Is áis doiciméadúcháin amháin an téacs seo agus níl aon éifeacht dhlíthiúil aige. Ní ghabhann institiúidí an Aontais aon dliteanas orthu féin i leith inneachar an téacs. Is iad na leaganacha de na gníomhartha a foilsíodh in Iris Oifigiúil an Aontais Eorpaigh agus atá ar fáil ar an suíomh gréasáin EUR-Lex na leaganacha barántúla de na gníomhartha ábhartha, brollach an téacs san áireamh. Is féidir teacht ar na téacsanna oifigiúla sin ach na naisc atá leabaithe sa doiciméad seo a bhrú

►B ►M6 TREOIR 2013/36/AE Ó PHARLAIMINT NA HEORPA AGUS ÓN GCOMHAIRLE

an 26 Meitheamh 2013

maidir le rochtain ar ghníomhaíocht institiúidí creidmheasa agus maoirseacht stuamachta ar institiúidí creidmheasa, lena leasaítear Treoir 2002/87/CE agus lena n-aisghairtear Treoracha 2006/48/CE agus 2006/49/CE ◄

(Text with EEA relevance)

(IO L 176, 27.6.2013, lch. 338)

Arna leasú le:

		Iris Oifigiúil		
		Uimh	Leathanach	Dáta
►M1	Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 (*)	L 60	34	28.2.2014
►M2	Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 (*)	L 173	190	12.6.2014
►M3	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 (*)	L 337	35	23.12.2015
►M4	Treoir (AE) 2018/843 ó Pharlaimint na hEorpa agus ón gComhairle an 30 Bealtaine 2018	L 156	43	19.6.2018
►M5	Treoir (AE) 2019/878 ó Pharlaimint na hEorpa agus ón gComhairle an 20 Bealtaine 2019	L 150	253	7.6.2019
►M6	Treoir (AE) 2019/2034 Ó Pharlaimint Na Heorpa Agus Ón Gcomhairle an 27 Samhain 2019	L 314	64	5.12.2019
►M7	Treoir (AE) 2021/338 ó Pharlaimint na hEorpa agus ón gComhairle an 16 Feabhra 2021	L 68	14	26.2.2021

Arna ceartú le:

►C1 Ceartúchán, IO L 208, 2.8.2013, lch. 73 (2013/36/AE)
►C2 Ceartúchán, IO L 20, 25.1.2017, lch. 1 (2013/36/AE)
►C3 Ceartúchán, IO L 203, 26.6.2020, lch. 95 (2013/36/AE)
►C4 Ceartúchán, IO L 212, 3.7.2020, lch. 20 (2019/878)

(*) Níor foilsíodh an gníomh seo i nGaeilge.

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TREOIR 2013/36/AE Ó PHARLAIMINT NA HEORPA AGUS ÓN GCOMHAIRLE

an 26 Meitheamh 2013

maidir le rochtain ar ghníomhaíocht institiúidí creidmheasa agus maoirseacht stuamachta ar institiúidí creidmheasa, lena leasaítear Treoir 2002/87/CE agus lena n-aisghairtear Treoracha 2006/48/CE agus 2006/49/CE

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(Text with EEA relevance)

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

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Airteagal 1

Ábhar

Leis an Treoir seo, leagtar rialacha síos maidir leis an méid seo a leanas:

(a) rochtain ar ghníomhaíocht institiúidí creidmheasa;

(b) cumhachtaí maoirseachta agus uirlisí le haghaidh maoirseacht stuamachta a dhéanann údaráis inniúla ar institiúidí creidmheasa;

(c) an mhaoirseacht stuamachta a dhéanann údaráis inniúla ar institiúidí creidmheasa ar bhealach atá comhsheasmhach leis na rialacha a leagtar amach i Rialachán (AE) Uimh. 575/2013;

(d) ceanglais foilseacháin maidir le húdaráis inniúla i réimse an rialaithe stuamachta agus na maoirseachta ar institiúidí creidmheasa.

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Article 2

Scope

1. This Directive shall apply to institutions.

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4. Article 34 and Title VII, Chapter 3 shall apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head offices in the Union;

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5. Ní bheidh feidhm ag an Treoir seo maidir leis na nithe seo a leanas:

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(2) bainc cheannais;

(3) institiúidí gióró postoifige;

(4) sa Danmhairg, “Eksport Kredit Fonden”, “Eksport Kredit Fonden A/S”, “Danmarks Skibskredit A/S” agus “KommuneKredit”;

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(5) sa Ghearmáin, “Kreditanstalt für Wiederaufbau”, “Landwirtschaftliche Rentenbank”, “Bremer Aufbau-Bank GmbH”, “Hamburgische Investitions- und Förderbank”, “Investitionsbank Berlin”, “Investitionsbank des Landes Brandenburg”, “Investitionsbank Schleswig-Holstein”, “Investitions- und Förderbank Niedersachsen – NBank”, “Investitions- und Strukturbank Rheinland-Pfalz”, “Landeskreditbank Baden-Württemberg – Förderbank”, “LfA Förderbank Bayern”, “NRW.BANK”, “Saarländische Investitionskreditbank AG”, “Sächsische Aufbaubank – Förderbank”, “Thüringer Aufbaubank”, gnóthais a aithnítear faoi “Wohnungsgemeinnützigkeitsgesetz” mar chomhlachtaí beartais tithíochta Stáit agus nach idirbhearta baincéireachta atá mar phríomhghníomhaíocht acu, agus gnóthais a aithnítear faoin dlí sin mar ghnóthais tithíochta neamhbhrabúis;

(6) san Eastóin, “hoiu-laenuühistud”, mar chomhghnóthais a aithnítear faoi “hoiu-laenuühistu seadus”;

(7) in Éirinn, “Corparáid Baincéireachta Straitéiseach na hÉireann/the Strategic Banking Corporation”, “comhair chreidmheasa/credit unions” agus “cara-chumainn/friendly societies”;

(8) sa Ghréig, “Ταμείο Παρακαταθηκών και Δανείων” (Tamio Parakatathikon kai Danion);

(9) sa Spáinn, “Instituto de Crédito Oficial”;

(10) sa Fhrainc, “Caisse des dépôts et consignations”;

(11) sa Chróit, “kreditne unije' agus” Hrvatska banka za obnovu i razvitak';

(12) san Iodáil, “Cassa depositi e prestiti”;

(13) sa Laitvia, “krājaizdevu sabiedrības”, gnóthais a aithnítear faoi “krājaizdevu sabiedrību likums” mar chomhghnóthais a sholáthraíonn seirbhísí airgeadais dá gcomhaltaí amháin;

(14) sa Liotuáin, “kredito unijos” seachas “centrinės kredito unijos”;

(15) san Ungáir, “MFB Magyar Fejlesztési Bank Zártkörűen Működő Részvénytársaság” agus “Magyar Export-Import Bank Zártkörűen Működő Részvénytársaság”;

(16) i Málta, “The Malta Development Bank”;

(17) san Ísiltír, “Nederlandse Investeringsbank voor Ontwikkelingslanden NV”, “NV Noordelijke Ontwikkelingsmaatschappij”, “NV Limburgs Instituut voor Ontwikkeling en Financiering”, “Ontwikkelingsmaatschappij Oost-Nederland NV” agus kredietunies;

(18) san Ostair, gnóthais a aithnítear mar chomhlachais tithíochta chun leas an phobail agus “Österreichische Kontrollbank AG”;

(19) sa Pholainn, “Spółdzielcze Kasy Oszczędnościowo — Kredytowe” agus “Bank Gospodarstwa Krajowego”;

(20) sa Phortaingéil, “Caixas Económicas” a bhí ann an 1 Eanáir 1986 seachas iad sin a ionchorpraíodh mar chuideachtaí teoranta agus mar chuideachtaí de “Caixa Económica Montepio Geral”;

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(21) sa tSlóivéin, “SID-Slovenska izvozna in razvojna banka, d.d. Ljubljana”;

(22) san Fhionlainn, “Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB”, agus “Finnvera Oyj/Finnvera Abp”;

(23) sa tSualainn, “Svenska Skeppshypotekskassan”;

(24) sa Ríocht Aontaithe, “National Savings and Investments (NS&I)”, “CDC Group plc”, “Agricultural Mortgage Corporation Ltd”, “Crown Agents for overseas governments and administrations”, “credit unions” agus “municipal banks”.

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6. Caithfear leis na heintitis dá dtagraítear i bpointí (3) go (24) de mhír 5 den Airteagal seo mar institiúidí airgeadais chun críocha Airteagal 34 agus Theideal VII, Caibidil 3.

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Article 3

Definitions

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

(1) “credit institution” means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(2) “investment firm” means investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013;

(3) “institution” means institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013;

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(5) “insurance undertaking” means insurance undertaking as defined in point (5) of Article 4(1) of Regulation (EU) No 575/2013;

(6) “reinsurance undertaking” means reinsurance undertaking as defined in point (6) of Article 4(1) of Regulation (EU) No 575/2013;

(7) “management body” means an institution's body or bodies, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution;

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

(9) “senior management” means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;

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(10) “systemic risk” means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;

(11) “model risk” means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;

(12) “originator” means originator as defined in point (13) of Article 4(1) of Regulation (EU) No 575/2013;

(13) “sponsor” means sponsor as defined in point (14) of Article 4(1) of Regulation (EU) No 575/2013;

(14) “parent undertaking” means parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;

(15) “subsidiary” means subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;

(16) “branch” means branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;

(17) “ancillary services undertaking” means ancillary services undertaking as defined in point (18) of Article 4(1) of Regulation (EU) No 575/2013;

(18) “asset management company” means asset management company as defined in point (19) of Article 4(1) of Regulation (EU) No 575/2013;

(19) “financial holding company” means financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;

(20) “mixed financial holding company” means mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;

(21) “mixed activity holding company” means mixed activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;

(22) “financial institution” means financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

(23) “financial sector entity” means financial sector entity as defined in point (27) of Article 4(1) of Regulation (EU) No 575/2013;

(24) “parent institution in a Member State” means parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;

(25) “EU parent institution” means EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;

(26) “parent financial holding company in a Member State” means parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;

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(27) “EU parent financial holding company” means EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;

(28) “parent mixed financial holding company in a Member State” means parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of Regulation (EU) No 575/2013;

(29) “EU parent mixed financial holding company” means EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;

(30) “systemically important institution” means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;

(31) “central counterparty” means central counterparty as defined in point (34) of Article 4(1) of Regulation (EU) No 575/2013;

(32) “participation” means participation as defined in point (35) of Article 4(1) of Regulation (EU) No 575/2013;

(33) “qualifying holding” means qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;

(34) “control” means control as defined in point (37) of Article 4(1) of Regulation (EU) No 575/2013;

(35) “close links” means close links as defined in point (38) of Article 4(1) of Regulation (EU) No 575/2013;

(36) “competent authority” means competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013;

(37) “consolidating supervisor” means consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;

(38) “authorisation” means authorisation as defined in point (42) of Article 4(1) of Regulation (EU) No 575/2013;

(39) “home Member State” means home Member State as defined in point (43) of Article 4(1) of Regulation (EU) No 575/2013;

(40) “host Member State” means host Member State as defined in point (44) of Article 4(1) of Regulation (EU) No 575/2013;

(41) “ESCB central banks” means ESCB central banks as defined in point (45) of Article 4(1) of Regulation (EU) No 575/2013;

(42) “central banks” means central banks as defined in point (46) of Article 4(1) of Regulation (EU) No 575/2013;

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(43) “consolidated situation” means consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;

(44) “consolidated basis” means consolidated basis as defined in point (48) of Article 4(1) of Regulation (EU) No 575/2013;

(45) “sub-consolidated basis” means sub-consolidated basis as defined in point (49) of Article 4(1) of Regulation (EU) No 575/2013;

(46) “financial instrument” means financial instrument as defined in point (50) of Article 4(1) of Regulation (EU) No 575/2013;

(47) “own funds” means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;

(48) “operational risk” means operational risk as defined in point (52) of Article 4(1) of Regulation (EU) No 575/2013;

(49) “credit risk mitigation” means credit risk mitigation as defined in point (57) of Article 4(1) of Regulation (EU) No 575/2013;

(50) “securitisation” means securitisation as defined in point (61) of Article 4(1) of Regulation (EU) No 575/2013;

(51) “securitisation position” means securitisation position as defined in point (62) of Article 4(1) of Regulation (EU) No 575/2013;

(52) “securitisation special purpose entity” means securitisation special purpose entity as defined in point (66) of Article 4(1) of Regulation (EU) No 575/2013;

(53) “discretionary pension benefits” means discretionary pension benefits as defined in point (73) of Article 4(1) of Regulation (EU) No 575/2013;

(54) “trading book” means trading as defined in point (86) of Article 4(1) of Regulation (EU) No 575/2013;

(55) “regulated market” means regulated market as defined in point (92) of Article 4(1) of Regulation (EU) No 575/2013;

(56) “leverage” means leverage as defined in point (93) of Article 4(1) of Regulation (EU) No 575/2013;

(57) “risk of excessive leverage” means risk of excessive leverage as defined in point (94) of Article 4(1) of Regulation (EU) No 575/2013;

(58) “external credit assessment institution” means external credit assessment institution as defined in point (98) of Article 4(1) of Regulation (EU) No 575/2013;

(59) “internal approaches” means the internal ratings based approach referred to in Article 143(1), the internal models approach referred to in Article 221, the own estimates approach referred to in Article 225, the advanced measurement approaches referred to in Article 312(2), the internal models method referred to in Articles 283 and 363, and the internal assessment approach referred to in Article 259(3) of Regulation (EU) No 575/2013;

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(60) ciallaíonn “údarás réitigh” údarás réitigh mar a shainmhínítear é i bpointe (18) d'Airteagal 2(1) de Threoir 2014/59/AE ó Pharlaimint na hEorpa agus ón gComhairle ([1]);

(61) ciallaíonn “institiúid a bhfuil tábhacht shistéamach dhomhanda léi” nó “G-SII” G-SII mar a shainmhínítear é i bpointe (133) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013;

(62) ciallaíonn “institiúid neamh-AE a bhfuil tábhacht shistéamach dhomhanda léi” nó “G-SII neamh-AE” G-SII neamh-AE mar a shainmhínítear é i bpointe (134) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013;

(63) ciallaíonn “grúpa” grúpa mar a shainmhínítear é i bpointe (138) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013;

(64) ciallaíonn “grúpa tríú tír” grúpa tríú tír a mbunaítear an máthairghnóthas i dtríú tír;

(65) ciallaíonn “beartas inscne-neodrach um luach saothair” beartas luacha saothair atá bunaithe ar phá comhionann as obair chomhionann nó obair ar comhionann a luach a bheith ag dul d'oibrithe fireanna agus d'oibrithe baineanna.

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2. Where this Directive refers to the management body and, pursuant 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 identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive.

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3. Chun a áirithiú go mbeidh ceanglais nó cumhachtaí maoirseachta a leagtar síos sa Treoir seo nó i Rialachán (AE) Uimh. 575/2013 i bhfeidhm ar bhonn comhdhlúite nó ar bhonn fo-chomhdhlúite i gcomhréir leis an Treoir seo agus leis an Rialachán sin, áireofar ar na téarmaí “institiúid”, “máthairinstitiúid i mBallstát”, “máthairinstitiúid AE” agus “máthairghnóthas” an méid seo a leanas freisin:

(a) cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha ar formheasadh iad i gcomhréir le hAirteagal 21a den Treoir seo;

(b) institiúidí ainmnithe arna rialú ag máthairchuideachta shealbhaíochta airgeadais AE nó máthairchuideachta shealbhaíochta airgeadais mheasctha AE, máthairchuideachta shealbhaíochta airgeadais i mBallstát nó máthairchuideachta shealbhaíochta airgeadais mheasctha i mBallstát i gcás nach bhfuil an mháthairchuideachta ábhartha faoi réir a formheasa i gcomhréir le hAirteagal 21a(4) den Treoir seo; agus

(c) cuideachtaí sealbhaíochta airgeadais, cuideachtaí sealbhaíochta airgeadais mheasctha nó institiúidí ainmnithe de bhun phointe (d) d'Airteagal 21a(6) den Treoir seo.

([1]) Treoir 2014/59/AE ó Pharlaimint na hEorpa agus ón gComhairle an 15 Bealtaine 2014 lena mbunaítear creat le haghaidh institiúidí creidmheasa agus comhlachtaí infheistíochta a théarnamh agus a réiteach agus lena leasaítear Treoir 82/891/CEE ón gComhairle, agus Treoracha 2001/24/CE, 2002/47/CE, 2004/25/CE, 2005/56/CE, 2007/36/CE agus 2011/35/AE, 2012/30/AE agus 2013/36/AE, agus Rialacháin (AE) Uimh 1093/2010 agus (AE) Uimh. 648/2012 ó Pharlaimint na hEorpa agus ón gComhairle (IO L 173, 12.6.2014, lch. 190).

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TITLE II

COMPETENT AUTHORITIES

Article 4

Designation and powers of the competent authorities

1. Member States shall designate competent authorities that carry out the functions and duties provided for in this Directive and in Regulation (EU) No 575/2013. They shall inform the Commission and EBA thereof, indicating any division of functions and duties.

2. 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 and Regulation (EU) No 575/2013.

3. Member States shall ensure that appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of institutions and, where applicable, of financial holding companies and mixed financial holding companies, with the requirements referred to in paragraph 2 and to investigate possible breaches of those requirements.

4. Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and penalties set out in this Directive and in Regulation (EU) No 575/2013.

5. Member States shall require that institutions provide the competent authorities of their home Member States with all the information necessary for the assessment of their compliance with the rules adopted in accordance with this Directive and Regulation (EU) No 575/2013. Member States shall also ensure that internal control mechanisms and administrative and accounting procedures of the institutions permit the checking of their compliance with such rules at all times.

6. Member States shall ensure that institutions register all their transactions and document systems and processes, which are subject to this Directive and Regulation (EU) No 575/2013 in such a manner that the competent authorities are able to check compliance with this Directive and Regulation (EU) No 575/2013 at all times.

7. Member States shall ensure that the functions of supervision pursuant to this Directive and to Regulation (EU) No 575/2013 and any other functions of the competent authorities are separate and independent from the functions relating to resolution. Member States shall inform the Commission and EBA thereof, indicating any division of duties.

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8. Áiritheoidh na Ballstáit, i gcás ina bhfuil cumhacht an réitigh ag údaráis seachas údaráis inniúla, go mbeidh na húdaráis eile sin ag obair i ndlúthchomhar leis na húdaráis inniúla agus go mbeidh siad ag dul i gcomhairle leo maidir le pleananna réitigh a ullmhú agus i ngach cás eile nuair a cheanglaítear an comhar sin agus an comhairliúchán sin leis an Treoir seo, le Treoir 2014/59/AE nó le Rialachán (AE) Uimh. 575/2013.

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Airteagal 5

Comhordú laistigh de na Ballstáit

Déanfaidh na Ballstáit ag a bhfuil níos mó ná údarás inniúil amháin le haghaidh na maoirseachta stuamachta ar institiúidí creidmheasa agus institiúidí airgeadais na bearta is gá chun comhordú a eagrú idir údaráis den sórt sin.

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Article 6

Cooperation within the European System of Financial Supervision

In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive and to Regulation (EU) No 575/2013. For that purpose, Member States shall ensure that:

(a) the competent authorities, as parties to the European System of Financial Supervision (ESFS), 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 set out in Article 4(3) of the Treaty on European Union;

(b) the competent authorities participate in the activities of EBA and, as appropriate, in the colleges of supervisors;

(c) the competent authorities make every effort to comply with those guidelines and recommendations issued by EBA in accordance with Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010;

(d) the competent authorities cooperate closely with the ESRB;

(e) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA, of the ESRB, where appropriate, or under this Directive and under Regulation (EU) No 575/2013.

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Article 7

Union dimension of supervision

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

TITLE III

REQUIREMENTS FOR ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS

CHAPTER 1

General requirements for access to the activity of credit institutions

Article 8

Authorisation

1. Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 10 to 14, they shall lay down the requirements for such authorisation and notify EBA.

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

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(a) an fhaisnéis atá le cur ar fáil do na húdaráis inniúla san iarratas chun institiúidí creidmheasa a údarú, lena n-áirítear clár na n-oibríochtaí, struchtúr eagraíochtúil agus socruithe rialachais dá bhforáiltear in Airteagal 10;

(b) na ceanglais a bhfuil feidhm acu maidir le scairshealbhóirí agus comhaltaí a bhfuil sealúchais cháilitheacha acu, nó, i gcás nach bhfuil aon sealúchais cháilitheacha ann, maidir leis an 20 scairshealbhóir nó comhalta is mó, de bhun Airteagal 14; agus

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(c) obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as referred to in Article 14.

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

3. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in point (a) of the first subparagraph of paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

▼B

4. EBA shall submit the draft technical standards referred to in paragraphs 2 and 3 to the Commission by 31 December 2015.

▼M5

5. Eiseoidh ÚBE treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, chuig na húdaráis inniúla chun modheolaíocht chomh-mheasúnaithe a shonrú chun údaruithe a dheonú i gcomhréir leis an Treoir seo.

▼M6

Airteagal 8a

Ceanglais shonracha maidir le húdarú institiúidí creidmheasa dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013

1. Ceanglóidh na Ballstáit ar na gnóthais dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013 a fuair údarú cheana de bhun Theideal II de Threoir 2014/65/AE iarratas ar údarú a chur isteach i gcomhréir le hAirteagal 8, an lá a tharlaíonn ceachtar den dá imeacht seo a leanas ar a dhéanaí:

(a) is ionann meán na sócmhainní iomlána míosúla, arna ríomh thar thréimhse 12 mhí tar éis a chéile, agus EUR 30 billiún nó is mó an meán sin ná EUR 30 billiún; nó

(b) is lú meán na sócmhainní iomlána míosúla, arna ríomh thar thréimhse 12 mhí tar éis a chéile, ná EUR 30 billiún, agus tá an gnóthas ina chuid de ghrúpa inarb ionann agus EUR 30 billiún nó inar mó ná EUR 30 billiún luach iomlán shócmhainní comhdhlúite na ngnóthas uile sa ghrúpa ar lú ná EUR 30 billiún na sócmhainní iomlána atá ag gach ceann acu ar bhonn aonair agus a dhéanann aon cheann de na gníomhaíochtaí dá dtagraítear i bpointí (3) agus (6) de Roinn A d'Iarscríbhinn I a ghabhann le Treoir 2014/65/AE, agus an dá cheann á ríomh mar mheán thar thréimhse 12 mhí tar éis a chéile.

2. Féadfaidh na gnóthais dá dtagraítear i mír 1 den Airteagal seo leanúint de bheith ag déanamh na ngníomhaíochtaí dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013 go dtí go bhfaighidh siad an t-údarú dá dtagraítear i mír 1 den Airteagal seo.

3. De mhaolú ar mhír 1 den Airteagal seo, déanfaidh na gnóthais dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013 a bheidh, an 24 Nollaig 2019, ag déanamh gníomhaíochtaí mar ghnólachtaí infheistíochta atá údaraithe faoi Threoir 2014/65/AE, déanfaidh siad iarratas ar údarú i gcomhréir le hAirteagal 8 den Treoir seo faoin 27 Nollaig 2020.

4. I gcás ina gcinnfidh an t-údarás inniúil, tar éis dó an fhaisnéis a fháil i gcomhréir le hAirteagal 95a de Threoir 2014/65/EU go bhfuil nach mór gnóthas a údarú mar institiúid creidmheasa i gcomhréir le hAirteagal 8 den Treoir seo, tabharfaidh sé fógra don ghnóthas agus don údarás inniúil mar a shainmhínítear é i bpointe (26) d'Airteagal 4(1) de Threoir 2014/65/AE agus glacfaidh sé an nós imeachta údarúcháin air féin ó dháta an fhógra sin.

▼M6

5. I gcásanna ina ndéanfar ath-údarú, áiritheoidh an t-údarás inniúil údarúcháin go ndéanfar an próiseas a chuíchóiriú a mhéid is féidir agus go gcuirfear san áireamh an fhaisnéis ó na húdaruithe atá ann cheana.

6. Forbróidh ÚBE dréachtchaighdeáin theicniúla rialála chun na nithe seo a leanas a shonrú:

(a) an fhaisnéis a bheidh le tabhairt ag an ngnóthas do na húdaráis inniúla san iarratas ar an údarú, lena n-áirítear clár na n-oibríochtaí dá bhforáiltear in Airteagal 10;

(b) an mhodheolaíocht chun na tairseacha a ríomh dá dtagraítear i mír 1.

Tarmligtear an chumhacht chuig an gCoimisiún chun an Treoir seo a fhorlíonadh trí na dréachtchaighdeáin theicniúla rialála dá dtagraítear i bpointí (a) agus (b) den chéad fhomhír a ghlacadh i gcomhréir le hAirteagail 10 go 14 de Rialachán (AE) Uimh. 1093/2010.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 26 Nollaig 2020.

▼B

Article 9

Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public

1. Member States shall prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.

2. Paragraph 1 shall not apply to the taking of deposits or other funds repayable by a Member State, or by a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, or to cases expressly covered by national or Union law, provided that those activities are subject to regulations and controls intended to protect depositors and investors.

▼M5

3. Tabharfaidh na Ballstáit fógra don Choimisiún agus do ÚBE faoi na dlíthe náisiúnta lena gceadaítear go sainráite do ghnóthais seachas institiúidí creidmheasa dul i mbun gnó taiscí agus cistí inaisíoctha eile a ghlacadh ón bpobal.

4. De bhun an Airteagail seo, ní fhéadfaidh na Ballstáit institiúidí creidmheasa a dhíolmhú ó chur i bhfeidhm na Treorach seo ná Rialachán (AE) Uimh. 575/2013.

Airteagal 10

Clár na n-oibríochtaí, struchtúr eagraíochtúil agus socruithe rialachais

1. Éileoidh na Ballstáit go ngabhfaidh clár oibríochtaí le hiarratais ar údarú ar clár oibríochtaí é lena leagtar amach na cineálacha gnó atáthar ag brath a dhéanamh agus struchtúr eagraíochtúil na hinstitiúide creidmheasa, lena n-áirítear na máthairghnóthais, cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha laistigh den ghrúpa a shonrú. Éileoidh na Ballstáit go mbeidh cur síos ar na socruithe, na próisis agus na sásraí dá dtagraítear in Airteagal 74(1) ag gabháil leis na hiarratais ar údarú.

