities to authorise the application of the methods set out in Directive 2002/87/EC as an alternative to 'deduction'.

The ECB supports addressing the issue of double use of regulatory own funds both at the banking group level, i.e. consolidation of all subsidiaries that are institutions and financial institutions, and at the financial conglomerate level. In this context, application of the methods set out in Annex I to Directive 2002/87/EC should not at any time result in higher regulatory own funds for groups of institutions and financial institutions as referred to in the proposed regulation vis-à-vis what would be the regulatory own funds if the deduction approach applied.

Taking into account the Basel III agreement and also, as appropriate, the international principles of the Joint Forum on Financial Conglomerates, the ECB recommends ensuring full cross-sectoral consistency among these texts, which requires aligning the proposed regulation with the corresponding provisions of Directives 2009/138/EC and 2002/87/EC.

***3) Capital buffers:*** the ECB welcomes the choice of the proposed directive for the introduction of the framework for capital buffers. In this regard, the ECB emphasises that a decision with regard to a counter-cyclical capital buffer by national authorities should be subject to unconstrained reciprocity requirements up to 2.5 % of risk- weighted assets, while voluntary reciprocity should apply above this threshold.

In addition, the ECB supports the proposal that national authorities have the ability to set a counter-cyclical capital buffer that takes into account any financial and economic variables considered relevant for the assessment of excessive credit growth and the build-up of systemic risks. However, these variables should not be structural in nature as the counter-cyclical capital buffer should not aim at addressing structural risks in the financial system.

***4) Liquidity:*** the ECB welcomes the Commission's unequivocal commitment to introduce into Union legislation both a liquidity coverage requirement (LCR) and a net stable funding ratio (NSFR), in line with the Basel III agreements.

With regard to the proposed liquidity framework, the ECB would like to highlight the following points:

- regarding reporting on liquid assets, the ECB recommends the adoption of a single and transparent list of the items to be reported. As regards the treatment of shares or units in collective investment undertakings (CIUs) as liquid assets, it is important to limit the relative amount of these instruments in the total LCR, in addition to setting an absolute amount threshold of EUR 250 million, in order to limit concentration risks in small institutions;

- central banks should be involved in determining the extent to which central bank reserves may count towards the stock of liquid assets in times of stress;

- the ECB recommends being consulted by the EBA when developing a uniform definition of high quality assets as well as on the assessment by 31 December 2015 on how to ensure that institutions use stable sources of funding;

- the EBA, in cooperation with the ESRB, should be involved in formulating guidance on the possible release and subsequent build-up of the liquidity buffer in times of stress;

- the introduction of the NSFR will ensure that credit institutions have stable funding to meet their obligations. The ECB suggests drafting changes to avoid any possible ambiguity in the implementation of this requirement.

***5) Leverage***: the ECB welcomes the Commission's commitment to introduce a non- risk based leverage ratio as a binding requirement, subject to appropriate review and calibration by making maximum use of the agreed review period. Against this background, the ECB suggests clarifying in the proposed regulation the legislator's commitment to introducing this requirement.

***6) Supervisory reporting:*** the supervisory reporting frameworks of financial reporting (FINREP) and common reporting (COREP) have been last developed by the Committee of European Banking Supervisors. These frameworks are currently based on non-binding guidelines and reporting templates. In this context, the ECB recommends: (a) clarifying in the proposed regulation the COREP reporting framework; (b) introducing a clear legal basis for FINREP; and (c) further specifying the scope of the draft technical standards to be developed by the EBA in this field. In particular, it is proposed that EBA and ESRB should cooperate to define the scope of financial information necessary for the purposes of macro- prudential oversight.

*7) Enhancement of information-sharing arrangements*: the ECB suggests reflecting the changes introduced by the supervisory reform in the proposed directive and further improving the exchange of information between supervisory authorities and ESCB central banks, including the ECB, when this information is relevant for the performance of their respective tasks

The ECB would also recommend that the Commission, with the assistance of the relevant institutions and authorities (including the ECB, the ESRB and the EBA) undertake, within two years following the entry into force of the proposed directive, a full review of the effectiveness of these arrangements and, where appropriate, formulate proposals to further enhance this framework at Union level.

Lastly, the ECB recommends an in-depth assessment by the Commission, based on a report of the EBA, of the application of the proposed directive and regulation with regard to Union and Member State cooperation with third countries.

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

2011/0203(COD) - 30/05/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report drafted by Othmar KARAS (EPP, AT) 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.

It recommends that the European Parliament's position at first reading, under the ordinary legislative procedure, should amend the Commission proposal as follows:

**Definitions:** the text introduces the definition of 'systemic institution' which shall mean an institution which in case of failure or malfunction could lead to systemic risk at global or European or domestic level. In addition, the definition of 'systemic risk' has been included and shall mean a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

**Designation and powers of the competent authorities:** Member States shall ensure that the competent authorities monitor the activities of institutions, and where applicable, of **financial holding companies** and mixed financial holding companies, so as to assess compliance with the requirements of this Directive.

Member States shall designate one or more resolution authorities for overseeing and approving resolution plans as referenced in this Directive. They shall inform the Commission and EBA thereof, indicating any division of duties.

**Mediation powers of EBA and cooperation within the European System of Financial Supervision (ESFS):** competent authorities, as parties to the ESFS shall: (i) cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS in accordance with the principle of sincere cooperation; (ii) participate in the activities of EBA and, as appropriate, in the colleges of supervisors; (iii) make every effort to comply with those guidelines and recommendations issued by EBA in accordance Regulation (EU) No. 1093/2010.

**General requirements for access to the activity of credit institutions:** Member States or their competent authorities may fully or partially exempt one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, from the requirements set out in the Directive.

**The right of establishment of credit institutions:** the financial information shall also include the consolidated financial information of the credit institution or, where the credit institution is a subsidiary of a parent institution at EU level, the consolidated financial information of that parent institution.

**Collaboration concerning supervision:** the competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another as well as EBA with all information concerning the management and ownership of such institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the institution, administrative and accounting procedures and internal control mechanisms.

EBA shall have the power to carry out on a case by case basis announced or unannounced on-the-spot inspections.

**On-the-spot verification and inspection of branches:** a new Article stipulates that 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.

**Sanctions:** Member States shall provide that their competent authorities may take appropriate administrative sanctions and measures where the national provisions adopted in the implementation of this Directive have not been complied with, and where the violation of these provisions, apart from certain exceptions, is not subject to national criminal law. Member States shall ensure that the sanctions are applied.

Administrative sanctions may be imposed if an institution has been found liable for a serious infringement of the national provisions adopted pursuant to Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Member States shall ensure that competent authorities inform EBA without delay and in detail about all sanctions imposed on institutions or individuals under their supervision. Where a competent authority of a Member State applies an administrative sanction to a legal person it shall notify EBA of that sanction and the circumstances under which it was applied. EBA shall monitor and maintain a list of natural persons to whom a sanction has been applied, for the duration that sanction is applicable. When a competent authority assesses the good repute of persons, they shall check for relevant information relating to sanctions with EBA. EBA shall inform them if those persons are currently recorded on their list. EBA shall cooperate in any development of international lists.

The effective and reliable mechanisms shall include at least: (a) specific procedures for the receipt of reports on breaches and their follow-up; (b) appropriate protection, including full anonymity, for employees; (c) clear rules that prohibit institutions from inquiring the identity of an individual who has reported a breach.

**Procedures and internal control mechanisms:** the amended text states that competent authorities shall ensure that the management body of institutions adopts comprehensive resolution plans (living wills), ensuring an effective resolution of the institution in the case of failure and limiting the negative impact on other institutions and the wider economy.

In the case of systemic Institutions and groups identified in accordance with the Directive, the management body shall develop these comprehensive resolution plans (living wills) at individual and group level within one year after inclusion in EBA's list of systemic institutions. They shall constantly be kept updated.

**Supervision of remuneration policies:** it is stipulated that competent authorities shall collect information on the number, names, titles and job responsibilities of individuals per institution being remunerated EUR 1 million or more per financial year.

Remuneration policy 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,
- **variable remuneration,** which should reflect performance in excess of that required to fulfil the employee's job description as part of the terms of employment,
- **any other employee benefits** beyond those required by law.

**For variable elements of remunerations**, the text lays down the following issues :

- **guaranteed bonuses** are not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective compensation plans;
- guaranteed variable remuneration is **exceptional** and occurs only when hiring new staff and is limited to the first year of employment, provided that the institution has a sound and strong capital base;
- fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- institutions shall set the **appropriate ratios** between the fixed and the variable component of the total remuneration where the variable component shall not exceed one time the fixed component of the total remuneration;

- remuneration packages related to compensation or buy out from contracts in previous employment shall not be disproportionate, shall not provide an earlier or greater payout than would have been the case in the previous employment, and must also align with the long term interests of the institution including retention, deferment, performance and claw back arrangements;
- a substantial portion, and in any event at least **60 %**, of the variable remuneration component is deferred over a period which is not less than three to 5 years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question. In the case of a variable remuneration component of a particularly high amount, **above EUR 100 000** at least 60 % of the amount shall be deferred.

The Commission shall come forward by the end of 2012 with a legislative proposal setting a fixed workable ratio between the fixed and variable components of the remuneration in the financial sector.

**Treatment of risks:** the management body should devote sufficient time to consideration of risk issues. It shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Directive as well as in the valuation of assets, the use of external ratings and internal models related to those risks. The institution must establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

Competent authorities shall ensure that institutions that are significant in terms of size, internal organisation and nature, scope and complexity of their activities establish a risk committee or equivalent body composed of members of the management body. An adequate number of members of the committee shall also be independent.

In order to ensure that credit institutions and investment firms have in place sound remuneration policies, the risk committee, or equivalent body, to assist sound compensation policies and practices, shall demonstrate that incentives provided by the compensation system take into consideration risk, capital, liquidity and the likelihood and timing of earnings. The risk management function shall ensure that **all material risks are identified, measured and properly reported**. The risk management function shall be able to report directly to the management body in its supervisory function when necessary, independent from senior management and to raise concerns and warn this body, where appropriate, in case of specific risk developments that affect or may affect the institution.

**Internal Approaches for calculating own funds requirements:** competent authorities shall ensure that internal ratings used by institutions **do not rely solely or mechanistically on external credit ratings and that these do not prevail over internal assessment**. Competent authorities, in cooperation with EBA, shall analyse and assess the performances of the internal ratings capacities within the institutions.

A new provisions obliges competent authorities shall design an hypothetical portfolio of instruments representing the full range of risks to which institutions are exposed and for which they are permitted to use internal models for calculating own fund requirements.

Credit and counterparty risk: competent authorities shall ensure that the development of relationship based lending, where information gleaned from a continuing business relationship with clients is used to get a better quality of due diligence and risk assessment than is available purely from standardized information and credit scores, will be encouraged.

**Liquidity risk:** competent authorities shall ensure that credit institutions have liquidity risk profiles that are consistent with and not in excess of that required for a well-functioning and robust system. Competent authorities shall monitor developments in, amongst other things, product design and volumes, risk management, funding policies and funding concentrations and take effective action where such developments may lead to individual institution or systemic instability. Competent authorities shall inform EBA about any measures carried out and submit a report at least once a year to EBA on developments in these matters.