▼M5

2. Diúltóidh na húdaráis inniúla don údarú gníomhaíocht institiúide creidmheasa a thosú ach amháin má tá siad sásta gur féidir leis an institiúid sin bainistiú riosca fónta éifeachtach a dhéanamh leis na socruithe, na próisis agus na sásraí da dtagraítear in Airteagal 74(1).

▼B

Article 11

Economic needs

Member States shall not require the application for authorisation to be examined in terms of the economic needs of the market.

Article 12

Initial capital

1. Without prejudice to other general conditions laid down in national law, the competent authorities shall refuse authorisation to commence the activity of a credit institution where a credit institution does not hold separate own funds or where its initial capital is less than EUR 5 million.

2. Initial capital shall comprise only one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.

3. Member States may decide that credit institutions which do not fulfil the requirement to hold separate own funds and which were in existence on 15 December 1979 may continue to carry out their business. They may exempt such credit institutions from complying with the requirement contained in the first subparagraph of Article 13(1).

4. Member States may grant authorisation to particular categories of credit institutions the initial capital of which is less than that specified in paragraph 1, subject to the following conditions:

(a) the initial capital is no less than EUR 1 million;

(b) the Member States concerned notify the Commission and EBA of their reasons for exercising that option.

Article 13

Effective direction of the business and place of the head office

1. The competent authorities shall grant authorisation to commence the activity of a credit institution only where at least two persons effectively direct the business of the applicant credit institution.

They shall refuse such authorisation if the members of the management body do not meet the requirements referred to in Article 91(1).

▼B

2. Each Member State shall require that:

(a) a credit institution which is a legal person and which, under its national law, has a registered office, has its head office in the same Member State as its registered office;

(b) a credit institution other than that referred to in point (a) has its head office in the Member State which granted it authorisation and in which it actually carries out its business.

Article 14

Shareholders and members

1. The competent authorities shall refuse authorisation to commence the activity of a credit institution unless a credit institution has informed them of the identities of its shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings or, where there are no qualifying holdings, of the 20 largest shareholders or members.

In determining whether the criteria for a qualifying holding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ([1]) and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which institutions hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

▼M5

2. Diúltóidh údaráis inniúla don údarú gníomhaíocht institiúide creidmheasa a thosú más rud é, agus an gá atá le bainistíocht fhónta agus stuama institiúide creidmheasa a áirithiú á chur san áireamh, nach bhfuil siad sásta faoi oiriúnacht na scairshealbhóirí nó na gcomhaltaí i gcomhréir leis na critéir a leagtar amach in Airteagal 23(1). Beidh feidhm ag Airteagal 23(2) agus (3) agus ag Airteagal 24.

▼B

3. Where close links exist between the credit institution and other natural or legal persons, competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

([1]) OJ L 390, 31.12.2004, p. 38.

▼B

The competent authorities shall refuse authorisation to commence the activity of a credit institution where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

The competent authorities shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on an ongoing basis.

Article 15

Refusal of authorisation

Where a competent authority refuses authorisation to commence the activity of a credit institution, it shall notify the applicant of the decision and the reasons therefor within six months of receipt of the application or, where the application is incomplete, within six months of receipt of the complete information required for the decision.

A decision to grant or refuse authorisation shall, in any event, be taken within 12 months of the receipt of the application.

Article 16

Prior consultation of the competent authorities of other Member States

1. The competent authority shall, before granting authorisation to a credit institution, consult the competent authorities of another Member State where the credit institution is:

(a) a subsidiary of a credit institution authorised in that other Member State;

(b) a subsidiary of the parent undertaking of a credit institution authorised in that other Member State;

(c) controlled by the same natural or legal persons as those who control a credit institution authorised in that other Member State.

2. The competent authority shall, before granting authorisation to a credit institution, consult the competent authority that is responsible for the supervision of insurance undertakings or investment firms in the Member State concerned where the credit institution is:

(a) a subsidiary of an insurance undertaking or investment firm authorised in the Union;

(b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Union;

(c) controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the Union.

▼B

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of members of the management body involved in the management of another entity of the same group. They shall exchange any information regarding the suitability of shareholders and the reputation and experience of members of the management body which is of relevance for the granting of an authorisation and for the ongoing assessment of compliance with operating conditions.

Article 17

Branches of credit institutions authorised in another Member State

Host Member States shall not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with Article 35, Article 36(1), (2) and (3), Article 37, Articles 40 to 46, Article 49 and Articles 74 and 75.

Article 18

Withdrawal of authorisation

The competent authorities may only withdraw the authorisation granted to a credit institution where such a credit institution:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

▼M6

(aa) úsáideann sí a údarú chun na gníomhaíochtaí dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013, agus na gníomhaíochtaí sin amháin, a dhéanamh agus bhí meán a sócmhainní iomlána faoi bhun na dtairseach a leagtar amach san Airteagal sin ar feadh cúig bliana as a chéile;

▼B

(b) has obtained the authorisation through false statements or any other irregular means;

(c) no longer fulfils the conditions under which authorisation was granted;

▼M5

(d) ní chomhlíonann an institiúid na ceanglais stuamachta a leagtar amach i gCuid a Trí, a Ceathair nó a Sé a thuilleadh, cé is moite de na ceanglais a leagtar síos in Airteagail 92a agus 92b, de Rialachán (AE) Uimh. 575/2013 nó arna bhforchur faoi phointe (a) d'Airteagal 104(1) nó Airteagal 105 den Treoir seo nó ní féidir bheith ag brath ar an institiúid a thuilleadh chun a hoibleagáidí a chomhlíonadh i leith a cuid creidiúnaithe, agus, go háirithe, ní thugann sí urrús a thuilleadh le haghaidh na sócmhainní a chuir a taisceoirí faoina cúram;

▼B

(e) falls within one of the other cases where national law provides for withdrawal of authorisation; or

▼B

(f) commits one of the breaches referred to in Article 67(1).

Article 19

Name of credit institutions

For the purposes of exercising their activities, credit institutions may, notwithstanding any provisions in the host Member State concerning the use of the words “bank”, “savings bank” or other banking names, use throughout the territory of the Union the same name that they use in the Member State in which their head office is situated. In the event of there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Article 20

Notification of authorisation and withdrawal of authorisation

1. Competent authorities shall notify EBA of every authorisation granted under Article 8.

▼M6

2. Déanfaidh ÚBE liosta ainmneacha na n-institiúidí creidmheasa uile a bhfuil údarú tugtha dóibh a fhoilsiú ar a shuíomh gréasáin agus déanfaidh sé an liosta sin a thabhairt cothrom le dáta ar bhonn bliantúil ar a laghad.

▼B

3. The consolidating supervisor shall provide the competent authorities concerned and EBA with all information regarding the group of credit institutions in accordance with Article 14(3), Article 74(1) and Article 109(2), in particular regarding the legal and organisational structure of the group and its governance.

▼M6

3a. Áireofar ar an liosta dá dtagraítear i mír 2 den Airteagal seo ainmneacha na ngnóthas dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013 agus sainaithneofar ann na hinstitiúidí creidmheasa sin dá réir. Tabharfar breac-chuntas sa liosta sin freisin ar athrú ar bith i gcomparáid leis an leagan den liosta a bhí ann roimhe sin.

▼B

4. The list referred to in paragraph 2 of this Article shall include the names of credit institutions that do not have the capital specified in Article 12(1) and shall identify those credit institutions as such.

5. The competent authorities shall notify EBA of each withdrawal of authorisation together with the reasons for such a withdrawal.

Article 21

Waiver for credit institutions permanently affiliated to a central body

1. The competent authorities may waive the requirements set out in Articles 10 and 12 and Article 13(1) of this Directive with regard to a credit institution referred to in Article 10 of Regulation (EU) No 575/2013 in accordance with the conditions set out therein.

▼B

Member States may maintain and make use of existing national law regarding the application of such a waiver provided that it does not conflict with this Directive or with Regulation (EU) No 575/2013.

2. Where the competent authorities exercise a waiver referred to in paragraph 1, Articles 17, 33, 34 and 35, Article 36(1) to (3), Articles 39 to 46, Section II of Chapter 2 of Title VII and Chapter 4 of Title VII shall apply to the whole as constituted by the central body together with its affiliated institutions.

▼M5

Airteagal 21a

Cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha a fhormheas

1. Féachfaidh máthairchuideachtaí sealbhaíochta airgeadais i mBallstát, máthairchuideachtaí sealbhaíochta airgeadais mheasctha i mBallstát, máthairchuideachtaí sealbhaíochta airgeadais AE agus máthairchuideachtaí sealbhaíochta airgeadais mheasctha AE le formheas a fháil i gcomhréir leis an Airteagal seo. Féachfaidh cuideachtaí sealbhaíochta airgeadais eile nó cuideachtaí sealbhaíochta airgeadais mheasctha eile le formheas a fháil i gcomhréir leis an Airteagal seo i gcás inar gá dóibh an Treoir seo nó Rialachán (AE) Uimh. 575/2013 a chomhlíonadh ar bhonn fo-chomhdhlúite.

2. Chun críocha mhír 1, cuirfidh cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha dá dtagraítear inti an fhaisnéis a leanas ar fáil don mhaoirseoir comhdhlúthaithe agus, i gcás nach ionann iad, don údarás inniúil sa Bhallstát ina bhfuil siad lonnaithe:

(a) struchtúr eagraíochtúil an ghrúpa a bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha mar chuid de, ina sonraítear go soiléir na fochuideachtaí agus, i gcás inarb infheidhme, na máthairghnóthais, agus suíomh agus cineál na gníomhaíochta a dhéanann gach ceann de na heintitis laistigh den ghrúpa;

(b) faisnéis maidir le hainmniúchán beirte, ar a laghad, arb iad a dhéanann an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha a stiúradh agus maidir le comhlíonadh na gceanglas a leagtar amach in Airteagal 121 maidir le cáilíocht stiúrthóirí;

(c) faisnéis maidir le comhlíonadh na gcritéar a leagtar amach in Airteagal 14 i ndáil le scairshealbhóirí agus comhaltaí, i gcás ina bhfuil institiúid creidmheasa ag an gcuideachta shealbhaíochta airgeadais nó ag an gcuideachta shealbhaíochta airgeadais mheasctha mar fhochuideachta;

(d) eagrúchán inmheánach agus dáileadh na gcúraimí laistigh den ghrúpa;

(e) aon fhaisnéis eile a d'fhéadfadh a bheith riachtanach chun an measúnú dá dtagraítear i míreanna 3 agus 4 den Airteagal seo a dhéanamh.

▼M5

I gcás ina dtarlaíonn formheas na cuideachta sealbhaíochta airgeadais nó na cuideachta sealbhaíochta airgeadais mheasctha i gcomhthráth leis an measúnú dá dtagraítear in Airteagal 22, déanfaidh an t-údarás inniúil, chun críocha an Airteagail sin, de réir mar is iomchuí, comhordú leis an maoirseoir comhdhlúthaithe agus, más éagsúil, leis an údarás inniúil sa Bhallstát ina bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha bunaithe. ►C4 Sa chás sin, déanfar an tréimhse mheasúnaithe dá dtagraítear sa dara fomhír d'Airteagal 22(2) a chur ar fionraí ar feadh tréimhse níos faide ná 20 lá oibre go dtí go mbeidh an nós imeachta a leagtar amach san Airteagal seo curtha i gcrích. ◄

3. Ní fhéadfar cuideachta shealbhaíochta airgeadais nó cuideachta shealbhaíochta airgeadais mheasctha a fhormheas de bhun an Airteagail seo ach amháin i gcás ina bhfuil gach ceann de na coinníollacha seo a leanas comhlíonta:

(a) tá socruithe agus dáileadh inmheánach na gcúraimí laistigh den ghrúpa leordhóthanach chun críocha na ceanglais a fhorchuirtear faoin Treoir seo agus faoi Rialachán (AE) Uimh. 575/2013 a chomhlíonadh ar bhonn comhdhlúite nó ar bhonn fo-chomhdhlúithe agus, go háirithe, tá éifeacht acu maidir leis an méid a leanas:

(i) gach fochuideachta de chuid na cuideachta sealbhaíochta airgeadais nó na cuideachta sealbhaíochta airgeadais mheasctha a chomhordú, lena n-áirítear, i gcás inar gá, trí dháileadh leordhóthanach na gcúraimí i measc fo-institiúidí;

(ii) coinbhleachtaí idirghrúpa a chosc nó a bhainistiú; agus

(iii) na beartais uile-ghrúpa arna leagan síos ag an máthairchuideachta shealbhaíochta airgeadais nó ag an máthairchuideachta shealbhaíochta airgeadais mheasctha a fhorfheidhmiú ar fud an ghrúpa;

(b) ní chuireann struchtúr eagraíochtúil an ghrúpa a bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha mar chuid de, bac ar stiúradh éifeachtach na bhfo-institiúidí nó na máthairinstitiúidí i dtaca leis na hoibleagáidí aonair, comhdhlúite agus, i gcás inarb iomchuí, fo-chomhdhlúite a bhfuil siad faoina réir, ná ní dhéanann sé an méid sin a chosc ar bhealach eile. Leis an measúnú ar an gcritéar sin, cuirfear an méid a leanas san áireamh, go háirithe:

(i) suíomh na cuideachta sealbhaíochta airgeadais nó na cuideachta sealbhaíochta airgeadais mheasctha i ngrúpa ilsrathach;

(ii) struchtúr na scairshealbhóireachta; agus

(iii) ról na cuideachta sealbhaíochta airgeadais nó na cuideachta sealbhaíochta airgeadais mheasctha laistigh den ghrúpa;

(c) comhlíontar na critéir a leagtar amach in Airteagal 14 agus na ceanglais a leagtar síos in Airteagal 121.

4. Ní gá an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha a fhormheas faoin Airteagal seo i gcás ina gcomhlíonfar na coinníollacha uile seo a leanas:

▼M5

(a) is é príomhghníomhaíocht na cuideachta sealbhaíochta airgeadais sealúchais a fháil i bhfochuideachtaí nó, i gcás cuideachta sealbhaíochta airgeadais mheasctha, is é an phríomhghníomhaíocht atá aici i dtaca le hinstitiúidí nó institiúidí airgeadais sealúchais i bhfochuideachtaí a fháil;

(b) níor ainmníodh an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha mar eintitis réitigh in aon cheann de ghrúpaí réitigh an ghrúpa i gcomhréir leis an straitéis réitigh arna chinneadh ag an údarás réitigh ábhartha de bhun Threoir 2014/59/AE;

(c) tá fo-institiúid chreidmheasa ainmnithe le bheith freagrach as comhlíonadh na gceanglas stuamachta ag an ngrúpa ar bhonn comhdhlúite agus tugtar di na hacmhainní riachtanacha uile agus an t-údarás dlíthiúil chun na hoibleagáidí sin a chomhlíonadh ar bhealach éifeachtach;

(d) níl an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha rannpháirteach i gcinntí bainistithe, oibríochtúla nó airgeadais a bhfuil tionchar acu ar an ngrúpa a dhéanamh nó a bhfuil tionchar acu ar a fhochuideachtaí atá ina n-institiúidí nó ina n-institiúidí airgeadais;

(e) níl aon bhac ar mhaoirseacht éifeachtach a dhéanamh ar an ngrúpa ar bhonn comhdhlúite.

Cuideachtaí sealbhaíochta airgeadais nó cuideachtaí sealbhaíochta airgeadais mheasctha arna ndíolmhú óna bhformheas i gcomhréir leis an mír seo, ní dhéanfar iad a eisiamh ón imlíne chomhdhlúthaithe mar a leagtar síos í sa Treoir seo agus i Rialachán (AE) Uimh. 575/2013.

5. Déanfaidh an maoirseoir comhdhlúthaithe faireachán ar chomhlíonadh na gcoinníollacha dá dtagraítear i mír 3 nó, i gcás inarb infheidhme, i mír 4 ar bhonn leanúnach. Cuirfidh cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha an fhaisnéis atá riachtanach ar fáil don mhaoirseoir comhdhlúthaithe atá ag teastáil uaidh nó uaithi chun faireachán a dhéanamh ar bhonn leanúnach ar struchtúr eagraíochtúil an ghrúpa agus comhlíonadh na gcoinníollacha dá dtagraítear i mír 3 nó, i gcás inarb infheidhme, mír 4. Déanfaidh an maoirseoir comhdhlúthaithe an fhaisnéis sin a chomhroinnt leis an údarás inniúil sa Bhallstát ina bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha bunaithe.

6. I gcás inar chinn an maoirseoir comhdhlúthaithe nach bhfuil na coinníollacha a leagtar amach i mír 3 á gcomhlíonadh nó nach bhfuil siad á gcomhlíonadh a thuilleadh, beidh an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha faoi réir bearta maoirseachta iomchuí chun leanúnachas agus sláine na maoirseachta comhdhlúite agus comhlíonadh na gceanglas a leagtar síos sa Treoir seo agus i Rialachán (AE) Uimh. 575/2013 a áirithiú nó a thabhairt ar ais, de réir mar a bheidh, ar bhonn comhdhlúite. I gcás cuideachta shealbhaíochta airgeadais mheasctha, cuirfear san áireamh sna bearta maoirseachta, go háirithe, an tionchar ar an ilchuideachta airgeadais.

Féadfar an méid seo a leanas a bheith san áireamh, go háirithe, sna bearta maoirseachta dá dtagraítear sa chéad fhomhír:

(a) feidhmiú na gceart vótála a bhaineann le scaireanna na bhfo-institiúidí atá i seilbh na cuideachta sealbhaíochta airgeadais nó na cuideachta sealbhaíochta airgeadais mheasctha a chur ar fionraí;

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(b) eisiúint urghairí nó pionós i gcoinne na cuideachta sealbhaíochta airgeadais, na cuideachta sealbhaíochta airgeadais mheasctha nó chomhaltaí an bhoird bainistíochta agus bainisteoirí faoi réir Airteagail 65 go 72;

(c) treoracha a thabhairt don chuideachta shealbhaíochta airgeadais nó don chuideachta shealbhaíochta airgeadais mheasctha na rannpháirtíochtaí ina cuid fo-institiúidí a aistriú chuig a scairshealbhóirí;

(d) ar bhonn sealadach, cuideachta shealbhaíochta airgeadais, cuideachta shealbhaíochta airgeadais mheasctha nó institiúid eile laistigh den ghrúpa a ainmniú le bheith freagrach as comhlíonadh na gceanglas a leagtar síos sa Treoir seo agus i Rialachán (AE) Uimh. 575/2013 ar bhonn comhdhlúite a áirithiú;

(e) srian nó toirmeasc a chur ar dháileacháin nó íocaíochtaí úis do scairshealbhóirí;

(f) a cheangal ar chuideachtaí sealbhaíochta airgeadais nó cuideachtaí sealbhaíochta airgeadais mheasctha dhífheistiú ó institiúidí nó eintitis eile in earnáil an airgeadais nó a sealúchas iontu a laghdú;

(g) a cheangal ar chuideachtaí sealbhaíochta airgeadais nó cuideachtaí sealbhaíochta airgeadais mheasctha plean a thíolacadh gan mhoill chun filleadh ar chomhlíonadh.

7. I gcás ina gcinneann an maoirseoir comhdhlúthaithe nach bhfuil na coinníollacha a leagtar amach i mír 4 á gcomhlíonadh a thuilleadh, iarrfaidh an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha formheas i gcomhréir leis an Airteagal seo.

8. Chun críocha cinntí a dhéanamh maidir le formheas agus díolmhú ó fhormheas dá dtagraítear i míreanna 3 agus 4 faoi seach, agus na bearta a dhéanamh dá dtagraítear i míreanna 6 agus 7, i gcás ina bhfuil an maoirseoir comhdhlúthaithe éagsúil ón údarás inniúil sa Bhallstát ina bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha bunaithe, oibreoidh an dá údarás i gcomhairle iomlán le chéile. Ullmhóidh an maoirseoir comhdhlúthaithe an measúnú maidir leis na hábhair dá dtagraítear i míreanna 3, 4, 6 agus 7, de réir mar is infheidhme, agus cuirfidh sé an measúnú sin ar aghaidh chuig an údarás inniúil sa Bhallstát ina bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha bunaithe. Déanfaidh an dá údarás gach a bhfuil ar a gcumas chun teacht ar chinneadh comhpháirteach laistigh de dhá mhí ón dáta a bhfaightear an measúnú thuasluaite.

Déanfar an cinneadh comhpháirteach a dhoiciméadú agus a réasúnú go cuí. Cuirfidh an maoirseoir comhdhlúthaithe an cinneadh comhpháirteach in iúl don chuideachta shealbhaíochta airgeadais nó don chuideachta shealbhaíochta airgeadais mheasctha.

I gcás easaontais, staonfaidh an maoirseoir comhdhlúthaithe nó an t-údarás inniúil sa Bhallstát ina bhfuil an chuideachta shealbhaíochta airgeadais nó an chuideachta shealbhaíochta airgeadais mheasctha bunaithe ó chinneadh a dhéanamh agus cuirfidh sé an t-ábhar faoi bhráid ÚBE i gcomhréir le hAirteagal 19 de Rialachán (AE) Uimh. 1093/2010. Déanfaidh ÚBE a chinneadh laistigh de 1 mhí amháin tar éis do ÚBE an t-ábhar a fháil. Déanfaidh na húdaráis inniúla lena mbaineann cinneadh comhpháirteach a ghlacadh i gcomhréir le cinneadh ÚBE. Ní chuirfear an t-ábhar faoi bhráid ÚBE tar éis dheireadh na tréimhse 2 mhí ná tar éis cinneadh comhpháirteach a bheith déanta.

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9. I gcás cuideachtaí sealbhaíochta airgeadais mheasctha, i gcás inarb éagsúil an maoirseoir comhdhlúthaithe, nó an t-údarás inniúil sa Bhallstát ina bhfuil an chuideachta shealbhaíochta airgeadais mheasctha bunaithe ón gcomhordaitheoir arna chinneadh i gcomhréir le hAirteagal 10 de Threoir 2002/87/CE, beidh comhaontú an chomhordaitheora ag teastáil chun críche cinntí nó cinntí comhpháirteacha dá dtagraítear i míreanna 3, 4, 6 agus 7 den Airteagal seo, de réir mar is infheidhme. I gcás ina dteastaíonn comhaontú an chomhordaitheora, is é an tÚdarás ábhartha Maoirseachta Eorpach a réiteoidh aon easaontas — amhail ÚBE nó an tÚdarás Maoirseachta Eorpach (an tÚdarás Eorpach um Árachas agus Pinsin Cheirde) (EIOPA), a bunaíodh le Rialachán (AE) Uimh. 1094/2010 ó Pharlaimint na hEorpa agus ón gComhairle ([1]), agus glacfaidh sé a chinneadh laistigh de 1 mhí amháin ó chuirfear an t-easaontas faoina mbráid. Beidh aon chinneadh a dhéantar i gcomhréir leis an mír seo gan dochar do na hoibleagáidí faoi Threoir 2002/87/CE nó faoi Threoir 2009/138/CE.

10. I gcás ina ndiúltaítear cuideachta shealbhaíochta airgeadais nó cuideachta shealbhaíochta airgeadais mheasctha a fhormheas de bhun an Airteagail seo, tabharfaidh an maoirseoir comhdhlúthaithe fógra don iarratasóir faoin gcinneadh agus na cúiseanna a bhaineann leo laistigh de 4 mhí tar éis dó an t-iarratas a fháil, nó i gcás ina bhfuil an t-iarratas neamhiomlán, laistigh de 4 mhí ón dáta a bhfaighfear an fhaisnéis iomlán is gá chun an cinneadh a dhéanamh.

I ngach cás, déanfar cinneadh maidir le formheas a cheadú nó a dhiúltú laistigh de 6 mhí ón iarratas a fháil. Féadfaidh aon cheann de na bearta dá dtagraítear i mír 6 a bheith ag gabháil leis an diúltú, sa chás inar gá.

Airteagal 21b

Máthairghnóthas idirmheánach AE

1. Maidir le dhá institiúid nó níos mó san Aontas atá mar chuid den ghrúpa tríú tír céanna, beidh máthairghnóthas idirmheánach AE amháin acu bunaithe san Aontas.

2. Féadfaidh na húdaráis inniúla a cheadú do na hinstitiúidí dá dtagraítear i mír 1 dhá mháthairghnóthas idirmheánach AE a bheith acu i gcás ina gcinneann siad gurbh fhíor an méid seo a leanas mura mbunófaí ach aon mháthairghnóthas idirmheánach amháin:

(a) bheadh máthairghnóthas idirmheánach AE amháin neamhréireach le ceanglas éigeantach i gcomhréir le rialacha na tríú tíre ina bhfuil a cheannoifig ag máthairghnóthas deiridh an ghrúpa tríú tíre; nó

(b) ní bheadh inréiteacht níos éifeachtúla ná i gcás dhá máthairghnóthas AE idirmheánach de réir measúnú arna dhéanamh ag údaráis inniúla réitigh an mháthairghnóthais AE idirmheánaigh.

([1]) Rialachán (AE) Uimh. 1094/2010 ó Pharlaimint na hEorpa agus ón gComhairle an 24 Samhain 2010 lena mbunaítear Údarás Maoirseachta Eorpach (an tÚdarás Eorpach um Árachas agus Pinsin Cheirde) lena leasaítear Cinneadh Uimh. 716/2009/CÉ agus lena n-aisghairtear Cinneadh 2009/79/CE ón gCoimisiún (IO L 331, 15.12.2010, lch. 48).

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3. Beidh máthairghnóthas idirmheánach AE ina institiúid creidmheasa arna húdarú i gcomhréir le hAirteagal 8, nó ina chuideachta shealbhaíochta airgeadais nó ina chuideachta shealbhaíochta airgeadais mheasctha arna formheas i gcomhréir le hAirteagal 21a.

De mhaolú ar an gcéad fhomhír den mhír seo, i gcás nach bhfuil aon cheann de na hinstitiúidí dá dtagraítear i mír 1 den Airteagal seo ina hinstitiúid chreidmheasa nó i gcás nach mór dara máthairchuideachta idirmheánach AE a bhunú i ndáil le gníomhaíochtaí infheistíochta chun ceangal sainordaitheach dá dtagraítear i mír 2 den Airteagal seo a chomhlíonadh, féadfaidh an mháthairchuideachta idirmheánach AE nó an dara máthairchuideachta idirmheánach AE a bheith ina gnólacht infheistíochta arna húdarú i gcomhréir le hAirteagal 5(1) de Threoir 2014/65/AE atá faoi réir Treoir 2014/59/AE.

4. Ní bheidh feidhm ag míreanna 1, 2, ná 3, i gcás ina mbeidh luach iomlán sócmhainní an ghrúpa tríú tír san Aontas níos ísle ná EUR 40 billiún.

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5. Chun críocha an Airteagail seo:

(a) is é suim na nithe seo a leanas luach iomlán sócmhainní an ghrúpa tríú tír san Aontas:

(i) luach iomlán na sócmhainní atá ag gach institiúid den ghrúpa tríú tír san Aontas a thiocfaidh as a clár comhardaithe comhdhlúite, nó a thiocfaidh as a cláir chomhardaithe aonair, i gcás nach gcomhdhlúthaítear clár comhardaithe de chuid institiúide; agus

(ii) luach iomlán na sócmhainní atá ag gach brainse den ghrúpa tríú tír a údaraítear le bheith ag oibriú san Aontas i gcomhréir leis an Treoir seo, le Rialachán (AE) Uimh. 600/2014 ó Pharlaimint na hEorpa agus ón gComhairle ([1]) nó le Treoir 2014/65/AE.

(b) cuimseofar gnólachtaí infheistíochta freisin faoin téarma “institiúid”.

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6. Tabharfaidh na húdaráis inniúla fógra do ÚBE faoin bhfaisnéis seo a leanas i ndáil le gach grúpa tríú tír atá ag oibriú ina ndlínse:

(a) ainmneacha na n-institiúidí faoi mhaoirseacht ar le grúpa tríú tír iad, mar aon le luach iomlán sócmhainní;

(b) ainmneacha agus luach iomlán sócmhainní a chomhfhreagraíonn do bhrainsí a údaraítear sa Bhallstát sin de bhun na Treorach seo, Treoir 2014/65/AE nó Rialachán (AE) Uimh. 600/2004, agus na cineálacha gníomhaíochtaí a bhfuil údarás ag na brainsí sin a chur i gcrích;

(c) ainm agus luach iomlán sócmhainní dá dtagraítear i mír 3 d'aon mháthairghnóthais idirmheánaigh AE arna bhunú sa Bhallstát sin agus ainm an ghrúpa tríú tír a bhfuil sé ina chuid de.

([1]) Rialachán (AE) Uimh. 600/2014 ó Pharlaimint na hEorpa agus ón gComhairle an 15 Bealtaine 2014 maidir le margaí in ionstraimí airgeadais agus lena leasaítear Rialachán (AE) Uimh. 648/2012 (IO L 173, 12.6.2014, lch. 84).

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7. Foilseoidh ÚBE ar a shuíomh gréasáin liosta de na grúpaí tríú tír ar fad atá ag oibriú san Aontas mar aon lena máthairghnóthas idirmheánach AE nó mar aon lena máthairghnóthais idirmheánacha AE, i gcás inarb fheidhme.

Áiritheoidh na húdaráis inniúla go gcomhlíonfaidh gach institiúid atá faoina ndlínse agus ar cuid de ghrúpa tríú tír í, ceann amháin de na coinníollacha seo a leanas:

(a) tá máthairghnóthas idirmheánach AE aici;

(b) is máthairghnóthas idirmheánach AE í;

(c) is í an t-aon institiúid í den ghrúpa tríú tír san Aontas; nó

(d) is cuid de ghrúpa tríú tír í ar fiú níos lú ná EUR 40 billiún méid iomlán shócmhainní an ghrúpa sin san Aontas.

8. ►C4 De mhaolú ar mhír 1, beidh, ag grúpaí tríú tír a oibríonn trí níos mó ná institiúid amháin san Aontas agus arb ionann méid iomlán na sócmhainní san Aontas atá acu agus EUR 40 billiún nó ar mó ná sin é an 27 Meitheamh 2019 ◄, máthairghnóthas idirmheánach AE nó, sa chás ina mbeidh feidhm ag mír 2, dhá mháthairghnóthas idirmheánach AE faoin 30 Nollaig 2023.

9. Faoin 30 Nollaig 2026, déanfaidh an Coimisiún, tar éis dul i gcomhairle le ÚBE, athbhreithniú ar na ceanglais arna bhforchur ar institiúidí leis an Airteagal seo agus cuirfidh sé tuarascáil, faoi bhráid Pharlaimint na hEorpa agus na Comhairle. Sa tuarascáil sin, breathnófar an méid a leanas, ar a laghad:

(a) an bhfuil na ceanglais a leagtar síos san Airteagal seo inoibrithe, riachtanach, agus comhréireach, agus an mbeadh bearta eile níos iomchuí;

(b) ar cheart na ceanglais arna bhforchur ar institiúidí leis an Airteagal seo a leasú d'fhonn na cleachtais idirnáisiúnta is fearr a léiriú iontu.

10. Faoin 28 Meitheamh 2021, cuirfidh ÚBE tuairisc faoi bhráid Pharlaimint na hEorpa, na Comhairle, agus an Choimisiúin maidir leis an gcaoi a gcaitear le brainsí tríú tír faoin dhlí náisiúnta na mBallstát. Sa tuarascáil sin, breathnófar an méid a leanas, ar a laghad:

(a) cé acu atá nó nach bhfuil, agus a mhéid atá, difríocht i measc na mBallstát maidir leis na cleachtais mhaoirseoireachta is infheidhme do bhrainsí tríú tír;

(b) cé acu a fhéadfadh nó nach bhféadfadh an chaoi a gcaitear le brainsí tríú tír faoin dlí náisiúnta a bheith ina shiocair le harbatráiste rialála;

(c) ar ghá, agus arbh iomchuí, tuilleadh comhchuibhithe ar na réimis náisiúnta i gcás brainsí tríú tír, go háirithe i dtaca le brainsí suntasacha tríú tír.

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Déanfaidh an Coimisiún, i gcás inarb iomchuí, togra reachtacha a thíolacadh chuig Parlaimint na hEorpa agus chuig an gComhairle bunaithe ar na moltaí a dhéanfaidh ÚBE.

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CHAPTER 2

Qualifying holding in a credit institution

Article 22

Notification and assessment of proposed acquisitions

1. Member States shall require any natural or legal person or such persons acting in concert (the "proposed acquirer"), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the credit institution would become its subsidiary (the "proposed acquisition"), to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4). Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

2. The competent authorities shall acknowledge receipt of notification under paragraph 1 or of further information under paragraph 3 promptly and in any event within two working days following receipt in writing to the proposed acquirer.

The competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 23(4) (the "assessment period"), to carry out the assessment provided for in Article 23(1) (the "assessment").

The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. The competent authorities may, during the assessment period if necessary, and no later than on the 50th working day of the assessment period, request further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

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4. The competent authorities may extend the suspension referred to in the second subparagraph of paragraph 3 up to 30 working days if the proposed acquirer is situated or regulated in a third country or is a natural or legal person ►C2 not subject to supervision under this Directive or under Directive 2009/65/EC, 2009/138/EC, or 2004/39/EC. ◄

5. If the competent authorities decide to oppose the proposed acquisition, they shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the proposed acquirer in writing, providing the reasons. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the proposed acquirer.

6. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

7. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8. Member States shall not impose requirements for notification to, or approval by, the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

9. EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 23

Assessment criteria

1. In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3), the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:

(a) the reputation of the proposed acquirer;

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(b) clú, eolas, scileanna agus taithí, mar a leagtar amach in Airteagal 91(1), aon chomhalta den chomhlacht bainistíochta a stiúrfaidh gnó na hinstitiúide creidmheasa mar thoradh ar an éadáil bheartaithe;

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(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

(d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and Regulation (EU) No 575/2013, and where applicable, other Union law, in particular Directives 2002/87/EC and 2009/110/EC, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ([1]) is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 22(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 22(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

([1]) OJ L 309, 25.11.2005, p. 15.

▼B

Article 24

Cooperation between competent authorities

1. The relevant competent authorities shall fully consult each other when carrying out the assessment if the proposed acquirer is one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm, or a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(c) a natural or legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In that regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the credit institution in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 25

Notification in the case of a divestiture

Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a credit institution to notify the competent authorities in writing in advance of the divestiture, indicating the size of the holding concerned. Such a person shall also notify the competent authorities if it has taken a decision to reduce its qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the credit institution would cease to be its subsidiary. Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

Article 26

Information obligations and penalties

1. Credit institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) and Article 25, inform the competent authorities of those acquisitions or disposals.

▼B

Credit institutions admitted to trading on a regulated market shall, at least annually, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market.

2. Member States shall require that, where the influence exercised by the persons referred to in Article 22(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, penalties, subject to Articles 65 to 72, against members of the management body and managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the credit institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information as set out in Article 22(1) and subject to Articles 65 to 72.

If a holding is acquired despite opposition by the competent authorities, Member States shall, regardless of any other penalty to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 27

Criteria for qualifying holdings

In determining whether the criteria for a qualifying holding as referred to in Articles 22, 25 and 26 are fulfilled, the voting rights referred to in Articles 9, 10 and 11 of Directive 2004/109/EC and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

In determining whether the criteria for a qualifying holding as referred to in Article 26 are fulfilled, Member States shall not take into account voting rights or shares which institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

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TITLE V

PROVISIONS CONCERNING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

CHAPTER 1

General Principles

Article 33

Credit institutions

Member States shall provide that the activities listed in Annex I may be carried out within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46 either by establishing a branch or by providing services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.

Article 34

Financial institutions

1. Member States shall provide that the activities listed in Annex I may be carried out within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46, either by establishing a branch or by providing services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying out of those activities and which fulfils each of the following conditions:

(a) the parent undertaking or undertakings are authorised as credit institutions in the Member State by the law of which the financial institution is governed;

(b) the activities in question are actually carried out within the territory of the same Member State;

(c) the parent undertaking or undertakings holds 90 % or more of the voting rights attaching to shares in the capital of the financial institution;

(d) the parent undertaking or undertakings satisfies the competent authorities regarding the prudent management of the financial institution and has declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;

(e) the financial institution is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title VII, Chapter 3 of this Directive and Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of that Regulation, for the control of large exposures provided for in Part Four of that Regulation and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that Regulation.

▼B

The competent authorities of the home Member State shall check compliance with the conditions set out in the first subparagraph and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in Articles 35 and 39.

2. If a financial institution as referred to in the first subparagraph of paragraph 1 ceases to fulfil any of the conditions imposed, the competent authorities of the home Member State shall notify the competent authorities of the host Member State and the activities carried out by that financial institution in the host Member State shall become subject to the law of the host Member State.

3. Paragraphs 1 and 2 shall apply accordingly to subsidiaries of a financial institution as referred to in the first subparagraph of paragraph 1.

CHAPTER 2

The right of establishment of credit institutions

Article 35

Notification requirement and interaction between competent authorities

1. A credit institution wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. Member States shall require every credit institution wishing to establish a branch in another Member State to provide all the following information when effecting the notification referred to in paragraph 1:

(a) the Member State within the territory of which it plans to establish a branch;

(b) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those to be responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged, they shall, within three months of receipt of the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the credit institution accordingly.

The home Member State's competent authorities shall also communicate the amount and composition of own funds and the sum of the own funds requirements under Article 92 of Regulation (EU) No 575/2013 of the credit institution.

▼B

By way of derogation from the second subparagraph, in the case referred to in Article 34 the home Member State's competent authorities shall communicate the amount and composition of own funds of the financial institution and the total risk exposure amounts calculated in accordance with Article 92(3) and (4) of Regulation (EU) No 575/2013 of the credit institution which is its parent undertaking.

4. Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the credit institution concerned within three months of receipt of all the information.

That refusal or a failure to reply shall be subject to a right to apply to the courts in the home Member State.

5. EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

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

6. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

7. EBA shall submit the draft technical standards referred to in paragraphs 5 and 6 to the Commission by 1 January 2014.

Article 36

Commencement of activities

1. Before the branch of a credit institution commences its activities the competent authorities of the host Member State shall, within two months of receiving the information referred to in Article 35, prepare for the supervision of the credit institution in accordance with Chapter 4 and if necessary indicate the conditions under which, in the interests of the general good, those activities shall be carried out in the host Member State.

2. On receipt of a communication from the competent authorities of the host Member State, or in the event of the expiry of the period provided for in paragraph 1 without receipt of any communication from the latter, the branch may be established and may commence its activities.

3. In the event of a change in any of the information communicated pursuant to points (b), (c) or (d) of Article 35(2), a credit institution shall give written notice of the change in question to the competent authorities of the home and host Member States at least one month before making the change in order to enable the competent authorities of the home Member State to take a decision following a notification under Article 35, and the competent authorities of the host Member State to take a decision setting out the conditions for the change pursuant to paragraph 1 of this Article.

▼B

4. Branches which have commenced their activities, in accordance with the provisions in force in their host Member States, before 1 January 1993, shall be presumed to have been subject to the procedures set out in Article 35 and in paragraphs 1 and 2 of this Article. They shall be governed, from 1 January 1993, by paragraph 3 of this Article and by Articles 33 and 52 and Chapter 4.

5. EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

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

6. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

7. EBA shall submit the draft technical standards referred to in paragraphs 5 and 6 to the Commission by 1 January 2014.

Article 37

Information about refusals

Member States shall inform the Commission and EBA of the number and type of cases in which there has been a refusal pursuant to Article 35 and Article 36(3).

Article 38

Aggregation of branches

Any number of places of business set up in the same Member State by a credit institution with headquarters in another Member State shall be regarded as a single branch.

CHAPTER 3

Exercise of the freedom to provide services

Article 39

Notification procedure

1. Any credit institution wishing to exercise the freedom to provide services by carrying out its activities within the territory of another Member State for the first time shall notify the competent authorities of the home Member State of the activities on the list in Annex I which it intends to carry out.

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2. The competent authorities of the home Member State shall, within one month of receipt of the notification provided for in paragraph 1, send that notification to the competent authorities of the host Member State.

3. This Article shall not affect rights acquired by credit institutions providing services before 1 January 1993.

4. EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

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

5. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

6. EBA shall submit the draft technical standards referred to in paragraphs 4 and 5 to the Commission by 1 January 2014.

CHAPTER 4

Powers of the competent authorities of the host Member State

Article 40

Reporting requirements

The competent authorities of the host Member States may require that all credit institutions having branches within their territories shall report to them periodically on their activities in those host Member States.

Such reports shall only be required for information or statistical purposes, for the application of Article 51(1), or for supervisory purposes in accordance with this Chapter. They shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

The competent authorities of the host Member States may in particular require information from the credit institutions referred to in the first subparagraph in order to allow those competent authorities to assess whether a branch is significant in accordance with Article 51(1).

▼B

Article 41

Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State

1. Where the competent authorities of the host Member State on the basis of information received from the competent authorities of the home Member State under Article 50 ascertain that a credit institution having a branch or providing services within its territory fulfils one of the following conditions in relation to the activities carried out in that host Member State, they shall inform the competent authorities of the home Member State:

(a) the credit institution does not comply with the national provisions transposing this Directive or with Regulation (EU) No 575/2013;

(b) there is a material risk that the credit institution will not comply with the national provisions transposing this Directive or with Regulation (EU) No 575/2013.

The competent authorities of the home Member State shall, without delay, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance or takes measures to avert the risk of non-compliance. The competent authorities of the home Member State shall communicate those measures to the competent authorities of the host Member State without delay.

2. Where the competent authorities of the host Member State consider that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to the second subparagraph of paragraph 1, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision under Article 19(3) of that Regulation within 24 hours. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

Article 42

Reasons and communication

Any measure taken pursuant to Article 41(1), or Article 43 or 44 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

Article 43

Precautionary measures

1. Before following the procedure set out in Article 41, the competent authorities of the host Member State may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in the host Member State.

▼B

2. Any precautionary measures under paragraph 1 shall be proportionate to their purpose to protect against financial instability that would seriously threaten collective interests of depositors, investors and clients in the host Member State. Such precautionary measures may include a suspension of payment. They shall not result in a preference for the creditors of the credit institution in the host Member State over creditors in other Member States.

3. Any precautionary measure under paragraph 1 shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 3 of Directive 2001/24/EC.

4. The competent authorities of the host Member State shall terminate precautionary measures where they consider those measures to have become obsolete under Article 41, unless they cease to have effect in accordance with paragraph 3 of this Article.

5. The Commission, EBA and the competent authorities of the other Member States concerned shall be informed of precautionary measures taken under paragraph 1 without undue delay.

Where the competent authorities of the home Member State or of any other affected Member State object to measures taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision under Article 19(3) of that Regulation within 24 hours. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

Article 44

Powers of host Member States

Host Member States may, notwithstanding Articles 40 and 41, exercise the powers conferred on them under this Directive to take appropriate measures to prevent or to punish breaches committed within their territories of the rules they have adopted pursuant to this Directive or in the interests of the general good. This shall include the possibility of preventing offending credit institutions from initiating further transactions within their territories.

Article 45

Measures following withdrawal of authorisation

In the event of withdrawal of authorisation, the competent authorities of the home Member State shall inform the competent authorities of the host Member State without delay. The competent authorities of the host Member State shall take appropriate measures to prevent the credit institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors.

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Article 46

Advertising

Nothing in this Chapter shall prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interests of the general good.

TITLE VI

RELATIONS WITH THIRD COUNTRIES

Article 47

Notification in relation to third-country branches and conditions of access for credit institutions with such branches

1. Member States shall not apply to branches of credit institutions having their head office in a third country, when commencing or continuing to carry out their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Union.

▼M5

1a. Cuirfidh Ballstát de cheangal ar bhrainsí institiúidí creidmheasa a bhfuil a gceannoifig i dtríú tír a thuairisciú chuig údaráis inniúla, ar bhonn bliantúil ar a laghad, an fhaisnéis seo a leanas:

(a) na sócmhainní iomlána a chomhfhreagraíonn do na gníomhaíochtaí den bhrainse a údaraítear sa Bhallstát sin;

(b) faisnéis maidir leis na sócmhainní leachtacha atá ar fáil don bhrainse, go háirithe maidir le hinfhaighteacht na sócmhainní leachtacha seo in airgeadraí an Bhallstáit;

(c) na cistí dílse atá ar a chúl ag an mbrainse;

(d) na socruithe cosanta taiscí atá ar fáil do thaisceoirí sa bhrainse;

(e) na socruithe bainistithe riosca;

(f) na socruithe rialachais, lena n-áirítear na príomhfheidhmeannaigh maidir le gníomhaíochtaí an bhrainse;

(g) na pleananna téarnaimh lena gcumhdaítear an brainse; agus

(h) aon fhaisnéis eile a measann an t-údarás inniúil gur gá í chun gur féidir faireachán cuimsitheach a dhéanamh ar ghníomhaíochtaí an bhrainse.

2. Tabharfaidh na húdaráis inniúla fógra d'ÚBE faoin méid seo a leanas:

(a) gach údarú maidir le brainsí a deonaíodh d'institiúidí creidmheasa a bhfuil a gceannoifig i dtríú tír agus aon athruithe ina dhiaidh sin ar na húdaruithe sin;

▼M5

(b) na sócmhainní agus dliteanas iomlána atá ag brainsí údaraithe institiúidí creidmheasa a bhfuil a gceannoifig i dtríú tír mar a thuairiscítear go tréimhsiúil.

(c) ainm an ghrúpa tríú tír a mbaineann brainse údaraithe leis.

Foilseoidh ÚBE ar a shuíomh gréasáin liosta de na brainsí tríú tír a údaraíodh chun oibriú san Aontas, lena sonraítear an Ballstát ina bhfuil siad údaraithe oibriú.

2a. Na húdaráis inniúla a dhéanann maoirseacht ar bhrainsí institiúidí creidmheasa a bhfuil a gceannoifig i dtríú tír agus na húdaráis inniúla de chuid institiúidí ar cuid den ghrúpa tríú tír céanna iad, comhoibreoidh siad go dlúth chun a áirithiú go ndéanfar gníomhaíochtaí uile an ghrúpa tríú tír sin san Aontas faoi réir maoirseacht chuimsitheach, nach mbeifear in ann teacht timpeall ar na ceanglais is infheidhme maidir le grúpaí tríú tír de bhun na Treorach seo agus Rialachán (AE) Uimh. 575/2013 agus nach mbeidh aon tionchar díobhálach ar chobhsaíocht airgeadais an Aontais.

Éascóidh ÚBE an comhar idir údaráis inniúla chun críocha na chéad fhomhíre den mhír seo, lena n-áirítear nuair a bheidh comhlíonadh na tairsí dá dtagraítear in Airteagal 21b(4) á fhíorú.

▼B

3. The Union may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office in a third country identical treatment throughout the territory of the Union.

Article 48

Cooperation with supervisory authorities of third countries regarding supervision on a consolidated basis

1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:

(a) institutions the parent undertakings of which have their head offices in a third country;

(b) institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in the Union.

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:

▼B

(a) the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of institutions, financial holding companies and mixed financial holding companies situated in the Union which have as subsidiaries institutions or financial institutions situated in a third country, or holding participation therein;

(b) the supervisory authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries institutions or financial institutions situated in one or more Member States or holding participation therein; and

(c) EBA is able to obtain from the competent authorities of the Member States the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

3. Without prejudice to Article 218 TFEU, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

4. EBA shall assist the Commission for the purposes of this Article in accordance with Article 33 of Regulation (EU) No 1093/2010.

TITLE VII

PRUDENTIAL SUPERVISION

CHAPTER 1

Principles of prudential supervision

Section I

Competence and duties of home and host Member States

Article 49

Competence of the competent authorities of the home and host Member States

1. The prudential supervision of an institution, including that of the activities it carries out in accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2. Paragraph 1 shall not prevent supervision on a consolidated basis.

3. Measures taken by the host Member State shall not allow discriminatory or restrictive treatment on the basis that an institution is authorised in another Member State.

▼B

Article 50

Collaboration concerning supervision

1. 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 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.

2. The competent authorities of the home Member State shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of Regulation (EU) No 575/2013 and Title VII, Chapter 3 of this Directive of the activities performed by the institution through its branches, to the extent that such information and findings are relevant to the protection of depositors or investors in the host Member State.

3. The competent authorities of the home Member State shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervision measures taken in that context.

4. The competent authorities of the home Member State shall communicate and explain upon request to the competent authorities of the host Member State how information and findings provided by the latter have been taken into account. Where, following communication of information and findings, the competent authorities of the host Member State maintain that no appropriate measures have been taken by the competent authorities of the home Member State, the competent authorities of the host Member State may, after informing the competent authorities of the home Member State and EBA, take appropriate measures to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

Where the competent authorities of the home Member State disagree with the measures to be taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision within one month.

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

▼B

6. EBA shall develop draft regulatory technical standards to specify the information referred to in this Article.

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

7. EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of institutions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

8. EBA shall submit the draft technical standards referred to in paragraphs 6 and 7 to the Commission by 1 January 2014.

Article 51

Significant branches

▼M6

1. Féadfaidh údaráis inniúla Ballstáit óstaigh a iarraidh ar an maoirseoir comhdhlúthaithe, i gcás ina mbeidh feidhm ag Airteagal 112(1), nó ar údaráis inniúla an Bhallstáit baile, go measfar go bhfuil brainse institiúide creidmheasa suntasach.

▼B

That request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch in terms of deposits exceeds 2 % in the host Member State;

(b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the host Member State;

(c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and, where Article 112(1) applies, the consolidating supervisor, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

▼B

The decisions referred to in the third and fourth subparagraphs shall be set out in a document containing full reasons, shall be transmitted to the competent authorities concerned and shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

2. The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) and carry out the tasks referred to in Article 112(1)(c) in cooperation with the competent authorities of the host Member State.

If a competent authority of a home Member State becomes aware of an emergency situation as referred to in Article 114(1), it shall alert without delay the authorities referred to in Article 58(4) and Article 59(1).

The competent authorities of the home Member State shall communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments of institutions with such branches referred to in Article 97 and, where applicable, Article 113(2). They shall also communicate decisions under Articles 104 and 105 in so far as those assessments and decisions are relevant to those branches.

The competent authorities of the home Member States shall consult the competent authorities of the host Member States where significant branches are established about operational steps required by Article 86(11), where relevant for liquidity risks in the host Member State's currency.

Where the competent authorities of the home Member State have not consulted the competent authorities of the host Member State, or where, following such consultation, the competent authorities of the host Member State maintain that operational steps required by Article 86(11) are not adequate, the competent authorities of the host Member State may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

3. Where Article 116 does not apply, the competent authorities supervising an institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and under Article 50. The establishment and functioning of the college shall be based on written arrangements to be determined, after consulting the competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 7 and the obligations referred to in paragraph 2 of this Article.

▼B

The competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

4. EBA shall develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.

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

5. EBA shall develop draft implementing technical standards in order to determine the operational functioning of colleges of supervisors.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

6. EBA shall submit the draft technical standards referred to in paragraphs 4 and 5 to the Commission by 31 December 2014.

Article 52

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

1. Host Member States shall provide that, where an institution authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot checks of the information referred to in Article 50 and inspections of such branches.

2. The competent authorities of the home Member State may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in Article 118.

3. The competent authorities of the host Member State shall have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of 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 stability of the financial system in the host Member State. Before carrying out such checks and inspections, the competent authorities of the host Member State shall consult the competent authorities of the home Member State. After such checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the institution or the stability of the financial system in the host Member State. The competent authorities of the home Member State shall duly take into account that information and those findings in determining their supervisory examination programme referred to in Article 99, also having regard to the stability of the financial system in the host Member State.

▼B

4. The on-the-spot checks and inspections of branches shall be conducted in accordance with the law of the Member State where the check or inspection is carried out.

Section II

Exchange of information and professional secrecy

Article 53

Professional secrecy

1. Member States shall provide that all persons working for or who have worked for the competent authorities and auditors or experts acting on behalf of the competent authorities shall be bound by the obligation of professional secrecy.

Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be disclosed in civil or commercial proceedings.