Institutions should consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers and long term stable funding in order to be able to withstand a range of **different short, medium and long-term stress events**.

**Governance:** 'management body' shall mean the body or bodies of an institution, appointed in accordance with the national law, which is empowered to set the institution's strategy, objectives and overall direction, and which oversees and monitors management decision-making. This shall include persons who effectively direct the business of the institution.

In particular, the references to management body shall comprise both the managerial and supervisory functions of the body or bodies. Where, according to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall make the distinction between the responsible bodies or members of the management body in accordance with its national law, unless otherwise specified by the Directive. For the purpose of this Directive 'managerial function' means setting the institution's strategy, objectives and overall direction and 'supervisory function' means overseeing and monitoring management decision-making.

Moreover, the management body shall ensure the integrity of the accounting and financial reporting systems, including the independent audit, financial and operational control and compliance with the law and relevant standards. It shall also oversee the process of disclosure and communications.

The chairman of the management body of an institution which is responsible for the supervisory function shall not exercise simultaneously the functions of a chief executive officer within the same institution, except in certain circumstances.

**Capital buffer rate:** the buffer rate should be based on the buffer guidance of the ESRB. The buffer guidance by the ESRB should take into account the growth of credit levels and changes to the ratio of credit to GDP in Member States. EBA should specify the common rules for implementation of the countercyclical buffer. The ESRB should also provide guidance on which other variables could potentially be relevant for the setting of the countercyclical buffer rates or which otherwise could be relevant indicators for financial stability in one or more Member States, based on discussions with designated authorities and own analysis.

**Identification of Systemic Institutions:** the text states that competent authorities shall indicate Systemic Institutions within their jurisdiction to EBA. Systemically important financial institutions may also be identified by the ESRB. This identification shall be based on quantitative and qualitative analysis on global, Union or domestic level in particular taking into account certain elements specified in the Directive.

**Requirement to Maintain a Systemic Buffer:** systemic institutions at global or Union level al well as domestic systemic institutions shall be assigned to one of five categories of systemic relevance with regard to their relevance for the European or an individual domestic financial market respectively. In the lowest category, systemic financial institutions shall be required to maintain a supplementary Core-Tier 1 capital buffer of 1.0% of total risk exposure, increasing by 0.5% with each of the following categories.

**Review:** by 31 December 2014, the Commission shall review and report on the application of Articles 103 and 104 and shall submit this report to the European Parliament and the Council, and if appropriate, a legislative proposal.

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

2011/0203(COD) - 10/02/2012

**Opinion of the European Data Protection Supervisor (EDPS)** on the Commission proposals for a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and for a Regulation on prudential requirements for credit institutions and investment firms.

The EDPS notes that while most of the provisions of the proposed instruments relate to the pursuit of the activities of credit institutions, the implementation and application of the legal framework may in certain cases affect the rights of individuals relating to the processing of their personal data.

Several provisions of the **proposed Directive** allow for the exchange of information between the authorities of the Member States and, possibly, third countries. This information may well relate to individuals, such as the members of the management of the credit institutions, their employees and shareholders. Furthermore, under the proposed Directive competent authorities may impose sanctions directly on individuals and are obliged to publish the sanctions inflicted, including the identity of the individuals responsible. In order to facilitate the detection of violations, the proposal introduces the obligation for the competent authorities to put in place mechanisms encouraging the reporting of breaches.

Moreover, the proposed Regulation obliges credit institutions and investment firms to disclose information relating to their remuneration policies, including the amounts paid segregated per categories of staff and per pay-bands.

The EDPS's opinion focuses on the following aspects of the packet of measures relating to data protection:

**(1) Applicability of data protection legislation**: Recital 74 of the proposed Directive contains a reference to the full applicability of data protection legislation. However, a reference to the applicable data protection legislation should be inserted in a substantive article of the proposals according to the EDPS.

**(2) Transfers to third countries**: the EDPS recommends: i) clarifying that agreements with third countries or third countries authorities for the transfer of personal data must comply with the conditions for the transfer of personal data to third countries contained in Chapter IV of Directive 95/46/EC and Regulation (EC) No 45/2001; ii) inserting in the draft directive a provision similar to that contained in Article 23 of the proposal Regulation of the European Parliament and the Council on insider dealing and market manipulation (market abuse).

**(3) Professional secrecy and use of confidential information**: the EDPS recommends extending the prohibition of disclosing confidential information contained in the proposal to cases where individuals are identifiable (i.e. not only 'individual credit institutions'). In other words, the provision should be reformulated so as to prohibit the disclosure of confidential information, 'except in summary or collective form, such that individual credit institutions and individuals cannot be identified'.

**(4) Mandatory publication of sanctions**: the EDPS is of the view that the provision on the mandatory publication of sanctions — as it is currently formulated — does not comply with the fundamental right to privacy and data protection.

The legislator should **carefully assess the necessity of the proposed system** and verify whether the publication obligation goes beyond what is necessary to achieve the public interest objective pursued and whether there are less restrictive measures to attain the same objective.

Subject to the outcome of this proportionality test, the publication obligation should in any event be supported by adequate safeguards to ensure respect of the presumption of innocence, the right of the persons concerned to object, the security/accuracy of the data and their deletion after an appropriate period of time.

**(5) Reporting of breaches**: Article 70 of the proposed Directive deals with mechanisms for reporting violations, also known as whistle-blowing schemes. The EDPS welcomes the fact that the Proposal contains specific safeguards, to be further developed at national level, concerning the protection of the persons reporting on the suspected violation and more in general the protection of personal data.