▼M6

2. Ní chuirfidh mír 1 cosc ar na húdaráis inniúla faisnéis a mhalartú le chéile nó faisnéis a tharchur chuig BERS, ÚBE nó chuig an Údarás Maoirseachta Eorpach (an tÚdarás Eorpach um Urrúis agus Margaí) ("ÚEUM") a bunaíodh le Rialachán (AE) Uimh. 1095/2010 ó Pharlaimint na hEorpa agus ón gComhairle ([1]) i gcomhréir leis an Treoir seo, le Rialachán (AE) Uimh. 575/2013, le Rialachán (AE) 2019/2033 ó Pharlaimint na hEorpa agus ón gComhairle ([2]), le hAirteagal 15 de Rialachán (AE) Uimh. 1092/2010, le hAirteagail 31, 35 agus 36 de Rialachán (AE) Uimh. 1093/2010 agus le hAirteagail 31 agus 36 de Rialachán (AE) Uimh. 1095/2010, le Treoir (AE) 2019/2033 ó Pharlaimint na hEorpa agus ón gComhairle ([3]) agus le treoracha eile is infheidhme maidir le hinstitiúidí creidmheasa. Beidh an fhaisnéis sin faoi réir mhír 1.

([1]) Rialachán (AE) Uimh. 1095/2010 ó Pharlaimint na hEorpa agus ón gComhairle an 24 Samhain 2010 lena mbunaítear Údarás Maoirseachta Eorpach (an tÚdarás Eorpach um Urrúis agus Margaí), lena leasaítear Cinneadh Uimh. 716/2009/CE agus lena n-aisghairtear Cinneadh 2009/77/CE ón gCoimisiún (IO L 331, 15.12.2010, lch. 84).

([2]) Rialachán (AE) 2019/2033 ó Pharlaimint na hEorpa agus ón gComhairle an 27 Samhain 2019 maidir leis na ceanglais stuamachta ar ghnólachtaí infheistíochta agus lena leasaítear Rialacháin (AE) Uimh. 1093/2010, (AE) Uimh 575/2013, (AE) Uimh 600/2014 agus (AE) Uimh 806/2014 (IO L 314, 5.12.2019, lch. 1).

([3]) Treoir (AE) 2019/2033 ó Pharlaimint na hEorpa agus ón gComhairle an 27. Samhain 2019 maidir le maoirseacht stuamachta ar ghnólachtaí infheistíochta agus lena leasaítear Treoracha 2002/87/CE, 2009/65/CE, 2011/61/AE, 2013/36/AE, 2014/59/AE agus 2014/65/AE (IO L314, 5.12.2019, lch. 1).;

▼B

3. Paragraph 1 shall not prevent the competent authorities from publishing the outcome of stress tests carried out in accordance with Article 100 of this Directive or Article 32 of Regulation (EU) No 1093/2010 or from transmitting the outcome of stress tests to EBA for the purpose of the publication by EBA of the results of Union-wide stress tests.

Article 54

Use of confidential information

Competent authorities receiving confidential information under Article 53 shall use it only in the course of their duties and only for any of the following purposes:

(a) to check that the conditions governing access to the activity of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;

(b) to impose penalties;

(c) in an appeal against a decision of the competent authority including court proceedings pursuant to Article 72;

(d) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of credit institutions.

▼M1

Article 54a

Articles 53 and 54 shall be without prejudice to the powers of investigation conferred on the European Parliament pursuant to Article 226 TFEU.

▼B

Article 55

Cooperation agreements

Member States and EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, may conclude cooperation agreements, providing for exchanges of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Article 56 and Article 57(1) of this Directive only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive are complied with. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

▼B

Where the information originates in another Member State, it shall only be disclosed with the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 56

Exchange of information between authorities

Article 53(1) and Article 54 shall not preclude the exchange of information between competent authorities within a Member State, between competent authorities in different Member States or between competent authorities and the following, in the discharge of their supervisory functions:

(a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;

(b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macroprudential rules;

(c) reorganisation bodies or authorities aiming at protecting the stability of the financial system;

(d) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;

(e) bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(f) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions;

▼M5

(g) údaráis freagrach as maoirseacht a dhéanamh ar na heintitis faoi oibleagáid a liostaítear i bpointí (1) agus (2) d'Airteagal 2(1) de Threoir (AE) 2015/849 ó Pharlaimint na hEorpa agus ón gComhairle ([1]) dtaca le comhlíonadh na Treorach sin, agus na haonaid um fhaisnéis airgeadais;

(h) na húdaráis inniúla nó na comhlachtaí atá freagrach as cur i bhfeidhm na rialacha maidir le deighilt struchtúrach laistigh de ghrúpa baincéireachta.

▼B

Article 53(1) and Article 54 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions.

([1]) Treoir (AE) 2015/849/AE ó Pharlaimint na hEorpa agus ón gComhairle an 20 Bealtaine 2015 chun cosc a chur ar úsáid an chórais airgeadais chun críocha sciúradh airgid agus maoiniú sceimhlitheoirí, lena leasaítear Rialachán (AE) Uimh. 648/2012 ó Pharlaimint na hEorpa agus ón gComhairle agus lena n-aisghairtear Treoir 2005/60/CE ó Pharlaimint na hEorpa agus ón gComhairle agus Treoir 2006/70/CE ón gCoimisiún (IO L 141, 5.6.2015, Lch. 73).

▼B

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

Article 57

Exchange of information with oversight bodies

▼M5

1. D'ainneoin Airteagail 53, 54 agus 55, áiritheoidh na Ballstáit gur féidir faisnéis a mhalartú idir na húdaráis inniúla agus na húdaráis a bheidh freagrach as maoirseacht:

▼B

(a) the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(b) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;

(c) persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

2. In the cases referred to in paragraph 1, Member States shall require fulfilment of at least the following conditions:

(a) that the information is exchanged for the purpose of performing the tasks referred to in paragraph 1;

(b) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1);

(c) where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

3. Notwithstanding Articles 53, 54 and 55, Member States may, with the aim of strengthening the stability and integrity of the financial system, authorise the exchange of information between competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

In such cases Member States shall require fulfilment of at least the following conditions:

(a) that the information is exchanged for the purpose of detecting and investigating breaches of company law;

(b) that the information received is subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1);

(c) where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

▼B

4. Where the authorities or bodies referred to in paragraph 1 perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, a Member State may extend the possibility of exchanging information provided for in the first subparagraph of paragraph 3 to such persons under the conditions specified in the second subparagraph of paragraph 3.

5. The competent authorities shall communicate to EBA the names of the authorities or bodies which may receive information pursuant to this Article.

6. In order to implement paragraph 4, the authorities or bodies referred to in paragraph 3 shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Article 58

Transmission of information concerning monetary, deposit protection, systemic and payment aspects

1. Nothing in this Chapter shall prevent a competent authority from transmitting information to the following for the purposes of their tasks:

(a) ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;

(b) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;

(c) where appropriate, other public authorities responsible for overseeing payment systems;

(d) the ESRB, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ("EIOPA"), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council [1] and ESMA, where that information is relevant for the exercise of their tasks under Regulations (EU) No 1092/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

Member States shall take the appropriate measures to remove obstacles preventing competent authorities from transmitting information in accordance with the first subparagraph.

2. Nothing in this Chapter shall prevent the authorities or bodies referred to in paragraph 1 from communicating to the competent authorities such information as the competent authorities may need for the purposes of Article 54.

[1] OJ L 331, 15.12.2010, p. 48.

▼B

3. Information received in accordance with paragraphs 1 and 2 shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

4. Member States shall take the necessary measures to ensure that, in an emergency situation as referred to in Article 114(1), the competent authorities communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks.

▼M5

Airteagal 58a

Tarchur faisnéise chuig comhlachtaí idirnáisiúnta

1. D'ainneoin Airteagal 53(1) agus Airteagal 54, féadfaidh na húdaráis inniúla, faoi réir na gcoinníollacha a leagtar amach i míreanna 2, 3 agus 4 den Airteagal seo, faisnéis áirithe a tharchur chucu seo a leanas nó í a roinnt leo, freisin:

(a) an Ciste Airgeadaíochta Idirnáisiúnta agus an Banc Domhanda chun críocha measúnuithe le haghaidh clár measúnaithe na hearnála airgeadais;

(b) an Banc um Shocraíochtaí Idirnáisiúnta chun críocha staidéir tionchair cainníochtúil;

(c) an Bord um Chobhsaíocht Airgeadais chun críocha a fheidhme faireachais.

2. Ní fhéadfaidh na húdaráis inniúla faisnéis rúnda a roinnt ach amháin tar éis iarraidh shainráite a fháil ón gcomhlacht iomchuí, ar iarraidh í ina gcomhlíonfar na coinníollacha seo a leanas ar a laghad:

(a) beidh údar maith leis an iarraidh sin i bhfianaise na gcúraimí sonracha a dhéanann an comhlacht iarrthach i gcomhréir lena shainordú reachtúil;

(b) beidh an iarraidh cruinn go leor maidir le cineál, raon feidhme, agus formáid na faisnéise a éilítear, agus maidir le modh a nochta nó a tarchurtha;

(c) beidh fíorghá leis an bhfaisnéis a iarradh chun cúraimí sonracha an chomhlachta iarrthaigh a dhéanamh agus ní rachaidh sé thar na cúraimí reachtúla a tugadh don chomhlacht iarrthach;

(d) ní chuirfear an fhaisnéis ach chucu siúd amháin a bhfuil baint dhíreach acu le feidhmíocht an taisc shonraigh, ná ní nochtfar ach dóibh siúd amháin í;

(e) iad siúd a bhfuil rochtain acu ar an bhfaisnéis, beidh siad faoi réir ceanglais maidir le rúndacht ghairmiúil atá chomh dian céanna, ar a laghad, agus atá na ceanglais dá dtagraítear in Airteagal 53(1).

▼M5

3. I gcás ina ndéanann aon cheann de na heintitis dá dtagraítear i mír 1 an iarraidh, ní fhéadfaidh na húdaráis inniúla ach faisnéis chomhiomlán nó faisnéis anaithnid a tharchur agus is in áitreabh an údaráis inniúil amháin a fhéadfaidh siad faisnéis eile a roinnt.

4. A mhéid a bheidh próiseáil sonraí pearsanta i gceist leis an nochtadh faisnéise, comhlíonfaidh aon phróiseáil a dhéanann an comhlacht iarrthach ar shonraí pearsanta na ceanglais a leagtar síos i Rialachán (AE) 2016/679 ó Pharlaimint na hEorpa agus ón gComhairle ([1]).

▼B

Article 59

Transmission of information to other entities

1. Notwithstanding Article 53(1) and Article 54, Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other departments of their central government administrations responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential supervision, and prevention and resolution of failing institutions. Without prejudice to paragraph 2 of this Article, persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

In an emergency situation as referred to in Article 114(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first subparagraph of this paragraph in all Member States concerned.

2. Member States may authorise the disclosure of certain information relating to the prudential supervision of institutions to parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under the following conditions:

(a) that the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;

(b) that the information is strictly necessary for fulfilling the mandate referred to in point (a);

([1]) Rialachán (AE) 2016/679 ó Pharlaimint na hEorpa agus ón gComhairle an 27 Aibreán 2016 maidir le daoine nádúrtha a chosaint i ndáil le sonraí pearsanta a phróiseáil agus maidir le saorghluaiseacht sonraí den sórt sin, agus lena n-aisghairtear Treoir 95/46/CE (An Rialachán Ginearálta maidir le Cosaint Sonraí) (IO L 119, 4.5.2016, lch. 1).

▼B

(c) the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 53(1);

(d) where the information originates in another Member State that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement.

To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the entities referred to in the first subparagraph shall comply with the applicable national laws transposing Directive 95/46/EC.

Article 60

Disclosure of information obtained by on-the-spot checks and inspections

Member States shall ensure that information received under Article 52(3), Article 53(2) and Article 56 and information obtained by means of an on-the-spot check or inspection referred to in Article 52(1) and (2) shall not be disclosed under Article 59 save with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which such an on-the-spot check or inspection was carried out.

Article 61

Disclosure of information concerning clearing and settlement services

1. Nothing in this Chapter shall prevent the competent authorities of a Member State from communicating the information referred to in Articles 53, 54 and 55 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

2. Member States shall, however, ensure that information received under Article 53(2) shall not be disclosed in the circumstances referred to in paragraph 1 without the express consent of the competent authorities, which have disclosed it.

Article 62

Processing of personal data

The processing of personal data for the purposes of this Directive shall be carried out in accordance with Directive 95/46/EC and, where relevant, with Regulation (EC) No 45/2001.

▼B

Section III

Duty of persons responsible for the legal control of annual and consolidated accounts

Article 63

Duty of persons responsible for the legal control of annual and consolidated accounts

1. Member States shall provide that any person authorised in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts ([1]) and performing in an institution the tasks described in Article 51 of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ([2]), Article 37 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ([3]) Article 73 of Directive 2009/65/EC, or any other statutory task, shall at least have a duty to report promptly to the competent authorities any fact or decision concerning that institution of which that person has become aware while carrying out that task, which is liable to:

(a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of institutions;

(b) affect the ongoing functioning of the institution;

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

Member States shall provide at least that a person referred to in the first subparagraph shall also have a duty to report any fact or decision of which that person becomes aware in the course of carrying out a task as described in the first subparagraph in an undertaking having close links resulting from a control relationship with the institution within which he is carrying out that task.

▼M5

Forálfaidh na Ballstáit gur ceadmhach do na húdaráis inniúla a cheangal go gcuirfear duine eile in ionad an té dá dtagraítear sa chéad fhomhír i gcás ina ngníomhaíonn an té sin de shárú ar a chuid oibleagáidí de bhun na chéad fhomhíre.

▼B

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in any liability. Such disclosure shall be made simultaneously to the management body of the institution unless there are compelling reasons not to do so.

([1]) OJ L 157, 9.6.2006, p. 87.
([2]) OJ L 222, 14.8.1978, p. 11.
([3]) OJ L 193, 18.7.1983, p. 1.

▼B

Section IV

Supervisory powers, powers to impose penalties and right of appeal

Article 64

Supervisory powers and powers to impose penalties

▼M5

1. Tabharfar do na húdaráis inniúla go léir na cumhachtaí maoirseachta chun cur isteach ar ghníomhaíocht a dhéanann institiúidí, cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha, ar cumhachtaí iad sin atá riachtanach dá bhfeidhmiúchán, lena n-áirítear go háirithe an ceart chun údarú a tharraingt siar i gcomhréir le hAirteagal 18, na cumhachtaí dá dtagraítear in Airteagail 18, 102, 104 agus 105, agus na cumhachtaí chun na bearta dá dtagraítear in Airteagal 21a(6) a dhéanamh.

▼B

2. Competent authorities shall exercise their supervisory powers and their powers to impose penalties in accordance with this Directive and with national law, in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

▼M5

3. Cuirfear in iúl, i ngach cinneadh a ghlacfaidh na húdaráis inniúla agus a gcumhachtaí maoirseachta agus forchurtha pionós á bhfeidhmiú acu, an chúis a bhí leis na cinntí sin.

▼B

Article 65

Administrative penalties and other administrative measures

1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, penalties may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach.

▼B

3. Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013 those powers shall include:

(a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

(i) institutions established in the Member State concerned;

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

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

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

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

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

(b) the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including:

(i) the right to require the submission of documents;

(ii) to examine the books and records of the persons referred to in points(a)(i) to (vi) and take copies or extracts from such books and records;

(iii) to obtain written or oral explanations from any person referred to in points (a) (i) to (vi) or their representatives or staff; and

(iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(c) the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a)(i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.

▼B

Article 66

Administrative penalties and other administrative measures for breaches of authorisation requirements and requirements for acquisitions of qualifying holdings

1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties and other administrative measures at least in respect of:

(a) carrying out the business of taking deposits or other repayable funds from the public without being a credit institution in breach of Article 9;

▼M6

(aa) ceann amháin ar a laghad de na gníomhaíochtaí dá dtagraítear i bpointe (1)(b) d'Airteagal 4(1)(1)(b) de Rialachán (AE) Uimh. 575/2013 a dhéanamh agus an tairseach a leagtar síos san Airteagal sin a bhaint amach gan a bheith údaraithe mar institiúid creidmheasa;

▼B

(b) commencing activities as a credit institution without obtaining authorisation in breach of Article 9;

(c) acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or so that the credit institution would become its subsidiary, without notifying in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of Article 22(1);

(d) disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25 or so that the credit institution would cease to be a subsidiary, without notifying in writing the competent authorities;

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(e) mainneachtain iarratas a dhéanamh ar fhormheas, ar sárú é sin ar Airteagal 21a, nó aon sárú eile ar na ceanglais a leagtar amach san Airteagal sin.

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2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

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

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

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(c) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;

(d) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

(e) administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined;

(f) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.

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

Article 67

Other provisions

1. This Article shall apply at least in any of the following circumstances:

(a) an institution has obtained an authorisation through false statements or any other irregular means;

(b) an institution, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) or Article 25, fails to inform the competent authorities of those acquisitions or disposals in breach of the first subparagraph of Article 26(1);

(c) an institution listed on a regulated market as referred to in the list to be published by ESMA in accordance with Article 47 of Directive 2004/39/EC does not, at least annually, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of the second subparagraph of Article 26(1) of this Directive;

(d) an institution fails to have in place governance arrangements required by the competent authorities in accordance with the national provisions transposing Article 74;

(e) an institution fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the competent authorities in breach of Article 99(1) of that Regulation;

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(f) an institution fails to report or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in Article 101 of Regulation (EU) No 575/2013;

(g) an institution fails to report information or provides incomplete or inaccurate information about a large exposure to the competent authorities in breach of Article 394(1) of Regulation (EU) No 575/2013;

(h) an institution fails to report information or provides incomplete or inaccurate information on liquidity to the competent authorities in breach of Article 415(1) and (2) of Regulation (EU) No 575/2013;

(i) an institution fails to report information or provides incomplete or inaccurate information on the leverage ratio to the competent authorities in breach of Article 430(1) of Regulation (EU) No 575/2013;

(j) an institution repeatedly or persistently fails to hold liquid assets in breach of Article 412 of Regulation (EU) No 575/2013;

(k) an institution incurs an exposure in excess of the limits set out in Article 395 of Regulation (EU) No 575/2013;

(l) an institution is exposed to the credit risk of a securitisation position without satisfying the conditions set out in Article 405 of Regulation (EU) No 575/2013;

(m) an institution fails to disclose information or provides incomplete or inaccurate information in breach of Article 431(1), (2) and (3) or Article 451(1) of Regulation (EU) No 575/2013;

(n) an institution makes payments to holders of instruments included in the own funds of the institution in breach of Article 141 of this Directive ►C2 or in cases where Article 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds; ◄

(o) an institution is found liable for a serious breach of the national provisions adopted pursuant to Directive 2005/60/EC;

(p) an institution allows one or more persons not complying with Article 91 to become or remain a member of the management body;

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(q) mainníonn máthairinstitiúid, máthairchuideachta shealbhaíochta airgeadais nó máthairchuideachta shealbhaíochta airgeadais mheasctha aon ghníomhaíocht a dhéanamh a d'fhéadfadh a bheith ag teastáil chun a áirithiú go gcomhlíonfar na ceanglais stuamachta a leagtar amach i gCodanna a Trí, a Ceathair, a Sé nó a Seacht de Rialachán (AE) Uimh. 575/2013 nó a fhorchuirtear faoi phointe (a) d'Airteagal 104(1) nó Airteagal 105 den Treoir seo ar bhonn comhdhlúite nó fo-chomhdhlúite.

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2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

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

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

(c) in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;

(d) subject to Article 65(2), a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions;

(e) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;

(f) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

(g) administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

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

Article 68

Publication of administrative penalties

1. Member States shall ensure that the competent authorities publish on their official website at least any administrative penalties against which there is no appeal and which are imposed for breach of the national provisions transposing this Directive or of Regulation (EU) No 575/2013, including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties.

Where Member States permit publication of penalties against which there is an appeal, competent authorities shall, without undue delay, also publish on their official website information on the appeal status and outcome thereof.

2. Competent authorities shall publish the penalties on an anonymous basis, in a manner in accordance with national law, in any of the following circumstances:

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(a) where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

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

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 may be postponed for such a period of time.

3. Competent authorities shall ensure that information published under paragraphs 1 or 2 remains on their official website at least five years. Personal data shall be retained on the official website of the competent authority only for the period necessary, in accordance with the applicable data protection rules.

4. By 18 July 2015 EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2, in particular where there have been significant divergences between Member States in this respect. In addition, EBA shall submit a report to the Commission on any significant divergences in the duration of publication of penalties under national law.

Article 69

Exchange of information on penalties and maintenance of a central database by EBA

1. Subject to the professional secrecy requirements referred to in Article 53(1), the competent authorities shall inform EBA of all administrative penalties, including all permanent prohibitions, imposed under Articles 65, 66 and 67 including any appeal in relation thereto and the outcome thereof. EBA shall maintain a central database of administrative penalties communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by competent authorities.

2. Where a competent authority assesses good repute for the purposes of Article 13(1), Article 16(3), Article 91(1) and Article 121, it shall consult the EBA database of administrative penalties. In the event of a change of status or a successful appeal, EBA shall delete or update relevant entries in the database on request by the competent authorities.

3. The competent authorities shall check, in accordance with national law, the existence of a relevant conviction in the criminal record of the person concerned. For those purposes, information shall be exchanged in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.

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4. EBA shall maintain a website with links to each competent authority's publication of administrative penalties under Article 68 and shall show the time period for which each Member State publishes administrative penalties.

Article 70

Effective application of penalties and exercise of powers to impose penalties by competent authorities

Member States shall ensure that when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, the competent authorities shall take into account all relevant circumstances, including, where appropriate:

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

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

(c) the financial strength of the natural or legal person responsible for the breach, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;

(e) the losses for third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority;

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

(h) any potential systemic consequences of the breach.

Article 71

Reporting of breaches

1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports on breaches and their follow-up;

(b) appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;

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(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC;

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

3. Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

Such a channel may also be provided through arrangements provided for by social partners. The same protection as referred to in points (b), (c) and (d) of paragraph 2 shall apply.

Article 72

Right of appeal

Member States shall ensure that decisions and measures taken pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive or to Regulation (EU) No 575/2013 are subject to a right of appeal. Member States shall also ensure that failure to take a decision within six months of submission of an application for authorisation which contains all the information required under the national provisions transposing this Directive, is subject to a right of appeal.

CHAPTER 2

Review Processes

Section I

Internal capital adequacy assessment process

Article 73

Internal Capital

Institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

Those strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned.

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Section II

Arrangements, processes and mechanisms of institutions

Sub-Section 1

General principles

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Airteagal 74

Rialachas inmheánach agus pleananna téarnaimh agus réitigh

1. Beidh ag institiúidí socruithe daingne rialachais, lena n-áirítear struchtúr soiléir eagraíochtúil a mbeidh freagrachtaí dea-shainithe, tréd-hearcacha agus comhsheasmhacha ann, próisis éifeachtacha chun rioscaí a bhfuil siad neamhchosanta orthu nó a bhféadfaidís a bheith neamh-chosanta orthu a shainaithint, a bhainistiú, a thuairisciú agus faireachán a dhéanamh orthu, mar aon le sásraí leordhóthanacha um rialú inmheánach, lena n-áirítear nósanna imeachta fónta riaracháin agus cuntasaíochta, agus beartais luach saothair agus cleachtais atá i gcomhréir le bainistiú riosca fónta agus éifeachtach agus a chuirfidh a leithéid chun cinn.

Beidh na beartais agus cleachtais luach saothair dá dtagraítear sa chéad fhomhír inscne-neodrach.

2. Beidh na socruithe, próisis, agus sásraí dá dtagraítear i mír 1 den Airteagal seo cuimsitheach agus comhréireach le cineál, scála agus castacht na rioscaí ar cuid iad de shamhail ghnó agus de ghníom-haíochtaí na hinstitiúide. Cuirfear san áireamh na critéir theicniúla a bhunaítear in Airteagal 75 go hAirteagal 95.

3. Eiseoidh ÚBE treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, maidir leis an socruithe, próisis, agus sásraí dá dtagraítear i mír 1 den Airteagal seo, agus a bhfuil i mír 2 den Airteagal seo á thabhairt san áireamh.

Eiseoidh ÚBE treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, maidir le beartais inscne-neodracha um luach saothair in institiúidí.

Laistigh de 2 bhliain dháta foilsithe na dtreoirlínte dá dtagraítear sa dara fomhír, agus bunaithe ar an bhfaisnéis a bhaileoidh na húdaráis inniúla, eiseoidh ÚBE tuairisc faoi chur i bhfeidhm na mbeartas inscne-neodrach um luach saothair sna hinstitiúidí.

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Article 75

Oversight of remuneration policies

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1. Baileoidh na húdaráis inniúla an fhaisnéis a nochtar i gcomhréir leis na critéir um nochtadh arna mbunú i bpointí (g), (h), (i) agus (k) d'Airteagal 450(1) de Rialachán (AE) Uimh. 575/2013 mar aon le faisnéis arna soláthar i dtaobh na bearna pá idir na hinscní ag na hinstitiúidí agus bainfidh siad úsáid as an bhfaisnéis sin chun treochtaí agus cleachtais luach saothair a thagarmharcáil. Cuirfidh na húdaráis inniúla an fhaisnéis sin ar fáil do ÚBE.

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2. EBA shall issue guidelines on sound remuneration policies which comply with the principles set out in Articles 92 to 95. The guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector ([1]).

ESMA shall cooperate closely with EBA to develop guidelines on remuneration policies for categories of staff involved in the provision of investment services and activities within the meaning of point 2 of Article 4(1) of Directive 2004/39/EC.

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

3. Competent authorities shall collect information on the number of natural persons per institution that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution. That information shall be forwarded to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected.

Sub-Section 2

Technical criteria concerning the organisation and treatment of risks

Article 76

Treatment of risks

1. Member States shall ensure that the management body approves and periodically reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

2. Member States shall ensure that the management body devotes sufficient time to consideration of risk issues. The management body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Directive and in Regulation (EU) No 575/2013 as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks. The institution shall establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof.

([1]) OJ L 120, 15.5.2009, p. 22.

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3. Member States shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a risk committee composed of members of the management body who do not perform any executive function in the institution concerned. Members of the risk committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the institution.

The risk committee shall advise the management body on the institution's overall current and future risk appetite and strategy and assist the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for risks.

The risk committee shall review whether prices of liabilities and assets offered to clients take fully into account the institution's business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee shall present a remedy plan to the management body.

Competent authorities may allow an institution which is not considered significant as referred to in the first subparagraph to combine the risk committee with the audit committee as referred to in Article 41 of Directive 2006/43/EC. Members of the combined committee shall have the knowledge, skills and expertise required for the risk committee and for the audit committee.

4. Member States shall ensure that the management body in its supervisory function and, where a risk committee has been established, the risk committee have adequate access to information on the risk situation of the institution and, if necessary and appropriate, to the risk management function and to external expert advice.

The management body in its supervisory function and, where one has been established, the risk committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive. In order to assist in the establishment of sound remuneration policies and practices, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

5. Member States shall, in accordance with the proportionality requirement laid down in Article 7(2) of Commission Directive 2006/73/EC ([1]), ensure that institutions have a risk management function independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body.

([1]) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

▼B

Member States shall ensure that the risk management function ensures that all material risks are identified, measured and properly reported. They shall ensure that the risk management function is actively involved in elaborating the institution's risk strategy and in all material risk management decisions and that it can deliver a complete view of the whole range of risks of the institution.

Where necessary, Member States shall ensure that the risk management function can report directly to the management body in its supervisory function, independent from senior management, and can raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body in its supervisory and/or managerial functions pursuant to this Directive and Regulation (EU) No 575/2013.

The head of the risk management function shall be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the institution do not justify a specially appointed person, another senior person within the institution may fulfil that function, provided there is no conflict of interest.

The head of the risk management function shall not be removed without prior approval of the management body in its supervisory function and shall be able to have direct access to the management body in its supervisory function where necessary.

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Article 77

Internal Approaches for calculating own funds requirements

1. Competent authorities shall encourage institutions that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities to develop internal credit risk assessment capacity and to increase use of the internal ratings based approach for calculating own funds requirements for credit risk where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties. This Article shall be without prejudice to the fulfilment of criteria laid down in Part Three, Title I, Chapter 3, Section 1 of Regulation (EU) No 575/2013.

2. Competent authorities shall, taking into account the nature, scale and complexity of institutions' activities, monitor that they do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

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3. Competent authorities shall encourage institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, to develop internal specific risk assessment capacity and to increase use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

This Article shall be without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5, of Regulation (EU) No 575/2013.

4. EBA shall develop draft regulatory technical standards to further define the notion "exposures to specific risk which are material in absolute terms" referred to in the first subparagraph of paragraph 3 and the thresholds for large numbers of material counterparties and positions in debt instruments of different issuers.

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

Article 78

Supervisory benchmarking of internal approaches for calculating own funds requirements

1. Competent authorities shall ensure that institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own fund requirements except for operational risk report the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios. Institutions shall submit the results of their calculations, together with an explanation of the methodologies used to produce them, to the competent authorities at an appropriate frequency, and at least annually.

2. Competent authorities shall ensure that institutions submit the results of the calculations referred to in paragraph 1 in accordance with the template developed by EBA in accordance with paragraph 8 to the competent authorities and to EBA. Where competent authorities choose to develop specific portfolios, they shall do so in consultation with EBA and ensure that institutions report the results of the calculations separately from the results of the calculations for EBA portfolios.

3. Competent authorities shall, on the basis of the information submitted by institutions in accordance with paragraph 1, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions. At least annually, competent authorities shall make an assessment of the quality of those approaches paying particular attention to:

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(a) those approaches that exhibit significant differences in own fund requirements for the same exposure;

(b) approaches where there is particularly high or low diversity, and also where there is a significant and systematic under-estimation of own funds requirements.

EBA shall produce a report to assist the competent authorities in the assessment of the quality of the internal approaches based on the information referred to in paragraph 2.

4. Where particular institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, competent authorities shall investigate the reasons therefor and, if it can be clearly identified that an institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, shall take corrective action.

5. The competent authorities shall ensure that their decisions on the appropriateness of corrective actions as referred to in paragraph 4 comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

(a) lead to standardisation or preferred methods;

(b) create wrong incentives; or

(c) cause herd behaviour.

6. EBA may issue guidelines and recommendations in accordance with Article 16 of Regulation (EU) No 1093/2010 where it considers them necessary on the basis of the information and assessments referred to in paragraphs 2 and 3 of this Article in order to improve supervisory practices or practices of institutions with regard to internal approaches.

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

(a) the procedures for sharing assessments made in accordance with paragraph 3 between the competent authorities and with EBA;

(b) the standards for the assessment made by competent authorities referred to in paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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

8. EBA shall develop draft implementing technical standards to specify:

(a) the template, the definitions and the IT-solutions to be applied in the Union for the reporting referred to in paragraph 2;

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(b) the benchmark portfolio or portfolios referred to in paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

9. The Commission shall, by 1 April 2015 and after consulting EBA, submit a report to the European Parliament and to the Council on the functioning of the benchmarking of internal models including the scope of the model. Where appropriate, the report shall be followed by a legislative proposal.

Article 79

Credit and counterparty risk

Competent authorities shall ensure that:

(a) credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established;

(b) institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital;

(c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems;

(d) diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.

Article 80

Residual risk

Competent authorities shall ensure that the risk that recognised credit risk mitigation techniques used by institutions prove less effective than expected is addressed and controlled including by means of written policies and procedures.

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Article 81

Concentration risk

Competent authorities shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures.

Article 82

Securitisation risk

1. Competent authorities shall ensure that the risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor, including reputational risks, such as arise in relation to complex structures or products, are evaluated and addressed through appropriate policies and procedures, to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

2. Competent authorities shall ensure that liquidity plans to address the implications of both scheduled and early amortisation exist at institutions which are originators of revolving securitisation transactions involving early amortisation provisions.

Article 83

Market risk

1. Competent authorities shall ensure that policies and processes for the identification, measurement and management of all material sources and effects of market risks are implemented.

2. Where the short position falls due before the long position, competent authorities shall ensure that institutions also take measures against the risk of a shortage of liquidity.

3. The internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

Institutions, which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities. Institutions shall also have such adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

▼B

Where using the treatment in Article 345 of Regulation (EU) No 575/2013, institutions shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

▼M5

Airteagal 84

Riosca úis a thagann as gníomhaíochtaí leabhar neamhthrádála

1. Áiritheoidh na húdaráis inniúla go gcuirfidh institiúidí córais inmheánacha i bhfeidhm nó go mbainfidh siad úsáid as an modheolaíocht shimplithe chaighdeánaithe chun rioscaí a shainaithint, a mheas, a bhainistiú agus a mhaolú, ar rioscaí iad a thiocfaidh as athruithe a d'fhéadfadh teacht ar rátaí úis a mbeadh tionchar acu ar luach eacnamaíoch cothromais agus ar ghlanioncam úis na ngníomhaíochtaí leabhar neamhthrádála atá ag institiúid.

2. Rioscaí a thiocfaidh as athruithe a d'fhéadfadh teacht ar raonta difríochta creidmheasa a mbeadh tionchar acu ar luach eacnamaíoch cothromais agus ar ghlanioncam úis na ngníomhaíochtaí leabhar neamhthrádála atá ag institiúid, áiritheoidh na húdaráis inniúla go gcuirfidh institiúidí córais i bhfeidhm chun na rioscaí sin a mheasúnú agus faireachán a dhéanamh orthu.

3. Féadfaidh údarás inniúil ceangal a chur ar institiúid úsáid a bhaint as an modheolaíocht chaighdeánaithe dá dtagraítear i mír 1 i gcás nach mbeidh na córais inmheánacha arna gcur i bhfeidhm ag an institiúid sin sásúil chun na rioscaí dá dtagraítear sa mhír sin a mheasúnú.

4. Is ceadmhach don údarás inniúil a cheangal ar institiúid bheag agus neamhchasta, mar a shainmhínítear i bpointe (145) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013, an sásra caighdeánaithe a úsáid i gcás ina measann sé nach leor an sásra caighdeánaithe simplithe chun ardú sa riosca ráta úis, a eascróidh as gníomhaíochtaí neamhthrádála na hinstitiúide sin, a ghabháil.

5. Chun críocha an Airteagail seo, forbróidh ÚBE dréachtchaighdeáin theicniúla rialála chun sonrú a dhéanamh ar mhionsonraí modheolaíochta caighdeánaithe, a fhéadfaidh institiúidí a úsáid chun na rioscaí dá dtagraítear i mír 1 den Airteagal seo a mheas, lena n-áirítear sásra caighdeánaithe simplithe d'institiúidí beaga agus neamhchasta mar a shainmhínítear i bpointe (145) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013, a bheidh chomh coimeádach céanna leis an sásra caighdeánaithe.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 28 Meitheamh 2020.

Tarmligtear chuig an gCoimisiún an chumhacht chun an Treoir seo a fhorlíonadh trí na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

6. Eiseoidh ÚBE treoirlínte chun na critéir faoina saineofar an méid seo a leanas:

▼M5

(a) meastóireachtar na rioscaí dá dtagraítear i mír 1 arna dhéanamh ag córas inmheánach institiúide;

(b) sainaithint, bainistiú, agus maolú na rioscaí dá dtagraítear i mír 1;

(c) measúnú agus faireachán ar na rioscaí dá dtagraítear i mír 2;

(d) a chinneadh cé na córais inmheánacha arna gcur i bhfeidhm ag na hinstitiúidí chun críocha mhír 1 nach bhfuil sásúil, dá dtagraítear i mír 3.

Eiseoidh ÚBE na treoirlínte sin faoin 28 Meitheamh 2020.

▼B

Article 85

Operational risk

▼M5

1. Áiritheoidh na húdaráis inniúla go gcuirfidh institiúidí beartais agus próisis i bhfeidhm chun na risíochtaí ar riosca oibriúcháin a mheasúnú agus a bhainistiú, lena n-áirítear an riosca de bharr samhaltú agus na rioscaí a thiocfaidh as seachfhoinsiú, agus chun teagmhais ard-déine minicíochta íseal a chumhdach. Cuirfidh institiúidí in iúl cad é atá i gceist le riosca oibriúcháin chun críocha na mbeartas agus na nósanna imeachta sin.

▼B

2. Competent authorities shall ensure that contingency and business continuity plans are in place to ensure an institution's ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

Article 86

Liquidity risk

1. Competent authorities shall ensure that institutions have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

2. The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the management body and reflect the institution's importance in each Member State in which it carries out business. Institutions shall communicate risk tolerance to all relevant business lines.

▼B

3. Competent authorities shall ensure that institutions, taking into account the nature, scale and complexity of their activities, have liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.

Competent authorities shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.

Competent authorities shall take effective action where developments referred to in the second subparagraph may lead to individual institution or systemic instability.

Competent authorities shall inform EBA about any actions carried out pursuant to the third subparagraph.

EBA shall make recommendations where appropriate in accordance with Regulation (EU) No 1093/2010.

4. Competent authorities shall ensure that institutions develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

5. Competent authorities shall ensure that institutions distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also ensure that institutions take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account and their eligibility and shall monitor how assets can be mobilised in a timely manner.

6. Competent authorities shall ensure that institutions also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area.

7. Competent authorities shall ensure that institutions consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.

8. Competent authorities shall ensure that institutions consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. For those purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation (EU) No 575/2013, in relation to which the institution acts as sponsor or provides material liquidity support.

▼B

9. Competent authorities shall ensure that institutions consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stress conditions shall be considered.

10. Competent authorities shall ensure that institutions adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraph 8.

▼M6

11. Áiritheoidh údaráis inniúla go mbeidh pleananna téarnamh chun leachtachta i bhfeidhm ag institiúidí ina mbeidh straitéisí leordhóthanacha agus bearta cur chun feidhme cearta leagtha amach chun dul i ngleic le heasnaimh leachtachta fhéideartha, lena n-áirítear i leith brainsí atá bunaithe i mBallstát eile. Áiritheoidh údaráis inniúla go dtástálfaidh na hinstitiúidí na pleananna sin uair sa bhliain ar a laghad, go nuashonróidh siad iad ar bhonn thoradh na gcásanna malartacha a leagtar amach i mír 8, go mbeidh siad tuairiscithe don lucht bainistíochta sinsearach agus faofa acu, sa chaoi gur féidir beartais agus próisis inmheánacha a choigeartú dá réir. Tabharfaidh na hinstitiúidí na céimeanna oibríochtúla is gá roimh réidh chun a áirithiú gur féidir pleananna téarnamh chun leachtachta a chur chun feidhme láithreach. Ar na céimeanna oibríochtúla sin, beidh sealbhú comhthaobhachta a bheidh ar fáil láithreach le haghaidh cistiú banc ceannais. San áireamh ansin, tá sealbhú comhthaobhachta in airgeadra Ballstáit eile más gá, nó in airgeadra tríú tír a bhfuil neamhchosaintí uirthi ag an institiúid, agus más gá ó thaobh oibríochta laistigh de chríoch Ballstáit óstaigh nó tríú tír a bhfuil sí neamhchosanta uirthi.

▼B

Article 87

Risk of excessive leverage

1. Competent authorities shall ensure that institutions have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 and mismatches between assets and obligations.

2. Competent authorities shall ensure that institutions address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the institution's own funds through expected or realised losses, depending on the applicable accounting rules. To that end, institutions shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

▼B

Sub-Section 3

Governance

Article 88

Governance arrangements

1. Member States shall ensure that 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.

Those arrangements shall comply with the following principles:

(a) the management body must have the overall responsibility for the institution and approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance;

(b) the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

(c) the management body must oversee the process of disclosure and communications;

(d) the management body must be responsible for providing effective oversight of senior management;

(e) the chairman of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by competent authorities.

Member States shall ensure that the management body monitors and periodically assesses the effectiveness of the institution's governance arrangements and takes appropriate steps to address any deficiencies.

▼M5

Áiritheoidh na Ballstáit go ndéantar doiciméadú ceart ar fhaisnéis faoi iasachtaí do chomhaltaí an bhoird bainistíochta gona bpáirtithe gaolmhara, agus go gcuirtear ar fáil í do na húdaráis inniúla arna iarraidh sin dóibh.

Chun críocha an Airteagail sin, ciallaíonn an téarma “páirtí gaolmhar”:

(a) céile, páirtnéir cláraithe i gcomhréir leis an dlí náisiúnta, leanbh nó tuismitheoir le duine atá ar an mbord bainistíochta;

(b) eintiteas tráchtála, a bhfuil sealúchas cáilitheach dar luach 10 % nó níos mó de chaipiteal nó de chearta vótála san eintiteas sin ag ball de bhord bainistíochta na hinstitiúide nó ag duine dá dhaoine muinteartha dá dtagraítear i bpointe (a), nó ina bhféadfaidh na daoine sin tionchar nach beag a imirt, nó ina bhfuil post ardbhainistíochta acu nó a bhfuil siad ar an mbord bainistíochta.

▼B

2. Member States shall ensure that institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a nomination committee composed of members of the management body who do not perform any executive function in the institution concerned.

The nomination committee shall:

(a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected.

Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013;

(b) periodically, and at least annually, assess the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes;

(c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;

(d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole.

The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect.

Where, under national law, the management body does not have any competence in the process of selection and appointment of any of its members, this paragraph shall not apply.

▼B

Article 89

Country-by-country reporting

1. 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.

2. Notwithstanding paragraph 1, Member States shall require institutions to disclose the information referred to in paragraph 1(a), (b) and (c) for the first time on 1 July 2014.

3. By 1 July 2014, all global systemically important institutions authorised within the Union, as identified internationally, shall submit to the Commission the information referred to in paragraph 1(d), (e) and (f) on a confidential basis. The Commission, after consulting EBA, EIOPA and ESMA, as appropriate, shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of such information, including the impact on competitiveness, investment and credit availability and the stability of the financial system. The Commission shall submit its report to the European Parliament and to the Council by 31 December 2014.

In the event that the Commission report identifies significant negative effects, the Commission shall consider making an appropriate legislative proposal for an amendment of the disclosure obligations set out in paragraph 1 and may, in accordance with point (h) of Article 145, decide to defer those obligations. The Commission shall review the necessity to extend deferral annually.

4. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

5. To the extent that future Union legislative acts for disclosure obligations go beyond those laid down in this Article, this Article shall cease to apply and shall be deleted accordingly.

▼M5

6. Faoin 1 Eanáir 2021, athbhreithneoidh an Coimisiún, ar dhul i gcomhairle le ÚBE, UAPGE agus ÚEUM dó, cé acu is leor nó nach leor an fhaisnéis dá dtagraítear i bpointí (a) go (f) de mhír 1, agus na measúnuithe tionchair, comhaontuithe idirnáisiúnta agus forbairtí reachtacha a rinneadh go nuige seo san Aontas á gcur san áireamh, agus cé acu an fhéadfar nó nach bhféadfar tuilleadh ceanglas faisnéise a chur le mír 1.

Faoin 30 Meitheamh 2021, bunaithe ar an gcomhairliúchán a rinneadh le ÚBE, UAPGE agus ÚEUM, cuirfidh an Coimisiún tuarascáil chuig Parlaimint na hEorpa agus chuig an gComhairle, maidir leis an measúnú dá dtagraítear sa mhír seo agus, i gcás inarb iomchuí, cuirfidh sé togra reachtach faoi bhráid Pharlaimint na hEorpa agus na Comhairle.

▼B

Article 90

Public disclosure of return on assets

Institutions shall disclose in their annual report among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet.

Article 91

Management body

▼M5

1. Is ar na hinstitiúidí féin, cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha, a bheidh an phríomhfhreagracht as a áirithiú go bhfanfaidh a ndea-cháil ar chomhaltaí an bhoird bainistíochta agus go mbeidh acu a ndóthain eolais, scileanna agus taithí chun a gcúraimí a chomhlíonadh. Sásóidh baill an bhoird bainistíochta, go háirithe, na ceanglais a leagtar amach i míreanna 1 go 8.

I gcás nach sásaíonn baill an bhoird bainistíochta na ceanglais a leagtar amach sa mhír seo, beidh de chumhacht ag na húdaráis inniúla an duine sin a bhaint den bhord bainistíochta. Fíoróidh na húdaráis inniúla, go háirithe, an bhfuil na ceanglais a leagtar amach sa mhír seo fós á gcomhlíonadh i gcás ina bhfuil údar réasúnach acu lena cheapadh go bhfuil sciúradh airgid nó maoiniú sceimhlitheoireachta ar bun, go raibh sin ar bun, gur féachadh nó go bhfuiltear ag féachaint lena chur ar bun, nó go bhfuil riosca níos mó ann go dtarlódh a leithéid san institiúid atá i gceist.

▼B

2. All members of the management body shall commit sufficient time to perform their functions in the institution.

3. The number of directorships which may be held by a member of the management body at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Unless representing the Member State, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time:

▼B

(a) one executive directorship with two non-executive directorships;

(b) four non-executive directorships.

4. For the purposes of paragraph 3, the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same group;

(b) executive or non-executive directorships held within:

(i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled; or

(ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding.

5. Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 3.

6. Competent authorities may authorise members of the management body to hold one additional non-executive directorship. Competent authorities shall regularly inform EBA of such authorisations.

▼M5

7. Beidh a dhóthain eolais, scileanna agus taithí comhchoitinne ag an gcomhlacht bainistíochta chun gníomhaíochtaí na hinstitiúide a thuiscint, lena n-áirítear na príomhrioscaí. Beidh ballraíocht fhoriomlán an bhoird ina léiriú ar réimse leathan leordhóthanach taithí.

8. Gníomhóidh gach comhalta den chomhlacht bainistíochta go macánta, go hiontaofa agus go neamhspleách ó thaobh na smaointeoireachta de chun cinntí lucht bainistíochta sinsearaí a mheasúnú agus a cheistiú go héifeachtach, agus chun maoirseacht agus faireachán éifeachtach a dhéanamh ar chinnteoireacht an lucht bainistíochta. Ní hionann *per se* a bheith i do bhall de chuideachta chleamhnaithe nó d'eintiteas cleamhnaithe agus gan a bheith in ann gníomhú go neamhspleách ó thaobh na smaointeoireachta de.

▼B

9. Institutions shall devote adequate human and financial resources to the induction and training of members of the management body.

10. Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.

11. Competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.

▼B

12. EBA shall issue guidelines on the following:

(a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution;

(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 7;

(c) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 8;

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 9;

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 10;

▼M5

(f) cur i bhfeidhm comhsheasmhach na cumhachta dá dtagraítear sa dara fomhír de mhír 1.

▼B

EBA shall issue those guidelines by 31 December 2015.

13. This Article shall be without prejudice to provisions on the representation of employees in the management body as provided for by national law.

Article 92

Remuneration policies

▼M5

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▼B

2. ►M5 Áiritheoidh na Ballstáit, agus iad ag bunú agus ag cur i bhfeidhm na mbeartas luacha saothair iomláin, lena n-áirítear tuarastail agus sochair phinsin lánroghnacha, do chatagóirí foirne a raibh tionchar ábhartha ag a ngníomhaíochtaí gairmiúla ar phróifíl priacal na hinstitiúide, go gcomhlíonfaidh institiúidí na ceanglais seo a leanas ar dhóigh atá oiriúnach dá méid, dá n-eagrúchán inmheánach agus do chineál, do raon feidhme agus do chastacht a gcuid gníomhaíochtaí: ◄

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution;

▼M5

(aa) beartas inscne-neodrach um luach saothair a bheidh sa bheartas luach saothair;

▼B

(b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest;

▼B

(c) the institution' s management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing its implementation;

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

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

(f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 95 or, if such a committee has not been established, by the management body in its supervisory function;

(g) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting:

(i) 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

(ii) 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.

▼M5

3. Chun críocha mhír 2, ar áireamh sna catagóirí foirne a mbíonn tionchar ábhartha ag a gcuid gníomhaíochtaí gairmiúla ar phróifíl priacal na hinstitiúide, beidh, ar a laghad, na catagóirí seo a leanas:

(a) comhaltaí uile an bhoird bainistíochta agus na hardbhainistíochta;

(b) baill foirne a bhfuil freagracht bainistíochta acu ar fheidhmeanna rialaithe nó aonaid ghnó ábhartha na hinstitiúide;

(c) baill foirne atá i dteideal luach saothair suntasach sa bhliain airgeadais roimhe sin, ar an gcoinníoll go gcomhlíonfar na coinníollacha seo a leanas:

(i) is ionann agus, nó mó ná, EUR 500 000, ar a laghad, agus is ionann agus is mó ná an meánluach saothair a tugadh do chomhaltaí bhord bainistíochta na hinstitiúide agus don lucht bainistíochta sinsearaí dá dtagraítear i bpointe (a);

(ii) déanann an ball foirne a ghníomhaíocht ghairmiúil laistigh d'aonad gnó ábhartha agus is gníomhaíocht í de chineál a bhfuil tionchar suntasach aici ar phróifíl priacal an aonaid ábhartha gnó.

▼B

Article 93

Institutions that benefit from government intervention

In the case of institutions that benefit from exceptional government intervention, the following principles shall apply in addition to those set out in Article 92(2):

(a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

(b) the relevant competent authorities require institutions to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body of the institution;

(c) no variable remuneration is paid to members of the management body of the institution unless justified.

Article 94

Variable elements of remuneration

1. For variable elements of remuneration, the following principles shall apply in addition to, and under the same conditions as, those set out in Article 92(2):

(a) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the institution and when assessing individual performance, financial and non-financial criteria are taken into account;

(b) the assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;

(c) the total variable remuneration does not limit the ability of the institution to strengthen its capital base;

(d) 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;

(e) guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the institution has a sound and strong capital base and is limited to the first year of employment;

(f) 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;

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(g) institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration, whereby the following principles shall apply:

(i) the variable component shall not exceed 100 % of the fixed component of the total remuneration for each individual. Member States may set a lower maximum percentage;

(ii) 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. Member States may set a lower maximum percentage.

Any approval of a higher ratio in accordance with the first subparagraph of this point shall be carried out in accordance with the following procedure:

— the shareholders or owners or members of the institution shall act upon a detailed recommendation by the institution giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;

— shareholders or owners or members of the institution 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;

— the institution shall notify all shareholders or owners or members of the institution, providing a reasonable notice period in advance, that an approval under the first subparagraph of this point will be sought;

— the institution shall, without delay, inform the competent authority of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the competent authority that the proposed higher ratio does not conflict with the institution's obligations under this Directive and under Regulation (EU) No 575/2013, having regard in particular to the institution's own funds obligations;

— the institution shall, without delay, inform the competent authority of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the competent authorities shall use the information received to benchmark the practices of institutions in that regard. The competent authorities shall provide EBA with that information and EBA shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this indent and to ensure the consistency of the information collected;

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— staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this point shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the institution;

(iii) Member States may allow institutions to apply the discount rate referred to in the second subparagraph of this point 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. Member States may set a lower maximum percentage.

EBA shall prepare and publish, by 31 March 2014, guidelines on the applicable notional discount rate taking into account all relevant factors including inflation rate and risk, which includes length of deferral. The EBA guidelines on the discount rate shall specifically consider how to incentivise the use of instruments which are deferred for a period of not less than five years;

(h) payments relating to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct;

(i) remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the institution including retention, deferral, performance and clawback arrangements;

(j) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required;

(k) the allocation of the variable remuneration components within the institution shall also take into account all types of current and future risks;

(l) a substantial portion, and in any event at least 50 %, of any variable remuneration shall consist of a balance of the following:

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(i) scaireanna nó, faoi réir struchtúr dlíthiúil na hinstitiúide lena mbaineann, leasanna úinéireachta coibhéiseacha; nó ionstraimí atá nasctha le scaireanna, nó, faoi réir struchtúr dlíthiúil na hinstitiúide lena mbaineann, ionstraimí neamhairgid coibhéiseacha;

▼B

(ii) where possible, other instruments within the meaning of Article 52 or 63 of Regulation (EU) No 575/2013 or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down, that in each case adequately reflect the credit quality of the institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

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The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in accordance with point (m) and the portion of the variable remuneration component not deferred;

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(m) iarchuirtear sciar nach suaill, agus 40 % ar a laghad i ngach cás, de chomhpháirt inathraithe an luacha saothair thar tréimhse nach giorra ná 4 nó 5 de bhlianta, arna thabhairt ar comhréir mar is ceart le nádúr an ghnó gona rioscaí agus le gníomhaíochtaí na mball foirne lena mbaineann. I gcás chomhaltaí an bhoird bainistíochta agus na hardbhainistíochta in institiúidí nach beag a dtábhacht i ngeall ar a méid, ar a n-eagar inmheánach, ar nádúr, raon agus castacht a gcuid gníomhaíochtaí, níor cheart gur giorra ná 5 bliana an tréimhse iarchuir.