- The EDPS highlights the need to introduce a specific reference to the need to respect the confidentiality of whistleblowers' and informants' identity. In view of the above, the EDPS recommends to adding to Article 70 (2)(b) the following provision: 'the identity of these persons should be guaranteed at all stages of the procedure, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings'.

- The EDPS further highlights the importance of providing appropriate rules in order to safeguard the access rights of the accused persons, which are closely related to the rights of defence.

- The EDPS suggests adding, in the proposed Directive, the provision on insider dealing and market manipulation, which requires Member State to put in place 'appropriate procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him and the right to seek effective judicial remedy against any decision or measure concerning him'.

- Lastly, as regards Article 70(2)(c) the EDPS is pleased to see that this provision requires Member States to ensure the protection of personal data of both the accused and the accusing person, in compliance with the principles laid down in Directive 95/46/EC. He suggests however removing 'the principles laid down in', to make the reference to the Directive more comprehensive and binding.

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

2011/0203(COD) - 28/07/2016

The Commission presented a report on the assessment of the remuneration rules under Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD) and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (CRR).

The **Capital Requirements Directive** (CRD) and the Capital Requirements Regulation (CRR) contain a number of requirements regarding the remuneration policies and practices of credit institutions and investment firms. These requirements were introduced in the aftermath of the 2008 financial crisis to ensure that remuneration policies do not encourage excessive risk-taking behaviour.

This report was prepared to meet the obligation under Article 161(2) of the CRD that requires the Commission to report on the efficiency, implementation and enforcement of the remuneration rules, and in particular on the impact of the maximum ratio between variable and fixed remuneration.

**Financial incentives**: the report noted that measures to restore financial stability involved unprecedented levels of public support. It is broadly recognised that financial incentives which sent the wrong signals to staff were one of the contributing factors to the crisis.

Remuneration practices in the financial services industry meant that those incentives were not in line with the long-term objectives of firms and the need for responsible risk-taking.

Internationally agreed principles and standards on sound compensation practices were adopted. One of the main **differences** between the EU rules and these principles and standards is the **maximum ratio** between variable and fixed remuneration, which is defined only in the EU.

**Interpretation of the rules**: the report noted concerns as regards the interpretation by Member States of the principle of proportionality that underlies the CRD remuneration rules. It has been revealed that most Member States have put in place thresholds or criteria under which certain remuneration rules do not need to be applied, which are not in line with the text.

The second issue concerns the interpretation of what is '**fixed' and what is 'variable' remuneration**.

The report noted that another difficulty resulted from the very nature of the rules. The rules are meant to curb incentives which may send the wrong signals to individuals and thus to impact individuals' behaviour. However, measuring concrete impact on individuals' behaviour is very complex.

**Scope of the application of the remuneration rules**: an important step in ensuring the effectiveness of the remuneration rules is to correctly identify the staff, the investment firms and the groups to whom these rules should apply.

**Proportionate application**: specific concerns about the need for a **proportionate application** of the rules were stressed. While the requirements on the structure and pay-out of variable pay of staff are generally considered as effective mechanisms for linking remuneration with the long-term performance of an institution, many industry representatives and nearly all Member States and supervisors expressed serious concerns about the need for proportionate application of the remuneration rules and **warned against a 'one size fits all' approach**.

**Conclusions**: the report concluded that this review allows for a **largely positive assessment** of the rules on the governance of remuneration processes, performance assessment, disclosure and pay-out of the variable remuneration of identified staff.

These rules were found to contribute to the overall objectives of **curbing excessive risk-taking** and better aligning remuneration with performance, thereby **contributing to enhanced financial stability**.

The review also revealed that the deferral and pay-out in instruments requirements are not efficient in the case of small and non-complex credit institutions and investment firms, and of staff with low levels of variable remuneration. The Commission will therefore conduct an **impact assessment** which will examine options for addressing this issue in particular by exempting these institutions and staff from these specific requirements. This impact assessment will also look at allowing listed institutions to use share-linked instruments under the CRD pay-out in instruments requirement. This will be part of the wider work to prepare the revision of the CRD and CRR now under consideration.

With regard to the **maximum ratio** between variable and fixed remuneration, the review found that for the time being there is insufficient evidence to draw final conclusions on the impact of the rule on competitiveness, financial stability and staff working for non-EEA subsidiaries. It seems that conclusive findings can only be reached once more implementation experience is gained.

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

2011/0203(COD) - 12/07/2016 - Follow-up document

In accordance with Article 161(9) of Directive 2013/36/EU ("CRD") and after consulting the European Central Bank (ECB), the European Commission has prepared this report to the European Parliament and Council on the use and benefits of longer-term refinancing operations and similar funding support measures provided by European System of Central Banks (ESCB) to credit institutions between 2011 and 2013.

The central bank funding operations were expected to have a positive impact on the real economy as a whole through increased lending to corporates and households. The longer-term refinancing operations and similar central bank funding support measures assessed by the Commission in this report are refinancing operations with low rates of interest and exceptionally long maturities entailing generally the acceptance of a wider range of eligible collateral. The context of these measures was severe stress on bank funding markets in Europe at that time.

**Operations examined**: the longer-term refinancing operations and similar central bank funding support measures assessed by the Commission in this report are refinancing operations with low rates of interest and exceptionally long maturities entailing generally the acceptance of a wider range of eligible collateral.

In their mandate the co-legislators also invited the Commission to submit legislative proposals, if appropriate. These proposals would be aimed at **limiting the possible opportunistic use** of central banks' funding support measures by credit institutions.

**The Commission analysed four long-term funding support measures**:

- (two) 3-year long-term refinancing operations (LTRO) by the European Central Bank;
- Denmark's National Bank's 3-year loan facilities;
- the Hungarian Central Bank's 2-year variable rate collateralised loans and;
- the 'Funding for Lending Scheme' by the Bank of England.

In total, the ESCB central banks granted approximately the equivalent of EUR 1080 billion of funding between December 2011 and December 2013. The two ECB 3-year LTROs in December 2011 and March 2012 represented more than 95% of the total longer-term refinancing measures in this period.

**Conclusion**: the report concluded that the theoretical and practical limits posed by the "fungibility" of funding sources does not allow a reliable identification of the use of ESCB funding support measures by banks.

The methodological problem due to the "fungibility" of funding relates to the fact that it is not possible to "track the money" borrowed by banks from central banks to its ultimate use. The borrowed funding is not earmarked for any specific purpose but is used interchangeably with other sources of funding to support a range of activities.

EBA explained in its report that the "fungibility" problem precluded a precise quantification of the use and benefits of the central banks' funding. Although this method has its merits, unfortunately it does not allow robust conclusions to be drawn on the use and benefits of these long-term refinancing operations.

In order to overcome this "fungibility" constraint, the Commission attempted to develop a more quantitative analysis of changes in the balance sheets of national banking systems during the period when funding support was provided. However, this proved unsuccessful in delivering more detailed reliable insights into the actual use of the LTRO funding support measures by banks in the Eurozone.

Under these condition, the Commission stated that this renders it **impossible to identify and quantify with any degree of confidence the profits attributable to possible opportunistic behaviour by credit institutions** facilitated by such funding support.

In conclusion, there is **no sound empirical basis to justify a legislative proposal** from the Commission to the European Parliament and Council on this subject.

Lastly, the Commission notes and indeed welcomes the fact that the more recent ECB Targeted LTRO program provides incentives for banks to lend to the non-financial private sector.

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

2011/0203(COD) - 08/12/2016 - Follow-up document

The Commission presented a report on the benchmarking of diversity practices in connection with Directive 2013/36/EU, the Capital Requirements Directive (CRD).

To recap, the CRD Directive introduced a requirement for the **diversity of the management bodies of credit institutions**. This is to ensure that the composition of management bodies is sufficiently diversified.

Under the CRD, Member States must require institutions to take into account a wide range of qualifications and competences when recruiting members of their governing bodies. In addition, institutions of 'significant importance' must establish a nomination committee to set a target for the representation of the under-represented gender in the governing body.

The **European Banking Authority (EBA**) analysed the diversity practices of a representative sample of institutions covered by the CRD for which the competent national authorities had collected data.

**Key findings:** a review of the results of the benchmarking exercise shows that significant improvements can still be made in terms of diversity policies as well as strengthening the diversity of the governing bodies of institutions.

The majority of sampled institutions do not currently meet the requirement for diversity-friendly policies in the governing bodies.

On the basis of the data collected in 2015, the EBA found that only about 35% of the sampled establishments had adopted a diversity policy. Denmark was the only Member State in which all the sampled establishments had adopted such a policy. The percentage was 93.3% in Sweden and was over 60% in only three other Member States: Spain, Ireland and Latvia.

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It has not been possible to assess the extent to which institutions of “significant importance” have met the requirement to set a target for gender representation.

However, comparative analysis has shown that **most institutions that have set a gender goal have not yet achieved this goal** and/or have not set a target date for achieving this goal.

The data show that there is insufficient gender diversity in the governing bodies, with only **13.63%** of executive functions performed by women in the institutions sampled. As regards the supervisory function, the percentage of women performing non-executive functions in governing bodies is 18.90%, and in 39.18% of the institutions sampled, no woman exercises a non-executive function.

As regards **age and geographical origin**, numerical targets for diversity are currently being met in fewer than one third of the cases in which they have been set. In terms of the **educational and vocational background**, the targets were met in approximately 42% and 52% of the cases respectively.

These results demonstrate the need for institutions and supervisory authorities to **intensify their efforts** to ensure that the required diversity policies are put in place properly.

**Points for improvement:** the Commission considers that the comparative analysis and the presentation of the results should enable a better understanding of the extent to which institutions of "significant importance" meet the requirement of setting a target for the **representation of women**. It should also cover the aspect of staff representation and be carried out at regular intervals, and at least every three years.

However, the comparative analysis of diversity practices is considered **a useful tool** for assessing the impact and effectiveness over time of CRD diversity requirements. Regular benchmarking exercises should monitor compliance with the relevant provisions and observe future trends in the area of diversity.

The Commission does not therefore consider it desirable at this time to consider submitting a legislative proposal to amend these provisions.

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

2011/0203(COD) - 09/04/2018

The Commission presented a report on the effects of Regulation (EU) No 575/2013 and Directive 2013/36/EU on the economic cycle.

**Background to the report**: to combat financial instability, financial sector regulation and macroprudential policy aim to limit systemic risk. Drawing lessons from the crisis, ensuring sufficiently high capital levels, especially for banks, generally appears to reduce the likelihood of systemic financial crises and their cost, if they occur.

However, capital ratio requirements designed to guarantee sufficient capital could themselves become a source of instability. Indeed, the risk-based approach included in Regulation (EU) No 575/2013 and Directive 2013/36/EU implies that capital ratio requirements become more flexible in times of economic recovery and more stringent in times of slowdown. Such procyclicality of capital ratio requirements is an important potential externality of the financial system that can threaten financial stability.

The specific goal of this report is thus to analyse whether there is evidence that the provisions in Regulation (EU) 575/2013 and Directive 2013/36/EU contribute to any procyclical effects of capital ratio requirements.

If such pro-cyclical effects are detected, the Commission is required to submit a proposal on possible appropriate corrective measures.