Luach saothair is iníoctha faoi shocruithe iarchuir, ní íocfar sin níos sciobtha ná ar bhonn *pro rata*. I gcás comhpháirt inathraithe an luacha saothair a bheith ag gabháil le suim thar a bheith ard, ní mór 60 % ar a laghad de a iarchur. Is i gcomhréir leis an timthriall tráchtála, le cineál an ghnó aige gona rioscaí, agus le gníomhaíochtaí an bhaill foirne lena mbaineann a bhunófar fad na tréimhse iarchuir;

▼B

(n) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the institution as a whole, and justified on the basis of the performance of the institution, the business unit and the individual concerned.

Without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

Up to 100 % of the total variable remuneration shall be subject to malus or clawback arrangements. Institutions shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member:

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

(ii) failed to meet appropriate standards of fitness and propriety;

(o) the pension policy is in line with the business strategy, objectives, values and long-term interests of the institution.

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If the employee leaves the institution before retirement, discretionary pension benefits shall be held by the institution for a period of five years in the form of instruments referred to in point (l). Where an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (l) subject to a five-year retention period;

(p) staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

(q) variable remuneration is not paid through vehicles or methods that facilitate the non-compliance with this Directive or Regulation (EU) No 575/2013.

▼M5

2. Forbróidh ÚBE dréachtchaighdeáin theicniúla rialála chun na cineálacha ionstraimí a shonrú a chomhlíonann na coinníollacha a leagtar amach i bpointe (l)(ii) de mhír 1.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 31 Márta 2014.

▼M7

Chun baill foirne a shainaithint a bhfuil tionchar ábhartha ag a ngníomhaíochtaí gairmiúla ar phróifíl riosca na hinstitiúide amhail dá dtagraítear in Airteagal 92(3), ach amháin maidir le baill foirne i ngnólachtaí infheistíochta, forbróidh ÚBE dréachtchaighdeáin theicniúla rialála ina leagfar amach na critéir chun an méid seo a leanas a shainiú:

(a) freagrachtaí bainistíochta agus feidhmeanna rialála;

(b) aonad gnó ábhartha agus tionchar suntasach ar phróifíl riosca an aonaid gnó ábhartha; agus

(c) catagóirí eile foirne nach dtagraítear go sainráite dóibh in Airteagal 92(3) a bhfuil tionchar ag a ngníomhaíochtaí gairmiúla ar phróifíl riosca na hinstitiúide, ar tionchar é atá chomh hábhartha céanna le tionchar na gcatagóirí foirne dá dtagraítear sa mhír sin.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 28 Nollaig 2019.

Déantar cumhacht a tharmligean chuig an gCoimisiún chun an Treoir seo a fhorlíonadh trí na caighdeáin theicniúla rialála dá dtagraítear sa mhír seo a ghlacadh i gcomhréir le hAirteagail 10 go 14 de Rialachán (AE) Uimh. 1093/2010. Maidir leis na caighdeáin theicniúla rialála a bhfuil feidhm acu maidir le gnólachtaí infheistíochta mar a shainmhínítear i bpointe (2) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013, leanfaidh an cumhachtú a leagtar síos in Airteagal 94(2) den Treoir seo arna leasú le Treoir (AE) 2018/843 ó Pharlaimint na hEorpa agus ón gComhairle ([1]), d'fheidhm a bheith aige go dtí an 26 Meitheamh 2021.

([1]) Treoir (AE) 2018/843 ó Pharlaimint na hEorpa agus ón gComhairle an 30 Bealtaine 2018 lena leasaítear Treoir (AE) 2015/849 maidir le cosc a chur le húsáid an chórais airgeadais chun críocha sciúrtha airgid nó maoinithe sceimhlitheoireachta, agus lena leasaítear Treoracha 2009/138/CE agus 2013/36/AE (IO L 156, 19.6.2018, lch. 43).

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3. De mhaolú ar mhír 1, ní bheidh feidhm ag na ceanglais a leagtar amach i bpointe (l), (m) agus sa dara mír de phointe (o) den mhír sin maidir leis an méid seo a leanas:

(a) institiúid nach institiúid mhór í mar a shainmhínítear i bpointe (146) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013, agus a bhfuil luach a sócmhainní, ar an meán agus ar bhonn aonair, i gcomhréir leis an Treoir seo agus le Rialachán (AE) Uimh. 575/2013, cothrom le nó níos lú ná EUR 5 bhilliún in imeacht na tréimhse 4 bliana go díreach roimh an mbliain airgeadais reatha;

(b) ball foirne nach airde a luach saothair inathraitheach bliantúil ná EUR 50 000 agus nach ionann agus níos mó ná aon trian de luach saothair iomlán bliantúil an bhaill foirne sin.

4. De mhaolú ar phointe (a) de mhír 3, is ceadmhach don Bhallstát an tairseach dá dtagraítear ansiúd a ísliú nó a ardú, ar choinníoll:

(a) nach institiúid mhór, mar a shainmhínítear i bpointe (146) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013, a bhaineann úsáid as an bhforáil seo, agus i gcás ina n-ardaítear an tairseach:

(i) go gcomhlíonann an institiúid na critéir a leagtar amach i bpointí (145)(c), (d) agus (e) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013; agus

(ii) nach airde an tairseach ná EUR 15 billiún;

(b) gurb iomchuí an tairseach a ardú i gcomhréir leis an mír seo, á chur san áireamh cineál na hinstitiúide gona raon agus castacht gníomhaíochta, a heagar inmheánach nó, i gcás inarb iomchuí, saintréithe an ghrúpa lena mbaineann sí.

5. De mhaolú ar phointe (b) de mhír 3, féadfaidh an Ballstát a chinneadh nach mbeidh baill foirne, a bhíonn i dteideal luach saothair inathraitheach bliantúil is ísle ná an tairseach agus an sciar dá dtagraítear sa phointe sin i bpointe (b), nach mbeidh siad faoi réir na díolúine a leagtar amach ansiúd i ngeall ar shonraíochtaí an mhargaidh náisiúnta i dtéarmaí cleachtas luacha saothair nó mar gheall ar chineál na bhfreagrachtaí nó ar phróifíl an phoist atá ag na baill foirne sin.

6. Faoin 28 Meitheamh 2023, déanfaidh an Coimisiún, i ndlúthchomhar le ÚBE, athbhreithniú agus cuirfidh sé tuarascáil i dtoll a chéile ar chur i bhfeidhm mhíreanna 3 agus 5 agus cuirfidh sé an tuarascáil sin, agus togra reachtach, más iomchuí, faoi bhráid Pharlaimint na hEorpa agus na Comhairle.

7. Eiseoidh ÚBE treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, d'éascú ar chur chun feidhme mhíreanna 3, 4 agus 5 agus chun a áirithiú go gcuirtear i bhfeidhm go comhsheasmhach iad.

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Article 95

Remuneration Committee

1. Competent authorities shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

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2. Competent authorities shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the institution concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the institution concerned. If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the institution and the public interest.

Article 96

Maintenance of a website on corporate governance and remuneration

Institutions that maintain a website shall explain there how they comply with the requirements of Articles 88 to 95.

Section III

Supervisory review and evaluation process

Article 97

Supervisory review and evaluation

1. Taking into account the technical criteria set out in Article 98, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation (EU) No 575/2013 and evaluate:

(a) risks to which the institutions are or might be exposed;

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(c) risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.

2. The scope of the review and evaluation referred to in paragraph 1 shall cover all requirements of this Directive and of Regulation (EU) No 575/2013.

3. On the basis of the review and evaluation referred to in paragraph 1, the competent authorities shall determine whether the arrangements, strategies, processes and mechanisms implemented by institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

4. Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 99(2).

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Agus an t-athbhreithniú agus an mheastóireacht dá dtagraítear i mír 1 den Airteagal seo ar siúl acu, cuirfidh na húdaráis inniúla i bhfeidhm prionsabal na comhréireachta i gcomhréir leis na critéir a nochtar de bhun phointe (c) d'Airteagal 143(1).

4a. Féadfaidh na húdaráis inniúla na modheolaíochtaí le haghaidh chur i bhfeidhm an athbhreithnithe agus na meastóireachta dá dtagraítear i mír 1 den Airteagal seo a shaincheapadh d'fhonn institiúidí a bhfuil próifílí priacal comhchosúla acu a chur san áireamh, samhlacha gnó comhchosúla nó suíomhanna geografacha comhchosúla risíochtaí, mar shampla. Féadfaidh tagarmharcanna riosca-bhunaithe agus táscairí cainníochtúla a bheith ar na modheolaíochtaí saincheaptha sin, agus féadfar aird chuí a thabhairt leo ar na rioscaí sonracha nach mbeidh cosaint ag gach institiúid orthu, agus ní dhéanfaidh siad difear do cineál institiúid-sonrach na mbeart arna bhforchur i gcomhréir le hAirteagal 104.

Tabharfaidh na húdaráis inniúla fógra do ÚBE nuair a úsáideann siad modheolaíochtaí saincheaptha de bhun na míre seo. Déanfaidh ÚBE faireachán ar na cleachtais mhaoirseachta agus eiseoidh sé treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, ina sonrófar conas a mheasúnófar próifílí priacal comhchosúla chun críocha na míre seo agus chun a áirithiú go mbeidh cur i bhfeidhm comhsheasmhach comhréireach ann maidir le modheolaíochtaí ar fud an Aontais atá saincheaptha d'institiúidí comhchosúla.

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5. Member States shall ensure that where a review shows that an institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 the competent authorities inform EBA without delay about the results of the review.

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6. I gcás ina mbíonn údar réasúnach ag na húdaráis inniúla, i ngeall ar athbhreithniú, go háirithe i ngeall ar mheastóireacht ar shocruithe rialachais, ar shamhail ghnó, nó ar ghníomhaíochtaí institiúide, lena cheapadh go bhfuil sciúradh airgid nó maoiniú sceimhlitheoireachta ar bun, go raibh sin ar bun, gur féachadh nó go bhfuiltear ag féachaint lena chur ar bun, nó go bhfuil riosca níos mó ann go dtarlódh a leithéid san institiúid atá i gceist, tabharfaidh an t-údarás inniúil fógra láithreach faoin méid sin do ÚBE agus don údarás nó comhlacht a dhéanann maoirseacht ar an institiúid sin i gcomhréir le Treoir (AE) 2015/849 agus atá inniúil ar chomhlíonadh na Treorach sin a áirithiú. I gcás go mbíonn riosca níos mó ann go bhfuil sciúradh airgid nó maoiniú sceimhlitheoireachta ar bun, rachaidh an t-údarás inniúil agus an t-údarás nó comhlacht a dhéanann maoirseacht ar an institiúid i gcomhréir le Treoir (AE) 2015/849 agus atá inniúil ar chomhlíonadh na Treorach sin a áirithiú, rachaidh siad i gcomhar le chéile agus tabharfaidh siad fógra láithreach do ÚBE faoina gcomh-mheasúnú. Glacfaidh an t-údarás inniúil, mar is iomchuí, bearta i gcomhréir leis an Treoir seo.

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Article 98

Technical criteria for the supervisory review and evaluation

1. In addition to credit, market and operational risks, the review and evaluation performed by competent authorities pursuant to Article 97 shall include at least:

(a) the results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by institutions applying an internal ratings based approach;

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(b) the exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of Regulation (EU) No 575/2013 and Article 81 of this Directive;

(c) the robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

(d) the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

(e) the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

(f) the impact of diversification effects and how such effects are factored into the risk measurement system;

(g) the results of stress tests carried out by institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;

(h) the geographical location of institutions' exposures;

(i) the business model of the institution.

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2. For the purposes of point (e) of paragraph 1, the competent authorities shall regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions and promote the development of sound internal methodologies. While conducting those reviews, the competent authorities shall have regard to the role played by institutions in the financial markets. The competent authorities in one Member State shall duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

3. Competent authorities shall monitor whether an institution has provided implicit support to a securitisation. If an institution is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

4. For the purposes of the determination to be made under Article 97(3) of this Directive, competent authorities shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of Regulation (EU) No 575/2013, enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

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5. Áireofar leis an athbhreithniú agus leis an meastóireacht a dhéanfaidh na húdaráis inniúla risíocht institiúidí ar riosca ráta úis a thagann as gníomhaíochtaí leabhar neamhthrádála.

Déanfar na cumhachtaí maoirseachta sin a fheidhmiú sna cásanna seo a leanas, ar a laghad:

(a) i gcás institiúid ina laghdaíonn luach eacnamaíoch a gcothromais dá dtagraítear in Airteagal 84(1) níos mó ná 15 % dá caipiteal Leibhéal 1 mar thoradh ar athrú tobann gan choinne ar rátaí úis mar a leagtar amach in aon cheann de na sé chás maoirseachta suaite a chuirtear i bhfeidhm ar rátaí úis;

(b) i gcás ina dtagann titim mhór ar ghlanioncam úis institiúide, dá dtagraítear in Airteagal 84(1), i ngeall ar athrú tobann gan choinne sna rátaí úis mar a leagtar amach in aon cheann den dá chás maoirseachta suaite a chuirtear i bhfeidhm ar rátaí úis.

Déanfaidh na húdaráis inniúla na cumhachtaí maoirseachta a fheidhmiú sna cásanna seo a leanas, ar a laghad, ach amháin má mheasann siad, bunaithe ar an athbhreithniú agus ar an meastóireacht dá dtagraítear sa mhír seo, gur leormhaith an bainistiú a dhéanann an institiúid ar riosca ráta úis a thagann as gníomhaíochtaí leabhar neamhthrádála agus nach bhfuil an institiúid neamhchosanta go hiomarcach ar riosca ráta úis a thagann as gníomhaíochtaí leabhar neamhthrádála.

Chun críche na míre seo, ciallaíonn an téarma “cumhachtaí maoirseachta” na cumhachtaí dá dtagraítear in Airteagal 104(1) nó an chumhacht toimhdí samhaltaithe agus paraiméadracha a fhorchur, seachas iad siúd a shainaithin ÚBE de bhun phointe (b) de mhír 5a den Airteagal seo, rud a léireoidh institiúidí nuair a ríomhfaidh siad luach eacnamaíoch cothromais faoi Airteagal 84(1).

5a. Forbróidh ÚBE dréachtchaighdeáin theicniúla rialála d'fhonn na nithe seo a leanas a shonrú chun críocha mhír 5:

(a) na sé chás maoirseachta suaite dá dtagraítear i bpointe (a) den dara fhomhír de mhír 5, agus an dá chás maoirseachta suaite dá dtagraítear i bpointe (b) den dara fomhír de mhír 5 nach mór a chur i bhfeidhm ar na rátaí uís i gcás gach airgeadra;

(b) i bhfianaise na gcaighdeán stuamachta arna gcomhaontú go hidirnáisiúnta, na toimhdí coiteanna samhaltaithe agus paraiméadracha, seachas toimhdí iompraíochta, a léireoidh institiúidí agus luach eacnamaíoch cothromais á ríomh acu, dá dtagraítear i bpointe (a) den dara fomhír de mhír 5, agus a bheidh teoranta don mhéid seo a leanas:

(i) an tslí a láimhseáiltear cothromas na hinstitiúide féin;

(ii) cuimsiú, comhdhéanamh agus lascainiú sreafaí airgid atá íogair do rátaí úis a eascraíonn as sócmhainní agus dliteanais na hinstitiúide agus as míreanna na hinstitiúide atá lasmuigh den chlár comhardaithe, lena n-áirítear láimhseáil corrlach tráchtála agus comhpháirteanna eile raon difríochta;

(iii) samhlacha dinimiciúla nó statacha de na cláir chomhardaithe a úsáid agus an láimhseáil a dhéantar, dá bharr, ar shuíomhanna amúchta agus ar shuíomhanna atá ag aibiú.

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(c) i bhfianaise na gcaighdeán arna gcomhaontú go hidirnáisiúnta, na toimhdí coiteanna samhaltaithe agus paraiméadracha, seachas toimhdí iompraíochta, a léireoidh institiúidí agus an glanioncam úis dá dtagraítear i bpointe (b) den dara fomhír de mhír 5 á ríomh acu a bheidh teoranta don mhéid seo a leanas:

(i) cuimsiú agus comhdhéanamh sreafaí airgid atá íogair do rátaí úis a eascraíonn as sócmhainní agus dliteanais na hinstitiúide agus as míreanna na hinstitiúide atá lasmuigh den chlár comhardaithe, lena n-áirítear láimhseáil corrlach tráchtála agus comhpháirteanna eile raon difríochta;

(ii) samhlacha dinimiciúla nó statacha de na cláir chomhardaithe a úsáid agus an láimhseáil a dhéantar, dá bharr, ar shuíomhanna amúchta agus ar shuíomhanna atá ag aibiú;

(iii) an tréimhse ar lena linn a dhéanfar glanioncam úis sa todhchaí a thomhas;

(d) sainmhíniú ar an ní is titim mhór ann, dá dtagraítear i bpointe (b) den dara fomhír de mhír 5.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 28 Meitheamh 2020.

Tarmligtear chuig an gCoimisiún an chumhacht chun an Treoir seo a fhorlíonadh trí na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

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6. The review and evaluation performed by competent authorities shall include the exposure of institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, competent authorities shall take into account the business model of those institutions.

7. The review and evaluation conducted by competent authorities shall include governance arrangements of institutions, their corporate culture and values, and the ability of members of the management body to perform their duties. In conducting that review and evaluation, competent authorities shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

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8. Measúnóidh ÚBE an bhféadfaí rioscaí comhshaoil, sóisialta, agus rialachais (rioscaí ESG) a áireamh san athbhreithniú agus meastóireacht a dhéanfaidh na húdaráis inniúla.

Chun críocha na chéad fhomhíre, beidh an méid seo a leanas, ar a laghad, sa mheasúnú a dhéanfaidh ÚBE:

(a) sainmhíniú aonfhoirmeach a cheapadh ar an ní is rioscaí ESG ann, lena n-áirítear rioscaí fisiciúla agus rioscaí eatramhacha; is éard a bheidh sa mhéid réamhráite na rioscaí a bhaineann le dímheas sócmhainní dar siocair athruithe rialála;

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(b) critéir iomchuí cháilíochta agus chainníochta a cheapadh chun measúnú a dhéanamh thionchar na rioscaí ESG ar chobhsaíocht airgeadais na n-institiúidí go gearrthéarmach, go meántéarmach, agus go fadtéarmach; áireofar ar chritéir den sórt sin próisis tástála struis agus cásanailísí chun tionchar na rioscaí ESG i ndálaí difriúla nach ionann déine dóibh a mheasúnú;

(c) na socruithe, próisis, sásraí, agus straitéisí nach mór do na hinstitiúidí a chur chun feidhme d'fhonn rioscaí ESG a shainaithint, a mheasúnú, agus a bhainistiú;

(d) na modheolaíochtaí agus uirlisí anailíse lena measúnaítear tionchar na rioscaí ESG ar ghníomhaíochtaí iasachta agus eadránaíochta airgeadais na n-institiúidí.

Cuirfidh ÚBE tuarascáil ina mbeidh chuid torthaí faoi bhráid an Choimisiúin, Pharlaimint na hEorpa, agus na Comhairle tráth nach déanaí ná 28 Meitheamh 2021.

Bunaithe ar thorthaí na tuarascála sin, féadfaidh ÚBE, más iomchuí, treoirlínte a eisiúint, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, maidir le hiniamh na rioscaí ESG san athbhreithniú maoirseachta agus próiseas meastóireachta a dhéanfaidh na húdaráis inniúla.

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Article 99

Supervisory examination programme

1. The competent authorities shall, at least annually, adopt a supervisory examination programme for the institutions they supervise. Such programme shall take into account the supervisory review and evaluation process under Article 97. It shall contain the following:

(a) an indication of how competent authorities intend to carry out their tasks and allocate their resources;

(b) an identification of which institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3;

(c) a plan for inspections at the premises used by an institution, including its branches and subsidiaries established in other Member States in accordance with Articles 52, 119 and 122.

2. Supervisory examination programmes shall include the following institutions:

(a) institutions for which the results of the stress tests referred to in points (a) and (g) of Article 98(1) and Article 100, or the outcome of the supervisory review and evaluation process under Article 97, indicate significant risks to their ongoing financial soundness or indicate breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013;

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(c) any other institution for which the competent authorities deem it to be necessary.

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3. Where appropriate under Article 97 the following measures shall, in particular, be taken if necessary:

(a) an increase in the number or frequency of on-site inspections of the institution;

(b) a permanent presence of the competent authority at the institution;

(c) additional or more frequent reporting by the institution;

(d) additional or more frequent review of the operational, strategic or business plans of the institution;

(e) thematic examinations monitoring specific risks that are likely to materialise.

4. Adoption of a supervisory examination programme by the competent authority of the home Member State shall not prevent the competent authorities of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions on their territory in accordance with Article 52(3).

Article 100

Supervisory stress testing

1. The competent authorities shall carry out as appropriate but at least annually supervisory stress tests on institutions they supervise, to facilitate the review and evaluation process under Article 97.

2. EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to ensure that common methodologies are used by the competent authorities when conducting annual supervisory stress tests.

Article 101

Ongoing review of the permission to use internal approaches

1. Competent authorities shall review on a regular basis, and at least every 3 years, institutions' compliance with the requirements regarding approaches that require permission by the competent authorities before using such approaches for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013. They shall have particular regard to changes in an institution's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by an institution's internal approach, competent authorities shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

2. The competent authorities shall in particular review and assess whether the institution uses well developed and up-to-date techniques and practices for those approaches.

3. If for an internal market risk model numerous overshootings referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the model is not or is no longer sufficiently accurate, the competent authorities shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

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4. If an institution has received permission to apply an approach that requires permission by the competent authorities before using such an approach for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013 but does not meet the requirements for applying that approach anymore, the competent authorities shall require the institution to either demonstrate to the satisfaction of the competent authorities that the effect of non-compliance is immaterial where applicable in accordance with Regulation (EU) No 575/2013 or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authorities shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

5. In order to promote consistent soundness of internal approaches in the Union, EBA shall analyse internal approaches across institutions, including the consistency of implementation of the definition of default and how those institutions treat similar risks or exposures.

EBA shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, which contain benchmarks on the basis of that analysis.

Competent authorities shall take into account that analysis and those benchmarks for the review of the permissions they grant to institutions to use internal approaches.

Section IV

Supervisory measures and powers

Article 102

Supervisory measures

1. Competent authorities shall require an institution to take the necessary measures at an early stage to address relevant problems in the following circumstances:

(a) the institution does not meet the requirements of this Directive or of Regulation (EU) No 575/2013;

(b) the competent authorities have evidence that the institution is likely to breach the requirements of this Directive or of Regulation (EU) No 575/2013 within the following 12 months.

2. For the purposes of paragraph 1, the powers of competent authorities shall include those referred to in Article 104.

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Article 104

Supervisory powers

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1. Chun críocha Airteagal 97, Airteagal 98(4) agus (5), Airteagal 101(4) agus Airteagal 102 den Treoir seo agus chun Rialachán (AE) Uimh. 575/2013 a chur i bhfeidhm, beidh ar a laghad na cumhachtaí seo a leanas ag na húdaráis inniúla:

(a) a chur de cheangal ar institiúidí cistí dílse breise a bheith acu os cionn na gceanglas a leagtar amach i Rialachán (AE) Uimh. 575/2013, faoi na coinníollacha a leagtar amach in Airteagal 104a den Treoir seo;

(b) a chur de cheangal orthu socruithe, próisis, sásraí agus straitéisí a dhaingniú a chuirtear i bhfeidhm i gcomhréir le hAirteagail 73 agus 74;

(c) ceanglaítear ar institiúidí plean a chur isteach chun comhlíonadh na gceanglas maoirseachta de bhun na Treorach seo agus Rialachán (AE) Uimh. 575/2013 a thabhairt ar ais agus spriocdháta a leagan síos chun an plean a chur chun feidhme, lena n-áirítear feabhsuithe ar an bplean sin maidir leis an raon feidhme agus an spriocdháta;

(d) ceanglaítear ar institiúidí beartas soláthair ar leith nó láimhseáil sócmhainní i dtéarmaí ceanglas cistí dílse a chur i bhfeidhm;

(e) gnó, oibríochtaí nó líonra institiúidí a shrianadh nó teorainn a chur leo nó dífheistiú gníomhaíochtaí a iarraidh a chuirfidh fóntacht institiúide faoi rioscaí iomarcacha;

(f) ceanglaítear ar institiúidí laghdú a dhéanamh ar an riosca a bhaineann le gníomhaíochtaí, táirgí agus córais institiúidí, lena n-áirítear gníomhaíochtaí seachfhoinsithe;

(g) ceanglaítear ar institiúidí luach saothair inathraitheach mar chéatadán de ghlanioncaim a shrianadh i gcás ina mbeidh sé ar neamhréir le bonn caipitil fónta a chaomhnú;

(h) ceanglaítear ar institiúidí glanbhrabúis a úsáid chun na cistí dílse a threisiú;

(i) dáileacháin nó íocaíochtaí úis arna ndéanamh ag institiúid do scairshealbhóirí, do chomhaltaí nó do shealbhóirí ionstraimí Breise Leibhéal 1 a shrianadh nó iad a thoirmeasc i gcás nach ionann an toirmeasc sin agus mainneachtain na hinstitiúide;

(j) ceanglais maidir le tuairisciú breise nó tuairisciú níos minice a fhorchur, lena n-áirítear tuairisciú ar chistí dílse, ar leachtacht agus ar luamhánú;

(k) ceanglais leachtachta shonracha a fhorchur, lena n-áirítear srianta ar neamhréireanna aibíochta idir sócmhainní agus dliteanais;

(l) nochtaí breise a cheangal.