**Main conclusions**: the report concludes that while a procyclical impetus from capital ratio requirements is acknowledged in the literature as a potential source of risk, the empirical evidence is not conclusive as regards its actual strength for banks in the Union. **There is no evidence of a strong procyclical bias of the current framework** which would affect the non-financial sector in the economy.

Given the weak evidence of pro-cyclical effects due to the provisions of Directive 2013/36/EU and Regulation (EU) No 575/2013, the Commission considers that there is **no reason at this juncture to propose significant alterations to the prevailing regulatory framework for bank capital.**

The higher capital ratios achieved in recent years imply that the procyclical impact of a given loss will be weaker. The Union financial regulatory framework already includes various tools to deal with any procyclical effects. These include:

- **higher capital ratio requirements**;
- **capital conservation buffer and countercyclical capital buffer**: these extra buffers, built up over good economic times, can be released in an economic downturn to enable banks to absorb their losses in an orderly way that does not lead to costly increases in the price of credit, which

can aggravate recession. These buffers have been built up, but to date there is no experience with releasing such buffers. Reflections are ongoing in Basel and in the Union on the merits of introducing sector-specific buffers to address the cyclical nature of some specific risks;

- **introduction of a leverage ratio**: the leverage ratio is an additional non risk-based capital requirement conceived to supplement the risk-based capital ratio requirements. It would help to limit excessive bank lending during the upswing of an economic cycle when banks have momentum to expand balance sheets without an appropriate increase in capital. Empirically, banking sector leverage has been procyclical at an aggregate level in almost all Member States, tending to fall in credit booms and rising in downturns;

- a **reduced dependency on credit rating agencies** for prudential requirements;

- **stress tests**: in the aftermath of the financial crisis, micro-prudential stress tests were used promptly to assess the capital needs of individual banks. Such stress tests are helpful in informing how buffers can be set, also above minimum requirements.

**Prospects**: the Commission stresses the need to:

- **regularly monitor the impact on the economic cycle** of EU regulatory capital ratio requirements and further analyse the impact, effectiveness and efficiency that counter-cyclical instruments can have;
- **collect, as and when necessary, any concrete evidence** that might indicate the existence of a possible pro-cyclical bias linked to the tightening of capital ratio requirements.

Concrete proposals to change the current set-up should be based on such evidence becoming available.

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

2011/0203(COD) - 20/07/2011 - Legislative proposal

PURPOSE: to ensure the proper functioning of the banking sector and to restore confidence in it.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions have been substantially modified several times. Many of the provisions of these two directives are applicable both to credit institutions and investment firms. To ensure the consistent application of these measures, it is appropriate to merge them in order to create new legislation applicable to both types of entity.

This new legislation will comprise two different legal instruments. In this proposal for a Directive, are the provisions concerning the authorisation of credit institutions and the exercise of the freedom of establishment and of the freedom to provide services. The accompanying proposal for a Regulation establishes uniform and directly applicable prudential requirements for credit institutions and investment firms. This new elements in this proposal comprise provisions on sanctions, effective corporate governance and provisions preventing the over-reliance on external credit ratings.

**Sanctions**: the sanctions applicable for key violations of the Capital Requirements Directive (CRD), such as authorisation requirements, prudential obligations and reporting obligations, vary across Member States and do not seem always appropriate to ensure sanctions are sufficiently effective, proportionate and dissuasive. Furthermore, there is a certain divergence in the level of application of sanctions in different Member States.

In its 2010 Communication "Reinforcing sanctioning regimes in the financial sector", the Commission has envisaged EU legislative action to set minimum common standards on certain key issues of sanctioning regimes, to be adapted to the specifics of the different sectors.

**Corporate governance**: strengthening corporate governance is a priority for the Commission, especially in the context of its financial markets reform and crisis prevention programme. The public consultation launched as a result of its Green Paper on corporate governance in financial institutions and remuneration policies demonstrated a broad consensus on the deficiencies of corporate governance standards and practices in the financial services sector. In a resolution, adopted in July 2010, the European Parliament also recognised the importance of strengthening corporate governance standards and practices in financial institutions.

**Over-reliance on external ratings**: overreliance on credit ratings may lead to herding behaviour of financial actors, e.g. parallel selling-off of debt instruments after that instrument has been downgraded below investment grade, which may affect financial stability. At the international level, the Financial Stability Board (FSB) recently issued principles to reduce authorities' and financial institutions' reliance on external ratings.

IMPACT ASSESSMENT: a series of options was analysed to define the legal framework for sanctioning regimes and corporate governance:

- the options on **sanctioning regimes** are expected to facilitate detection of violations and to empower competent authorities to apply appropriate sanctions. This is expected to ensure better enforcement of the CRD obligations by credit institutions, which would benefit all stakeholders;
- the preferred policy options improving **corporate governance** will help avoid excessive risk-taking by credit institutions and lower the risk of failure. It would contribute to the resilience of the banking sector and improve investor confidence The impact on credit institutions and all stakeholders (depositors, shareholders, creditors) should be positive;
- as regards **over-reliance on external ratings**, the impact assessment of the new initiative on credit rating agencies (planned for early July 2011) will; include a general chapter on over-reliance covered by these proposals.

LEGAL BASIS: Article 53(1) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal **replaces Directives 2006/48/EC and 2006/49/EC** with regard to the coordination of national provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States in this regard and the provisions governing the initial capital and the supervisory review of credit institutions and investment firms.

Its main objective is to coordinate national provisions concerning the access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervisory framework.