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2. Chun críocha phointe (j) de mhír 1, ní fhéadfaidh na húdaráis inniúla ceanglais maidir le tuairisciú breise nó tuairisciú níos minice a fhorchur ar institiúidí ach i gcás ceanglas ábhartha a bheith iomchuí agus comhréireach maidir leis an gcríoch dá n-éilítear an fhaisnéis agus nach faisnéis dhúblach í an fhaisnéis sin a iarrtar.

Chun críocha Airteagal 97 go hAirteagal 102, measfar gur faisnéis dhúblach í aon fhaisnéis bhreise a fhéadfar a éileamh ar institiúidí i gcás inar tuairiscíodh an fhaisnéis chéanna, nó faisnéis atá mórán mar an gcéanna léi cheana féin, don údarás inniúil nó i gcás ina bhféadfaidh an t-údarás inniúil í a chur ar fáil.

Ní éileoidh an t-údarás inniúil ar institiúid faisnéis bhreise a thuairisciú i gcás ina bhfuair an t-údarás inniúil an fhaisnéis sin cheana féin i bhformáid atá éagsúil nó atá ar leibhéal éagsúil gráinneachta agus i gcás nach gcuirfidh an fhormáid ná an ghráinneacht éagsúil sin cosc ar an údarás inniúil faisnéis a chur ar fáil a bheidh ar comhcháilíocht agus ar comhiontaofacht leis an bhfaisnéis sin a chuirfear ar fáil ar bhonn na faisnéise breise a thuairisceofaí seachas sin.

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Airteagal 104a

Ceanglas cistí dílse breise

1. Forchuirfidh na húdaráis inniúla an ceanglas cistí dílse breise dá dtagraítear i bpointe (a) d'Airteagal 104(1) i gcás ina gcinnfidh siad, ar bhonn na n-athbhreithnithe a rinneadh i gcomhréir le hAirteagal 97 agus le hAirteagal 101, aon cheann de na cásanna seo a leanas i leith institiúid aonair:

(a) go bhfuil an institiúid neamhchosantach ar rioscaí nó ar ghnéithe rioscaí nach gcumhdaítear nó nach gcumhdaítear go leordhóthanach, mar a shonraítear i mír 2 den Airteagal seo, faoi na ceanglais cistí dílse a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402 ó Pharlaimint na hEorpa agus ón gComhairle ([1]);

(b) nach gcomhlíonann an institiúid na ceanglais a leagtar amach in Airteagail 73 agus 74 den Treoir seo ná in Airteagal 393 de Rialachán (AE) Uimh. 575/2013 agus ní dócha go mbeadh bearta eile maoirseachta leordhóthanach d'fhonn a áirithiú go bhféadfaí na ceanglais sin a chomhlíonadh laistigh de thréimhse ama iomchuí;

(c) meastar nach leor na coigeartuithe dá dtagraítear in Airteagal 98(4) go bhféadfaidh an institiúid a suíomhanna a dhíol nó a fhálú amach laistigh de thréimhse ghearr gan caillteanais ábhartha a thabhú faoi ghnáthchoinníollacha margaidh;

(d) léirítear leis an measúnú a dhéantar i gcomhréir le hAirteagal 101(4) gur cosúil gur ceanglais cistí dílse neamhleora an toradh a bheidh ar neamh-chomhlíonadh na gceanglas maidir leis an gcur chuige ceadaithe a chur i bhfeidhm;

([1]) Rialachán (AE) 2017/2402 ó Pharlaimint na hEorpa agus ón gComhairle an 12 Nollaig 2017 lena leagtar síos creat ginearálta maidir le hurrúsú agus lena gcruthaítear creat sonrach maidir le hurrúsú agus lena gcruthaítear creat sonrach maidir le hurrúsú simplí trédhearcach caighdeánaithe, agus lena leasaítear Treoir 2009/65/CE, Treoir 2009/138/CE agus Treoir 2011/61/AE agus Rialachán (CE) 1060/2009 agus Rialachán (AE) Uimh. 648/2012 (IO L 347, 28.12.2017, lch. 35).

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(e) mainníonn an institiúid leibhéal leordhóthanach cistí dílse breise a bhunú nó a choinneáil d'fhonn na treoracha arna gcur in iúl i gcomhréir le hAirteagal 104b(3) a chumhdach;

(f) cásanna eile institiúidsonrach a measann an t-údarás inniúil gur cúis imní ábhartha maoirseachta iad.

Ní dhéanfaidh na húdaráis inniúla an ceanglas cistí dílse breise dá dtagraítear i bpointe (a) d'Airteagal 104(1) a fhorchur ach amháin chun na rioscaí a chlúdach a thabhaíonn institiúidí aonair de bharr a ngníomhaíochtaí, lena n-áirítear iad siúd a léiríonn tionchar cúinsí eacnamaíocha áirithe agus forbairtí margaidh maidir le próifíl priacal institiúide aonair.

2. Chun críocha phointe (a) de mhír 1 den Airteagal seo, ní mheasfar gur rioscaí nó gnéithe rioscaí iad ach amháin más rioscaí nó gnéithe rioscaí iad nach gcumhdaítear nó nach gcumhdaítear go leordhóthanach leis na ceanglais cistí dílse a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402 i gcás inarb airde méideanna, cineálacha agus dáileachán an chaipitil a mheasann an t-údarás inniúil a bheith leordhóthanach ag cur san áireamh an t-athbhreithniú maoirseachta a dhéanfaidh na hinstitiúidí ar an measúnú i gcomhréir leis an gcéad mhír d'Airteagal 73 den Treoir seo ná na ceanglais cistí dílse a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402.

Chun críocha na chéad fhomhíre, agus próifíl priacal gach institiúide á cur san áireamh, déanfaidh na húdaráis inniúla na rioscaí nach bhfuil cosaint ag an institiúid orthu a mheas lena n-áirítear an méid seo a leanas:

(a) rioscaí institiúidsonracha nó gnéithe rioscaí den sórt sin a eisiatar go sainráite ó na ceanglais cistí dílse, nó nach dtugtar aghaidh orthu go sainráite sna ceanglais sin a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402;

(b) rioscaí institiúidsonracha nó gnéithe rioscaí den sórt sin ar dócha go ndéanfar gannmheas orthu in ainneoin go gcomhlíontar na ceanglais is infheidhme a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402.

Sa mhéid go bhfuil rioscaí nó gnéithe rioscaí faoi réir socruithe idirthréimhseacha nó forálacha marthanachta a leagtar amach sa Treoir seo nó i Rialachán (AE) Uimh. 575/2013, ní mheasfar gur rioscaí nó gnéithe rioscaí den sórt sin ar dócha go ndéanfar gannmheas orthu in ainneoin go gcomhlíontar na ceanglais is infheidhme a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402.

Chun críocha na chéad mhíre, cumhdóidh an caipiteal a mheastar a bheidh leordhóthanach na rioscaí uile nó gnéithe de rioscaí a shainaithnítear a bheith ábhartha de bhun an mheasúnaithe sin, a leagtar síos sa dara fomhír den mhír seo nach gcumhdaítear nó nach gcumhdaítear go leordhóthanach leis na ceanglais cistí dílse a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402.

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Is féidir a mheas gurb ábhartha an riosca ráta úis a thagann as suíomhanna leabhair neamhthrádála sna cásanna dá dtagraítear in Airteagal 98(5), ar a laghad, ach amháin má bhíonn na húdaráis inniúla den tuairim, agus an t-athbhreithniú agus an mheastóireacht á chur i gcrích acu, gur leormhaith an bainistiú a dhéanann an institiúid ar riosca ráta úis a thagann as gníomhaíochtaí leabhar neamhthrádála agus nach bhfuil an institiúid neamhchosanta go hiomarcach ar riosca ráta úis a thagann as gníomhaíochtaí leabhar neamhthrádála.

3. I gcás ina dteastóidh cistí dílse breise chun aghaidh a thabhairt ar phriacail seachas priacal an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh 575/2013, cinnfidh na húdaráis inniúla leibhéal na gcistí dílse breise a cheanglaítear faoi phointe (a) de mhír 1 den Airteagal seo mar an difríocht idir an caipiteal a mheastar a bheith leordhóthanach de bhun mhír 2 den Airteagal seo agus na ceanglais cistí dílse ábhartha a leagtar amach i gCodanna a Trí agus a Ceathair de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402.

I gcás ina dteastóidh cistí dílse breise chun aghaidh a thabhairt ar phriacal an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, cinnfidh na húdaráis inniúla leibhéal na gcistí dílse breise a cheanglaítear faoi phointe (a) de mhír 1 den Airteagal seo mar an difríocht idir an caipiteal a mheastar a bheith leordhóthanach de bhun mhír 2 den Airteagal seo agus na ceanglais cistí dílse ábhartha a leagtar amach i gCodanna a Trí agus a Seacht de Rialachán (AE) Uimh. 575/2013.

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4. Comhlíonfaidh an institiúid an ceanglas cistí dílse breise arna fhorchur ag an údarás inniúil faoi phointe (a) d'Airteagal 104(1) chun aghaidh a thabhairt ar phriacail seachas priacal an luamhánaithe iomarcaigh le cistí dílse a chomhlíonann na coinníollacha seo a leanas:

(a) comhlíonfar ar a laghad trí cheathrú den cheanglas cistí dílse breise le caipiteal Leibhéal 1;

(b) beidh ar a laghad trí cheathrú de chaipiteal Leibhéal 1 dá dtagraítear i bpointe (a) comhdhéanta de chaipiteal de Ghnáthchothromas Leibhéal 1.

Comhlíonfaidh an institiúid an ceanglas cistí dílse breise arna fhorchur ag an údarás inniúil faoi phointe (a) d'Airteagal 104(1) chun aghaidh a thabhairt ar phriacal an luamhánaithe iomarcaigh le caipiteal Leibhéal 1.

De mhaolú ar an gcéad fhomhír agus an dara fomhír, féadfaidh an t-údarás inniúil a cheangal ar an institiúid an ceanglas cistí dílse breise a chomhlíonadh le cion níos mó de chaipiteal Leibhéal 1, nó de chaipiteal Gnáthchothromas Leibhéal 1 i gcás inar gá agus ag féachaint d'imthosca sonracha na hinstitiúide.

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I dtaca le cistí dílse a úsáidtear chun an ceanglas cistí dílse breise a chomhlíonadh, dá dtagraítear i bpointe (a) d'Airteagal 104(1) den Treoir seo, forchurtha ag na húdaráis inniúla chun aghaidh a thabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, ní úsáidfear iad chun aon cheann díobh seo a leanas a chomhlíonadh:

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(a) an ceanglas cistí dílse a leagtar amach i bpointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013;

(b) an ceanglas maoláin um chóimheas luamhánaithe dá dtagraítear in Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013;

(c) an treoir maidir le cistí breise dílse dá dtagraítear in Airteagal 104b(3) den Treoir seo nuair a thugtar aghaidh sa treoir sin ar rioscaí an luamhánaithe iomarcaigh.

I dtaca le cistí dílse a úsáidtear chun an ceanglas cistí dílse breise a chomhlíonadh, dá dtagraítear i bpointe (a) d'Airteagal 104(1) den Treoir seo, forchurtha ag na húdaráis inniúla chun aghaidh a thabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, ní úsáidfear iad chun aon cheann díobh seo a leanas a chomhlíonadh:

(a) an ceanglas cistí dílse a leagtar amach i bpointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013;

(b) an ceanglas maoláin um chóimheas luamhánaithe dá dtagraítear in Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013;

(c) an treoir maidir le cistí breise dílse dá dtagraítear in Airteagal 104b(3) den Treoir seo nuair a thugtar aghaidh sa treoir sin ar rioscaí an luamhánaithe iomarcaigh.

5. Tabharfaidh an t-údarás inniúil údar cuí i scríbhinn do gach institiúid leis an gcinneadh ceangal cistí dílse breise a fhorchur faoi phointe (a) d'Airteagal 104(1), ar a laghad, trí chuntas soiléir a thabhairt ar an measúnú iomlán ar na gnéithe dá dtagraítear i míreanna 1 go 4 den Airteagal seo. Leis an údar sin, sa chás a leagtar amach i bpointe (e) de mhír 1 den Airteagal seo, áireofar ráiteas sonrach ar na cúiseanna lena measfar nach leor a thuilleadh an treoir maidir le cistí dílse breise a fhorchur.

Airteagal 104b

Treoir maidir le cistí dílse breise

1. De bhun na straitéisí agus na bpróiseas dá dtagraítear in Airteagal 73, bunóidh institiúidí a gcaipiteal inmheánach ar leibhéal cuí cistí dílse atá leordhóthanach chun na rioscaí uile nach bhfuil cosaint ag institiúid orthu a chumhdach agus chun a áirithiú gur féidir le cistí dílse na hinstitiúide caillteanais ionchasacha a chomhshó a thagann as cásanna struis, lena n-áirítear iad siúd arna sainaithint sa tástáil struis maoir-seachta dá dtagraítear in Airteagal 100.

2. Déanfaidh na húdaráis inniúla athbhreithniú rialta ar leibhéal an chaipitil inmheánaigh a shocraíonn gach institiúid i gcomhréir le mír 1 den Airteagal seo mar chuid den athbhreithniú agus den mheastóireacht arna ndéanamh i gcomhréir le hAirteagal 97 agus le hAirteagal 101 a chur san áireamh, lena n-áirítear torthaí na dtástálacha struis dá dtagraítear in Airteagal 100.

De bhun na n-athbhreithnithe sin, cinnfidh na húdaráis inniúla an leibhéal foriomlán cistí dílse le haghaidh gach institiúide a mheasann siad a bheith cuí.

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3. Déanfaidh na húdaráis inniúla an treoir maidir le cistí dílse breise a chur in iúl d'institiúidí.

Is éard a bheidh sa treoir maidir le cistí dílse breise cistí dílse breise a sháraíonn an méid ábhartha de chistí dílse mar a cheanglaítear de bhun Chodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013, Caibidil 2 de Rialachán (AE) 2017/2402, pointe (a) d'Airteagal 104(1) agus pointe (6) d'Airteagal 128 den Treoir seo nó de bhun Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013, de réir mar is ábhartha, a theastaíonn chun go mbainfear amach an leibhéal foriomlán cistí dílse a mheasann na húdaráis inniúla a bheidh iomchuí de bhun mhír 2 den Airteagal seo.

4. Ní mór do threoir na n-údarás inniúil maidir le cistí dílse breise de bhun mhír 3 den Airteagal seo a bheith institiúidsonrach. Leis an treoir sin, féadfar rioscaí a chumhdach a dtugtar aghaidh orthu le ceanglas cistí dílse breise arna bhforchur de bhun phointe (a) d'Airteagal 104 (1) sa mhéid go gcumhdaítear léi gnéithe de na rioscaí sin nach gcumhdaítear cheana féin faoin gceanglas sin, agus sa mhéid sin amháin.

5. I dtaca le cistí dílse a úsáidtear chun an treoir maidir le cistí dílse breise a chomhlíonadh, a chuirtear in iúl i gcomhréir le mír 3 den Airteagal seo, chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh, ní úsáidfear iad chun aon cheann díobh seo a leanas a chomhlíonadh:

(a) na ceanglais cistí dílse a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013;

(b) an ceanglas a leagtar amach faoi Airteagal 104a den Treoir seo forchurtha ag na húdaráis inniúla chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh agus ar an gceanglas maoláin chomhcheangailte.

I dtaca le cistí dílse a úsáidtear chun an treoir maidir le cistí dílse breise a chomhlíonadh, a chuirtear in iúl i gcomhréir le mír 3 den Airteagal seo, chun aghaidh a thabhairt ar riosca an luamhánaithe iomarcaigh, ní úsáidfear iad chun an ceanglas cistí dílse a leagtar amach i bpointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 sin a chomhlíonadh, an ceanglas a leagtar síos in Airteagal 104a den Treoir seo forchurtha ag na húdaráis inniúla chun aghaidh a thabhairt ar riosca an luamhánaithe iomarcaigh agus ar an gceanglas maoláin um chóimheas luamhánaithe dá dtagraítear in Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013.

6. I gcás ina mainnítear an treoir dá dtagraítear i mír 3 den Airteagal seo a chomhlíonadh, i gcás ina gcomhlíonfaidh institiúid na ceanglais cistí dílse ábhartha a leagtar amach i gCodanna a Trí, a Ceathair agus a Seacht de Rialachán (AE) Uimh. 575/2013 agus i gCaibidil 2 de Rialachán (AE) 2017/2402, na ceanglais cistí dílse breise ábhartha dá dtagraítear i bpointe (a) d'Airteagal 104(1) den Treoir seo agus, de réir mar is ábhartha, an ceanglas maoláin chomhcheangailte nó an ceanglas maoláin um chóimheas luamhánaithe dá dtagraítear in Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013, ní chuirfear chun gnímh na srianta dá dtagraítear in Airteagal 141 ná in Airteagal 141b den Treoir seo.

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Airteagal 104c

Comhar a dhéanamh le húdaráis réitithe

Déanfaidh na húdaráis inniúla fógra faoin gceanglas maidir le cistí dílse breise arna fhorchur ar institiúidí de bhun Airteagal 104(1)(a) agus faoi aon treoir maidir le cistí dílse breise a thabhairt d'institiúidí i gcomhréir le hAirteagal 104b(3).

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Article 105

Specific liquidity requirements

For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following:

(a) the particular business model of the institution;

(b) the institution's arrangements, processes and mechanisms referred to in Section II and in particular in Article 86;

(c) the outcome of the review and evaluation carried out in accordance with Article 97.

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In particular, without prejudice to Article 67, competent authorities should consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at national or Union level.

Article 106

Specific publication requirements

1. Member States shall empower the competent authorities to require institutions:

(a) to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for publication;

(b) to use specific media and locations for publications other than the financial statements.

2. Member States shall empower competent authorities to require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with Article 14(3), Article 74(1) and Article 109(2).

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Article 107

Consistency of supervisory reviews, evaluations and supervisory measures

1. Competent authorities shall inform EBA of:

(a) the functioning of their review and evaluation process referred to in Article 97;

(b) the methodology used to base decisions referred to in Articles 98, 100, 101, 102, 104 and 105 on the process referred to in point (a).

EBA shall assess the information provided by competent authorities for the purposes of developing consistency in the supervisory review and evaluation process. It may request additional information from competent authorities in order to complete its assessment, on a proportional basis in accordance with Article 35 of Regulation (EU) No 1093/2010.

2. EBA shall annually report to the European Parliament and the Council on the degree of convergence of the application of this Chapter between Member States.

In order to increase the degree of such convergence, EBA shall conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1093/2010.

3. EBA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 to further specify, in a manner that is appropriate to the size, the structure and the internal organisation of institutions and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraph 1 of this Article and in Article 97 and for the assessment of the organisation and treatment of the risks referred to in Articles 76 to 87, in particular relating to concentration risk in accordance with Article 81.

Section V

Level of application

Article 108

Internal capital adequacy assessment process

1. Competent authorities shall require every institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every institution not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013, to meet the obligations set out in Article 73 of this Directive on an individual basis.

Competent authorities may waive the requirements set out in Article 73 of this Directive in regard to a credit institution in accordance with Article 10 of Regulation (EU) No 575/2013.

Where the competent authorities waive the application of own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013, the requirements of Article 73 of this Directive shall apply on an individual basis.

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2. Competent authorities shall require parent institutions in a Member State, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013 to meet the obligations set out in Article 73 of this Directive on a consolidated basis.

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4. Competent authorities shall require subsidiary institutions to apply the requirements set out in Article 73 on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in such an undertaking.

Article 109

Institutions' arrangements, processes and mechanisms

1. Competent authorities shall require institutions to meet the obligations set out in Section II of this Chapter on an individual basis, unless competent authorities make use of the derogation provided for in Article 7 of Regulation (EU) No 575/2013.

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2. Cuirfidh na húdaráis inniúla de cheangal ar na máthairghnóthais agus na fochuideachtaí atá faoi réir na Treorach seo na hoibleagáidí a leagtar amach i Roinn II den Chaibidil seo ar bhonn comhdhlúite nó fo-chomhdhlúite a chomhlíonadh, chun a áirithiú go bhfuil na socruithe, na próisis agus na sásraí a cheanglaítear le Roinn II den Chaibidil seo comhsheasmhach agus comhtháite agus gur féidir aon sonraí agus aon fhaisnéis atá ábhartha do chuspóir na maoirseachta a chur ar fáil. Go sonrach, áiritheoidh siad go gcuirfidh na máthairghnóthais agus na fochuideachtaí atá faoi réir na Treorach seo na socruithe, na próisis agus na sásraí sin chun feidhme ina gcuid fochuideachtaí nach bhfuil faoi réir na Treorach seo, lena n-áirítear iad sin a bunaíodh in lárionaid airgeadais eischósta. Beidh na socruithe, na próisis agus na sásraí sin comhsheasmhach agus comhtháite freisin agus beidh na fochuideachtaí sin in ann aon sonraí agus aon fhaisnéis atá ábhartha do chuspóir na maoirseachta a chur ar fáil. Comhlíonfaidh na foghnóthais sin, nach bhfuil faoi réir na Treorach seo iad féin, na ceanglais earnáil-sonracha a bhaineann leo féin ar bhonn aonair.

3. Ní bheidh oibleagáidí a d'eascair ó Roinn II den Chaibidil seo maidir le foghnóthais, nach bhfuil faoi réir na Treorach seo iad féin, infheidhme más féidir leis an máthairinstitiúid AE a léiriú do na húdaráis inniúla go bhfuil cur i bhfeidhm Roinn II neamhdhleathach faoi rialacha na tríú tíre ina bhfuil an fhochuideachta bunaithe.

4. Ní bheidh feidhm ar bhonn comhdhlúite ag na ceanglais luacha saothair a leagtar síos in Airteagal 92, in Airteagal 94 ná in Airteagal 95 maidir le ceachtar acu seo a leanas:

(a) foghnóthais atá bunaithe san Aontas i gcás ina bhfuil siad faoi réir ceanglais shonracha luacha saothair i gcomhréir le gníomhartha dlí eile de chuid an Aontais;

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(b) foghnóthais atá bunaithe i dtríú tír, i gcás ina mbeadh siad faoi réir ceanglais shonracha luacha saothair i gcomhréir le gníomhartha dlí eile de chuid an Aontais dá mbeidís bunaithe san Aontas.

5. De mhaolú ar mhír 4 den Airteagal seo, agus d'fhonn imchéimniú na rialacha a leagtar amach in Airteagail 92, 94 agus 95 a chosc, áiritheoidh na Ballstáit go mbeidh feidhm ag na ceanglais a leagtar amach in Airteagal 92, in Airteagail 94 agus 95 i leith baill foirne gach foghnóthais nach bhfuil faoi réir na Treorach seo ar bhonn aonair i gcás:

(a) gur cuideachta bainistíochta sócmhainní nó gnóthas atá san fhochuideachta a chuireann na seirbhísí agus na gníomhaíochtaí infheistíochta a liostaítear i bpointí 2, 3, 4, 6 agus 7 de Roinn A d'Iarscríbhinn I a ghabhann le Treoir 2014/65/AE i gcrích; agus

(b) go bhfuil na baill foirne sin sainordaithe chun gníomhaíochtaí gairmiúla a chur i gcrích a mbeidh tionchar ábhartha díreach acu ar phróifíl priacal nó ar ghnó na n-institiúidí laistigh den ghrúpa.

6. D'ainneoin mhíreanna 4 agus 5 den Airteagal seo, féadfaidh na Ballstáit Airteagail 92, 94 agus 95 a chur i bhfeidhm, ar bhonn comhdhlúite, ar raon feidhme níos leithne d'fhoghnóthais agus ar bhaill foirne gach foghnóthais.

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Article 110

Review and evaluation and supervisory measures

1. Competent authorities shall apply the review and evaluation process referred to in Section III of this Chapter and the supervisory measures referred to in Section IV of this Chapter in accordance with the level of application of the requirements of Regulation (EU) No 575/2013 set out in Part One, Title II of that Regulation.

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CHAPTER 3

Supervision on a consolidated basis

Section I

Principles for conducting supervision on a consolidated basis

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Airteagal 111

An maoirseoir comhdhlúthaithe a chinneadh

1. I gcás inar máthairinstitiúid creidmheasa i mBallstát é nó inar máthairinstitiúid creidmheasa AE é máthairghnóthas, is é an t-údarás inniúil a dhéanann maoirseacht ar bhonn aonair ar an máthairinstitiúid creidmheasa sin nó ar an máthairinstitiúid creidmheasa AE sin a dhéanfaidh maoirseacht ar bhonn comhdhlúite.

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I gcás inar máthairghnólacht infheistíochta i mBallstát é nó inar máthairghnólacht infheistíochta AE é máthairghnóthas, agus nach institiúid creidmheasa ceann ar bith dá fhochuideachtaí, is é an t-údarás inniúil a dhéanann maoirseacht ar an máthairghnólacht infheistíochta sin sa Bhallstát nó ar an máthairghnólacht infheistíochta AE sin ar bhonn aonair a dhéanfaidh maoirseacht ar bhonn comhdhlúite.

I gcás inar máthairghnólacht infheistíochta i mBallstát é nó inar máthairghnólacht infheistíochta AE é máthairghnóthas, agus nach institiúid creidmheasa ceann amháin ar a laghad dá fhochuideachtaí, is é údarás inniúil na hinstitiúide creidmheasa, nó i gcás ina bhfuil roinnt institiúidí creidmheasa ann, is é údarás inniúil na hinstitiúide creidmheasa ar mó méid iomlán a cláir comhardaithe a dhéanfaidh maoirseacht ar bhonn comhdhlúite.

2. I gcás inar máthairchuideachta sealbhaíochta airgeadais i mBallstát é nó inar máthairchuideachta sealbhaíochta airgeadais mheasctha i mBallstát é nó inar máthairchuideachta sealbhaíochta airgeadais AE é nó inar máthairchuideachta sealbhaíochta airgeadais mheasctha AE é máthairghnóthas institiúide creidmheasa nó gnólachta infheistíochta, is é údarás inniúil a dhéanann maoirseacht ar an institiúid creidmheasa nó ar an ngnólacht infheistíochta ar bhonn aonair a dhéanfaidh maoirseacht ar bhonn comhdhlúite.