The proposal seeks to ensure the smooth operation of the banking sector and restoring confidence in it by:

- introducing an effective, proportionate and dissuasive sanctioning regime to ensure compliance with the CRD rules;
- development of a level playing field which minimises the opportunities for regulatory arbitrage;
- effective supervision of banking service providers;
- effective corporate governance within credit institutions which should contribute to avoid excessive risk taking.

The main features of the proposal are as follows:

**1) Sanctions**: with a view to reinforcing and approximating the legal framework concerning sanctions and the mechanisms facilitating detection of breaches, the Directive will require Member States to comply with the following minimum rules:

- make provision for administrative sanctions and measures that are applicable to natural and legal persons responsible for violations, which would include credit institutions, investment companies and individuals, where appropriate;
- in case of a breach, a minimum set of administrative sanctions and measures should be available to competent authorities. This includes withdrawal of authorisation, cease and desist orders, public statement, dismissal of management, administrative pecuniary sanctions;
- the maximum level of administrative pecuniary sanctions laid down in national legislation should exceed the benefits derived from the violation if they can be determined;
- sanctions and measures applied should be published.

Lastly, appropriate mechanism should be put in place to encourage reporting of breaches within credit institutions and investment firms.

**2) Corporate governance:** with a view to reinforcing the legislative framework regarding corporate governance, the proposal provides for: i) improving the effectiveness of management bodies to oversee risks; ii) improve the stature of the risk management function; and iii) ensure the effective follow-up of risk management by the supervisory authorities.

- The management body of a credit institution or investment firm as a whole should commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the credit institution and its main risk exposures. All members of the management body should be of sufficiently good repute and possess individual qualities and independence of mind which enable them to constructively challenge and oversee the decisions of the management. To avoid group think and facilitate critical challenge, management boards of credit institutions should be sufficiently diverse as regards age, gender, geographical provenance, educational and professional background.
- The management body should be responsible and accountable for the overall risk strategy of the credit institution or investment firm and for the adequacy of the risk management systems, taking into account the credit institution's risk profile.
- Credit institutions and investment firms should have an independent risk management function.

**3) Over-reliance on external ratings**: overall, the directive seeks to encourage banks to **rely on internal ratings** rather than external ones to calculate their regulatory capital requirements. In addition, it is proposed that EBA publicly discloses, on an annual basis, information on the steps taken by institutions and by supervisory authorities to reduce over-reliance on external ratings and reports on the degree of supervisory convergence in this regard.

**4) Capital buffers:** on the basis of Basel III, this proposal introduces two capital buffers on top of the requirements: a Capital Conservation Buffer and a countercyclical capital buffer.

- the **Capital Conservation Buffer** amounts to 2,5% of risk weighted assets, applies at all times and has to be met with capital of highest quality. It is aimed at ensuring institutions' capacity to absorb losses in stressed periods that may span a number of years;
- the **Countercyclical Capital Buffer** is set by national authorities for loans provided to natural and legal persons within their Member State. It can be set between 0% and 2.5% of risk weighted assets and has to be met by capital of highest quality likewise. If justified, authorities can even set a buffer beyond 2.5%. The Countercyclical Capital Buffer will be required during periods of excessive credit growth and released in a downturn.

BUDGETARY IMPACT: the proposal has no impact on the Union’s budget.

DELEGATED ACTS: the proposal contains provisions conferring on the Commission the right to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.

# 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 repute 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.** Members 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.

# 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.

# 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 - Corrigendum to final act

PURPOSE : **Corrigendum** to 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 (*Directive first published in OJ L 176 of 27.6.2013*)

The corrigendum concerns the **application** of the Directive (Article 162): the date of 31 December is replaced by the date **1 January 2014.**

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

2011/0203(COD) - 05/08/2015

In accordance with the mandates given to the Commission by the European Parliament and the Council, the report aims to evaluate **the appropriateness of the rules governing the levels of application of the prudential requirements** set out in **Directive 2013/36/EU (CRD)** and Regulation (EU) No 575/2013 (CRR), in particular the exemption regime.

The report is based on the opinion delivered by the European Banking Authority (EBA) in consultation with national competent authorities on 31 October 2014.

In accordance with the general rule of **dual-level supervision**, a banking group that is composed of one or more institutions is subject to prudential requirements on both individual and consolidated bases. However, the principle of dual-level supervision is **subject to exceptions.**

**Commission's mandate**: the first mandate requires the Commission to **review the application of Articles 108 and 109 of CRD,** and report, with any appropriate legislative proposals, to Parliament and Council. These two articles specify the levels of application of the prudential requirements laid down in Articles 73 to 96 of CRD, as regards the internal capital adequacy assessment process (ICAAP), governance arrangements, risk management and remuneration policies.

The report sets out the different rules governing the level of application of prudential requirements and discusses the challenges. It analyses the differences, and inconsistencies as well as problems of interpretation. Lastly, it sets out a path to follow.

**Recourse to waivers in the EU**: the report notes that the use of some waivers appears relatively limited across the EU: only two Member States exempt institutions from requirements on governance, remuneration and risk management pursuant to Article 109(1) of CRD.

While appearing of lesser material importance, **waivers may strongly influence the structure and internal organisation of EU banking groups** and the way competent authorities supervise banking groups. The Commission considers that changes to the existing rules might result in potentially far-reaching adjustments and costs for institutions, competent authorities, and EBA. However, there may be some merit in **reviewing the derogation regime in the future** to take account of the lessons learnt from the application of the liquidity coverage requirement and the Single Supervisory Mechanism (SSM).

**Issues identified**: the analysis of the rules governing the levels of application of prudential requirements raises differences, inconsistencies and interpretation issues that merit further consideration:

- **differences in the derogations applied to credit institutions and investments firms**: the Commission considers that there may be some merit in maintaining less stringent rules for investment firms, given their size, the nature of their activities or their risk profiles. It will be therefore important to understand whether such differentiated treatment could give rise to negative effects;

- **no integration of resolution aspects in the rules**: the conditions for exempting institutions from prudential requirements on an individual basis do not take resolution aspects into consideration. These conditions could be reviewed in light of the new requirements introduced in Directive 2014/59/EU ('BRRD') to maintain coherence between banking resolution and the way banking groups are supervised.

- **existence of derogations with inappropriate scope of application:** in accordance with Article 109(1) of CRD, competent authorities may exempt institutions from the prudential requirements set out in Articles 74 to 96 of CRD on an individual basis. However, Articles 74 to 96 cover fundamental prudential requirements, such as the implementation of robust governance arrangements, effective risk management processes and robust internal control mechanisms. The Commission regards it more prudent to limit the scope of this exemption where the application of these requirements on an individual basis is not essential;

- **misalignment of exemption rules between CRD and CRR**: the levels of application of the internal capital adequacy assessment process (ICAAP) and the prudential rules on governance arrangements, risk management and remuneration policies as set out in Articles 108 and 109 of CRD could be made consistent with the levels of application of the other prudential requirements set out in CRR and CRD.

Together with ICAAP requirements on a consolidated basis, where applicable, the ICAAP could apply on an individual basis to any institution, including those belonging to banking groups, except where competent authorities make use of the derogations under Article 7, 9 or 10 of CRR, taking account of the significance of the institution in relation to the rest of the group.

**Amongst the interpretation issues identified** are the following:

- risk of divergent interpretation on how to apply remuneration rules on a consolidated basis;
- risk of diverging interpretation of the conditions to the application of waivers;
- unclear treatment of institutions holding participations in financial entities established in third countries.

In conclusion, the Commission does **not consider it appropriate to propose amendments** to the current rules. It states that it needs to continue to reflect further on the exceptions and conditions for application of the exceptions. Some of these considerations would be particularly apposite in the context of SSM.

Moreover, it is **necessary to acquire greater experience with the application of the rules**, so that the Commission may carefully assess the feasibility of amending the existing rules.

Before considering the possibility of changing the rules applicable to investment firms, the Commission considers it important to take account of the conclusions of the report on the prudential regime for European investment firms, which the Commission will issue in accordance with the CRR.

Lastly, the experience gained by competent authorities in the implementation of the liquidity coverage requirement and the application of the provisions laid down in the BRRD will contribute to the reflection of the Commission on whether amendments to the application regime for banking prudential requirements would be appropriate.

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

2011/0203(COD) - 30/10/2014 - Follow-up document

The Commission presented a report on the general assessment of economic consequences of country-by-country disclosure requirements set out in Article 89 of Directive 2013/36/EU of the European Parliament and of the Council (CRD).

The CRD Directive introduces a **new country-by-country public reporting (CBCR) obligation for banks and investment firms**. Institutions will have to report annually, for each country in which they have an establishment, data on (a) their name(s), activities, geographical location, (b) turnover, (c) staff numbers, (d) profit or loss before tax, (e) tax on profit or loss and (f) public subsidies received.

Institutions are required to report the data under a), b) and c) as from 1 July 2014. In the next phase, i.e. as from **1 January 2015** all institutions that fall within the scope of Article 89 are required to disclose all information set out in Article 89, unless the Commission decides to defer the CBCR obligations.

The Commission consulted EBA, EIOPA and ESMA in order to draft its report. It also directly consulted with stakeholders, including inter alia the 14 of the most important European institutions and several civil society organisations interested in the matter.

**Evaluation**: since the country-by-country public reporting provisions have not yet fully entered into force, this assessment is essentially a **forward looking exercise** focussed on determining whether CBCR is expected to have significant negative economic effects.

Most stakeholders expect that CBCR will have **some positive impact on the transparency and accountability of, and on public confidence in the European financial sector**. Nevertheless, various stakeholder groups consider that **additional guidance** on the exact contents of the items to be reported would improve transparency and consistency in all the Member States.

**Impact on competitiveness, investment and credit availability and the stability of the financial system**: the balance of opinions among stakeholders is that CBCR will have no significant impact on competitiveness, investment, credit availability or the stability of the financial system.

Opponents mostly refer to a risk of public misunderstanding of the data and to an increased administrative burden. Supporters of CBCR point to a number of positive effects: (i) investors will be able to make more informed investment decisions and be more able to hold banks to account; (ii) CBCR will lead to better risk management by reporting institutions, thus reducing the risk of scandals and increasing stability in the financial sector; (iii) CBCR will attract investors and customers that value the increased transparency and in general lead to increased trust in the European financial sector.

Improved disclosure quality would lead to a number of positive outcomes:

- reduction of the cost of equity capital which may be passed on to businesses and households in the form of lower lending rates and thus benefit credit availability and investment;
- reduction in the ability of reporting institutions to mask their true performance (earnings management) and an increased accounting quality.

**Commission's position**: it is the assessment of the Commission, notably based on the results of the study and the views expressed by the stakeholders, that at this stage, the **public country-by-country reporting of information under Article 89 of Directive 2013/36/EU is not expected to have significant negative economic impact**, in particular on competitiveness, investment, credit availability or the stability of the financial system.

On the contrary, it seems that there could be **some limited positive impact**; however the beneficial effects of Article 89 could be increased by addressing some elements related to the **implementation of that provision**.

The Commission considers that, as no significant negative effects have been identified in relation to the public country-by-country reporting of information, **the obligations under Article 89 of Directive 2013/36/EU should not be deferred and should apply**, as foreseen, in full from 1 January 2015 onwards.