3. I gcás ina bhfuil an mháthairchuideachta sealbhaíochta airgeadais chéanna i mBallstát, an mháthairchuideachta sealbhaíochta airgeadais mheasctha chéanna i mBallstát nó an mháthairchuideachta sealbhaíochta airgeadais AE chéanna nó an mháthairchuideachta sealbhaíochta airgeadais mheasctha AE chéanna ag dhá institiúid creidmheasa nó níos mó nó dhá ghnólacht infheistíochta nó níos mó atá údaraithe san Aontas, is iad na húdaráis seo a leanas a dhéanfaidh maoirseacht ar bhonn comhdhlúite:

(a) údarás inniúil na hinstitiúide creidmheasa nach bhfuil ach institiúid creidmheasa amháin laistigh den ghrúpa;

(b) údarás inniúil na hinstitiúide creidmheasa ar mó méid iomlán a cláir comhardaithe, i gcás ina bhfuil roinnt institiúidí creidmheasa laistigh den ghrúpa; nó

(c) údarás inniúil an ghnólachta infheistíochta ar mó méid iomlán a chláir comhardaithe, i gcás nach bhfuil aon institiúid creidmheasa laistigh den ghrúpa.

4. I gcás ina gceanglaítear comhdhlúthú de bhun Airteagal 18(3) nó (6) de Rialachán (AE) Uimh. 575/2013, is é údarás inniúil an ghnólachta infheistíochta ar mó méid iomlán a chláir chomhardaithe nó, i gcás nach bhfuil aon institiúid creidmheasa laistigh den ghrúpa, is é údarás inniúil an ghnólachta infheistíochta ar mó méid iomlán a chláir chomhordaithe a dhéanfaidh an mhaoirseacht ar bhonn comhdhlúite.

5. De mhaolú ar an tríú fomhír de mhír 1, ar phointe (b) de mhír 3 agus ar mhír 4, i gcás ina ndéanann údarás inniúil maoirseacht ar bhonn aonair ar níos mó ná ceann amháin de na hinstitiúidí creidmheasa laistigh de ghrúpa, is é an t-údarás inniúil a dhéanann maoirseacht ar bhonn aonair ar cheann amháin nó níos mó ná ceann amháin de na hinstitiúidí creidmheasa laistigh den ghrúpa ar mó méid iomlán chláir chomhardaithe na n-institiúidí creidmheasa sin a ndéantar maoirseacht orthu ná méid iomlán chláir chomhardaithe na n-institiúidí creidmheasa a ndéanann aon údarás inniúil eile maoirseacht orthu ar bhonn aonair a bheidh ina mhaoirseoir comhdhlúthaithe.

▼M6

De mhaolú ar phointe (c) de mhír 3, i gcás ina ndéanann údarás inniúil maoirseacht ar bhonn aonair ar níos mó ná ceann amháin de na gnólachtaí infheistíochta laistigh de ghrúpa, is é an t-údarás inniúil a dhéanann maoirseacht ar bhonn aonair ar cheann amháin nó níos mó de na gnólachtaí infheistíochta laistigh den ghrúpa ar mó méid iomlán chláir chomhardaithe an ghrúpa a bheidh ina mhaoirseoir comhdhlúthaithe.

6. I gcásanna áirithe, déanfaidh na húdaráis inniúla, trí chomhaontú comhchoiteann, na critéir dá dtagraítear i míreanna 1, 3 agus 4 a tharscaoileadh agus údarás inniúil difriúil a cheapadh chun maoirseacht a dhéanamh ar bhonn comhdhlúite i gcás nach mbeadh sé iomchuí na critéir, dá dtagraítear iontu a chur i bhfeidhm, agus aird á tabhairt ar na hinstitiúidí creidmheasa nó na gnólachtaí infheistíochta lena mbaineann agus ar thábhacht chomparáideach a gcuid gníomhaíochtaí sna Ballstáit ábhartha, nó ar an ngá lena áirithiú go leanfaidh an t-údarás inniúil céanna den mhaoirseacht ar bhonn comhdhlúite. I gcásanna den sórt sin, beidh an ceart éisteacht a fháil sula ndéanann na húdaráis inniúla an cinneadh ag máthairinstitiúid AE, máthairchuideachta sealbhaíochta airgeadais AE, máthairchuideachta sealbhaíochta airgeadais mheasctha AE nó an institiúid creidmheasa nó an gnólacht infheistíochta ar mó méid iomlán a cláir comhardaithe nó a cláir comhardaithe, de réir mar is infheidhme.

7. Tabharfaidh na húdaráis inniúla fógra gan mhoill don Choimisiún agus do ÚBE faoi aon chomhaontú a thagann faoi raon feidhme mhír 6.

▼B

Article 112

Coordination of supervisory activities by the consolidating supervisor

1. In addition to the obligations imposed by this Directive and by Regulation (EU) No 575/2013, the consolidating supervisor shall carry out the following tasks:

(a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

(b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Title VII, Chapter 3, in cooperation with the competent authorities involved;

(c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management.

2. Where the consolidating supervisor fails to carry out the tasks referred to in paragraph 1 or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in paragraph 1, any of the competent authorities concerned may refer the matter to EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

▼B

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

3. The planning and coordination of supervisory activities referred to in paragraph 1(c) of this Article includes exceptional measures referred to in Article 117(1)(d) and Article 117(4)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

▼M5

Airteagal 113

Cinntí comhpháirteacha maidir le ceanglais stuamachta institiúidsonracha

1. Déanfaidh an maoirseoir comhdhlúthaithe agus na húdaráis inniúla atá freagrach as maoirseacht a dhéanamh ar fhochuideachtaí máthairinstitiúide AE nó máthairchuideachta shealbhaíochta airgeadais AE nó máthairchuideachta shealbhaíochta airgeadais mheasctha AE gach a bhfuil ar a gcumas chun teacht ar chinneadh comhpháirteach maidir leis an méid seo a leanas:

(a) i dtaca le cur i bhfeidhm Airteagail 73 agus 97, leordhóthanacht leibhéal comhdhlúite na gcistí dílse a chinneadh atá i seilbh an ghrúpa institiúidí maidir lena staid airgeadais agus a phróifíl priacal agus leibhéal na gcistí dílse is gá chun pointe (a) d'Airteagal 104(1) a chur i bhfeidhm ar gach eintiteas laistigh den ghrúpa institiúidí agus ar bhonn comhdhlúite;

(b) i dtaca le bearta chun aghaidh a thabhairt ar ábhair thábhachtacha agus ar thorthaí ábhartha a bhaineann le maoirseacht leachtachta agus a bhaineann le leordhóthanacht na heagraíochta freisin agus láimhseáil rioscaí mar a cheanglaítear de bhun Airteagal 86 agus a bhaineann leis an ngá atá le ceanglais leachtachta institiúidsonracha i gcomhréir le hAirteagal 105;

(c) i dtaca le haon treoir maidir le cistí dílse breise dá dtagraítear in Airteagal 104b(3).

2. Déanfar na cinntí comhpháirteacha dá dtagraítear i mír 1:

(a) chun críocha phointe (a) de mhír 1 den Airteagal seo, laistigh de 4 mhí ón tráth a gcuirfidh an maoirseoir comhdhlúthaithe tuarascáil ina ndéantar an measúnú riosca ar an ngrúpa institiúidí i gcomhréir le hAirteagal 104a faoi bhráid na n-údarás inniúil ábhartha eile;

(b) chun críocha phointe (b) de mhír 1 den Airteagal seo, laistigh de 4 mhí ón tráth a dtíolacfaidh an maoirseoir comhdhlúthaithe tuarascáil ina ndéantar an measúnú ar phróifíl priacal leachtachta an ghrúpa institiúidí i gcomhréir le hAirteagal 86 agus le hAirteagal 105;

(c) chun críocha phointe (c) de mhír 1 den Airteagal seo, laistigh de 4 mhí ón tráth a dtíolacfaidh maoirseoir comhdhlúthaithe tuarascáil ina ndéantar an measúnú riosca ar an ngrúpa institiúidí i gcomhréir le hAirteagal 104b.

▼**M5**

Déanfar breithniú cuí sna cinntí comhpháirteacha dá dtagraítear i mír 1 den Airteagal seo ar mheasúnú riosca na bhfochuideachtaí arna ndéanamh ag na húdaráis inniúla ábhartha i gcomhréir le hAirteagail 73, 97, 104a agus 104b.

Leagfar amach na cinntí comhpháirteacha dá dtagraítear i bpointí (a) agus (b) de mhír 1 i ndoiciméid ina mbeidh na cúiseanna iomlána a chuirfidh an maoirseoir comhdhlúthaithe ar fáil don mháthairchuideachta AE. I gcás easaontú, rachaidh an maoirseoir comhdhlúthaithe i gcomhairle le ÚBE arna iarraidh sin d'aon cheann de na húdaráis inniúla eile lena mbaineann. Féadfaidh an maoirseoir comhdhlúthaithe dul i gcomhairle le ÚBE as a stuaim féin.

3. Mura ndéantar cinneadh comhpháirteach den chineál sin idir na húdaráis inniúla laistigh de na tréimhsí ama dá dtagraítear i mír 2 den Airteagal seo, déanfaidh an maoirseoir comhdhlúthaithe cinneadh ar chur i bhfeidhm Airteagail 73, 86 agus 97, phointe (a) d'Airteagal 104(1), Airteagal 104b agus Airteagal 105 den Treoir seo ar bhonn comhdhlúite tar éis breithniú cuí a dhéanamh ar mheasúnú riosca na bhfochuideachtaí arna ndéanamh ag na húdaráis inniúla ábhartha. Más rud é, ag deireadh na dtréimhsí ama dá dtagraítear i mír 2 den Airteagal seo, go bhfuil aon cheann de na húdaráis inniúla lena mbaineann tar éis an t-ábhar a chur faoi bhráid ÚBE i gcomhréir le hAirteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh an maoirseoir comhdhlúthaithe a chinneadh siar ar feitheamh aon chinneadh a ghlacfaidh ÚBE i gcomhréir le hAirteagal 19(3) den Rialachán sin, agus glacfaidh sé a chinneadh i gcomhréir le cinneadh ÚBE. Measfar gurb iad na tréimhsí idir-réitigh de réir bhrí Rialachán (AE) Uimh. 1093/2010 na tréimhsí ama dá dtagraítear i mír 2 den Airteagal seo. Déanfaidh ÚBE an cinneadh laistigh de 1 mhí tar éis an t-easaontas a bheith tarchurtha do ÚBE. Ní chuirfear an t-ábhar faoi bhráid ÚBE tar éis dheireadh na tréimhse ceithre mhí ná tar éis cinneadh comhpháirteach a bheith déanta.

Maidir leis na húdaráis inniúla faoi seach atá freagrach as maoirseacht a dhéanamh ar fhochuideachtaí de chuid mháthairinstitiúid creidmheasa AE nó mháthairchuideachta shealbhaíochta airgeadais AE nó mháthairchuideachta shealbhaíochta airgeadais mheasctha AE ar bhonn aonair nó ar bhonn fo-chomhdhlúite tar éis breithniú cuí a dhéanamh ar thuairimí agus ar ábhair amhrais an mhaoirseora chomhdhlúthaithe, déanfaidh siadsan an cinneadh ar chur i bhfeidhm Airteagail 73, 86 agus 97, phointe (a) d'Airteagal 104(1), Airteagal 104b agus Airteagal 105 den Treoir seo. Más rud é, ag deireadh aon cheann de na tréimhsí ama dá dtagraítear i mír 2 den Treoir seo, go bhfuil aon cheann de na húdaráis inniúla lena mbaineann tar éis an t-ábhar a chur faoi bhráid ÚBE i gcomhréir le hAirteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh na húdaráis inniúla a gcinneadh siar ar feitheamh aon chinneadh a ghlacfaidh ÚBE i gcomhréir le hAirteagal 19(3) den Rialachán sin agus glacfaidh siad a gcinneadh i gcomhréir le cinneadh ÚBE. Measfar gurb iad na tréimhsí idir-réitigh de réir bhrí an Rialacháin sin na tréimhsí ama dá dtagraítear i mír 2 den Treoir seo. Déanfaidh ÚBE an cinneadh laistigh de 1 mhí tar éis an t-easaontas a bheith tarchurtha do ÚBE. Ní chuirfear an t-ábhar faoi bhráid ÚBE tar éis dheireadh na tréimhse 4 mhí ná tar éis cinneadh comhpháirteach a bheith déanta.

Leagfar an cinneadh amach i ndoiciméad ina mbeidh na cúiseanna iomlána agus cuirfear san áireamh ann measúnú riosca, tuairimí agus ábhair amhrais na n-údarás inniúil eile, arna gcur in iúl le linn na dtréimhsí ama dá dtagraítear i mír 2. Cuirfidh an maoirseoir comhdhlúthaithe an doiciméad ar fáil do na húdaráis inniúla go léir lena mbaineann agus don mháthairinstitiúid AE.

▼M5

I gcás ina ndeachaigh siad i gcomhairle le ÚBE, déanfaidh na húdaráis inniúla go léir a chomhairle a mheas, agus míneoidh siad aon imeacht suntasach ón gcomhairle sin.

4. Aithneofar na cinntí comhpháirteacha dá dtagraítear i mír 1 agus na cinntí a rinne na húdaráis inniúla in éagmais cinneadh comhpháirteach dá dtagraítear i mír 3 mar chinntí cinntitheacha agus cuirfidh na húdaráis inniúla sna Ballstáit lena mbaineann i bhfeidhm iad.

Déanfar na cinntí comhpháirteacha dá dtagraítear i mír 1 den Airteagal seo agus aon chinneadh arna dhéanamh in éagmais cinneadh comhpháirteach i gcomhréir le mír 3 den Airteagal seo, a thabhairt cothrom le dáta ar bhonn bliantúil nó, in imthosca eisceachtúla, i gcás ina gcuirfidh údarás inniúil atá freagrach as maoirseacht a dhéanamh ar fhochuideachtaí máthairinstitiúide AE nó, máthairchuideachta shealbhaíochta airgeadais AE nó máthairchuideachta shealbhaíochta airgeadais mheasctha AE, iarratas lánréasúnaithe i scríbhinn chuig an maoirseoir comhdhlúthaithe chun an cinneadh a thabhairt cothrom le dáta maidir le pointe (a) d'Airteagal 104(1), Airteagail 104b agus 105 a chur i bhfeidhm. Sna imthosca eisceachtúla sin, féadfar aghaidh a thabhairt ar an gcinneadh a thabhairt cothrom le dáta ar bhonn déthaobhach idir an maoirseoir comhdhlúthaithe agus an t-údarás inniúil a iarrfaidh amhlaidh.

5. Forbróidh ÚBE dréachtchaighdeáin theicniúla cur chun feidhme chun coinníollacha aonfhoirmeacha a áirithiú a bhaineann leis an gcinneadh comhpháirteach a chur i bhfeidhm dá dtagraítear san Airteagal seo, maidir le cur i bhfeidhm Airteagail 73, 86 agus 97, phointe (a) d'Airteagal 104(1), Airteagail 104b agus 105 d'fhonn cinntí comhpháirteacha a éascú.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla cur chun feidhme sin faoi bhráid an Choimisiúin faoin 1 Iúil 2014.

Tugtar an chumhacht don Choimisiún na caighdeáin theicniúla cur chun feidhme dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 15 de Rialachán (AE) Uimh. 1093/2010.

▼B

Article 114

Information requirements in emergency situations

▼M6

1. I gcás ina dtiocfaidh cás éigeandála chun cinn, lena n-áirítear cás de réir na tuairisce in Airteagal 18 de Rialachán (AE) Uimh. 1093/2010 nó cás drochfhorbairtí i margaí, cás is féidir a chuirfidh an leachtacht mhargaidh agus cobhsaíocht an chórais airgeadais i mbaol in aon cheann de na Ballstáit inar údaraíodh eintitis de chuid grúpa nó ina bhfuil brainsí suntasacha mar a thagraítear dóibh in Airteagal 51 bunaithe, déanfaidh an t-oifigeach comhdhlúthaithe, faoi réir Roinn 2 de Chaibidil 1 de Theideal VII den Treoir seo, agus más infheidhme, Roinn 2 de Chaibidil 1 de Theideal IV de [Threoir (AE) 2019/2034, foláireamh a thabhairt a luaithe is féidir do ÚBE agus do na húdaráis dá dtagraítear in Airteagal 58(4) agus Airteagal 59 agus cuirfidh sé in iúl an fhaisnéis uile is gá chun a gcúraimí a dhéanamh. Beidh feidhm ag na hoibleagáidí sin maidir leis an húdaráis inniúla uile.

▼B

If an ESCB central bank becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Article 112, and EBA.

Where possible, the competent authority and the authority referred to in Article 58(4) shall use existing channels of communication.

2. The consolidating supervisor shall, where it needs information which has already been given to another competent authority, contact that authority where possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Article 115

Coordination and cooperation arrangements

1. In order to facilitate and establish effective supervision, the consolidating supervisor and the other competent authorities shall have written coordination and cooperation arrangements in place.

Under those arrangements additional tasks may be entrusted to the consolidating supervisor and procedures for the decision-making process and for cooperation with other competent authorities, may be specified.

2. The competent authorities responsible for authorising the subsidiary of a parent undertaking which is an institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. EBA shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.

▼M5

3. I gcás nach ionann an maoirseoir comhdhlúthaithe agus an t-údarás inniúil sa Bhallstát ina bhfuil cuideachta shealbhaíochta airgeadais nó cuideachta shealbhaíochta airgeadais mheasctha bunaithe, ar cuideachta í a formheasadh i gcomhréir le hAirteagal 21a, cuirfear i gcrích le húdarás inniúil an Bhallstáit ina bhfuil an máthairghnóthas bunaithe na socruithe comhordaithe comhoibrithe dá dtagraítear i mír 1 den Airteagal seo.

▼B

Article 116

Colleges of supervisors

1. The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 112 and 113 and Article 114(1) and subject to the confidentiality requirements of paragraph 2 of this Article and to Union law, ensure appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate.

▼B

EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010. To that end, EBA shall participate as appropriate and shall be considered to be a competent authority for that purpose.

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

(a) exchanging information between each other and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes referred to in Article 99 based on a risk assessment of the group in accordance with Article 97;

(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 114 and Article 117(3);

(e) consistently applying the prudential requirements under this Directive and under Regulation (EU) No 575/2013 across all entities within a group of institutions without prejudice to the options and discretions available in Union law;

(f) applying Article 112(1)(c) taking into account the work of other forums that may be established in that area.

▼M5

1a. Chun an bealach a réiteach do na cúraimí dá dtagraítear in Airteagail 112(1), 114(1) agus 115(1) den Treoir seo, bunóidh an maoirseoir comhdhlúthaithe freisin coláistí maoirseoirí i gcás ina mbeidh ceannoifig gach fochuideachta máthairinstitúide AE, máthairchuideachta shealbhaíochta airgeadais AE nó máthairchuideachta shealbhaíochta airgeadais mheasctha AE i dtríú tír, ar choinníoll go bhfuil údaráis mhaoirseachta an tríú tír faoi réir ceanglais rúndachta arb ionann iad agus na ceanglais a leagtar síos i Roinn II de Chaibidil 1 den Treoir seo agus, i gcás inarb infheidhme, in Airteagail 76 agus 81 de Threoir 2014/65/AE.

▼M6

2. Oibreoidh na húdaráis inniúla a ghlacfaidh páirt sna coláistí maoirseoirí agus ÚBE i ndlúthchomhar le chéile. Ní chuirfidh na ceanglais rúndachta faoi Theideal VII, Caibidil 1, Roinn II den Treoir seo agus, más infheidhme, Roinn 2 de Chaibidil 1 de Theideal IV de Threoir (AE) 2019/2034 cosc ar na húdaráis inniúla faisnéis rúnda a mhalartú laistigh de choláistí maoirseoirí. Ní dhéanfaidh bunú ná feidhmiú coláistí maoirseoirí difear do chearta agus freagrachtaí na n-údarás inniúil faoin Treoir seo agus faoi Rialachán (AE) Uimh. 575/2013.

▼B

3. The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 115, determined after consulting competent authorities concerned by the consolidating supervisor.

▼B

4. EBA shall develop draft regulatory technical standards in order to specify general conditions of functioning of the colleges of supervisors.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

5. EBA shall develop draft implementing technical standards in order to determine the operational functioning of the colleges of supervisors.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

▼M6

6. Féadfaidh na húdaráis inniúla ar a bhfuil sé de chúram maoirseacht a dhéanamh ar fhochuideachtaí de chuid máthairinstitiúide Aontais nó de chuid máthairchuideachta sealbhaíochta airgeadais Aontais nó de chuid máthairchuideachta sealbhaíochta airgeadais mheasctha Aontais agus na húdaráis inniúla Ballstáit óstaigh i gcás ina mbeidh brainsí suntasacha dá dtagraítear in Airteagal 51 bunaithe, bainc ceannais de chuid CEBC de réir mar is iomchuí, agus údaráis mhaoirseachta tríú tír de réir mar is iomchuí agus faoi réir ceanglais rúndachta atá coibhéiseach, de réir thuairim na n-údarás inniúil uile, leis na ceanglais faoi Theideal VII, Caibidil 1, Roinn II den Treoir seo agus, más infheidhme, faoi Roinn 2 de Chaibidil 1 de Theideal IV de Threoir (AE).2019/2034, féadfaidh siad páirt a ghlacadh i gcoláistí maoirseoirí.

▼M5

Féadfaidh údarás inniúil an Bhallstáit ina bhfuil cuideachta shealbhaíochta airgeadais nó cuideachta shealbhaíochta airgeadais mheasctha bunaithe, ar cuideachta í a formheasadh i gcomhréir le hAirteagal 21a, a bheith rannpháirteach sa choláiste ábhartha maoirseoirí.

▼B

7. The consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college. The consolidating supervisor shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The consolidating supervisor shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

8. The decision of the consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned as referred to in Article 7 and the obligations referred to in Article 51(2).

▼M6

9. Faoi réir na gceanglas rúndachta faoi Theideal VII, Caibidil 1, Roinn II den Treoir seo agus, más infheidhme, faoi Roinn 2 de Chaibidil 1 de Theideal IV de Threoir (AE) 2019/2034, cuirfidh an maoirseoir comhdhlúthaithe ÚBE ar an eolas faoi ghníomhaíochtaí an choláiste maoirseoirí, lena n-airítear i gcásanna éigeandála, agus cuirfidh an té sin an fhaisnéis uile a bhfuil ábharthacht shonrach léi chun críocha an chóineasaithe maoirseachta in iúl do ÚBE.

▼B

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

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

Article 117

Cooperation obligations

1. The competent authorities shall cooperate closely with each other. They shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under this Directive and Regulation (EU) No 575/2013. In that regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

The competent authorities shall cooperate with EBA for the purposes of this Directive and Regulation (EU) No 575/2013, in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall provide EBA with all information necessary to carry out its duties under this Directive, under Regulation (EU) No 575/2013, and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

Information referred to in the first subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or financial institution in another Member State.

In particular, consolidating supervisors of EU parent institutions and institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of those parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.

The essential information referred to in the first subparagraph shall include, in particular, the following items:

▼B

(a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 14(3), Article 74(1) and Article 109(2), and of the competent authorities of the regulated entities in the group;

(b) procedures for the collection of information from the institutions in a group, and the checking of that information;

(c) adverse developments in institutions or in other entities of a group, which could seriously affect the institutions;

(d) significant penalties and exceptional measures taken by competent authorities in accordance with this Directive, including the imposition of a specific own fund requirement under Article 104 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.

2. The competent authorities may refer to EBA any of the following situations:

(a) where a competent authority has not communicated essential information;

(b) where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in developing consistent cooperation practices on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

3. The competent authorities responsible for the supervision of institutions controlled by an EU parent institution shall where possible contact the consolidating supervisor when they need information regarding the implementation of approaches and methodologies set out in this Directive and in Regulation (EU) No 575/2013 that may already be available to the consolidating supervisor.

4. The competent authorities concerned shall, before taking a decision, consult each other with regard to the following items, ►C2 where such a decision is of importance for other competent authorities' supervisory tasks: ◄

(a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities; and

(b) significant penalties or exceptional measures taken by competent authorities, including the imposition of a specific own funds requirement under Article 104 and the imposition of any limitation on the use of the advances measurement approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.

▼B

For the purposes of point (b), the consolidating supervisor shall always be consulted.

However, a competent authority may decide not to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the other competent authorities after taking its decision.

▼M5

5. Oibreoidh na húdaráis inniúla, na haonaid um fhaisnéis airgeadais agus na húdaráis sin a bhfuil sé de chúram orthu maoirseacht a dhéanamh ar na heintitis faoi oibleagáid a liostaítear i bpointí (1) agus (2) d'Airteagal 2(1) de Treoir (AE) 2015/849 maidir le comhlíonadh na Treorach sin, i ndlúthchomhar laistigh dá n-inniúlachtaí faoi seach agus déanfaidh siad an fhaisnéis ábhartha a chur ar fáil dá chéile d'fhonn a gcúraimí faoi seach faoin Treoir seo, Rialachán (AE) Uimh. 575/2013 agus faoi Threoir (AE) 2015/849 ar choinníoll nach gcuirfidh comhar agus malartú faisnéise den sórt sin isteach ar fhiosrúchán, ar imscrúdú ná ar imeacht atá fós ar bun, i gcomhréir le dlí coiriúil nó le dlí riaracháin an Bhallstáit ina bhfuil suite an t-údarás inniúil, an t-aonad um fhaisnéis airgeadais nó an t-údarás poiblí a bhfuil sé de chúram air maoirseacht a dhéanamh ar na heintitis faoi oibleagáid a liostaítear i bpointí (1) agus (2) d'Airteagal 2(1) de Treoir (AE) 2015/849.

Féadfaidh ÚBE cúnamh a thabhairt do na húdaráis inniúla i gcás easaontú faoi chomhordú gníomhaíochtaí maoirseachta faoin Airteagal seo ar a thionscnamh féin i gcomhréir leis an dara fomhír d'Airteagal 19(1) de Rialachán (AE) Uimh. 1093/2010.

6. Faoin 1 Eanáir 2020, eiseoidh ÚBE treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, ina sonrófar an bealach chun comhar agus malartú faisnéise a dhéanamh idir na húdaráis inniúla dá dtagraítear i mír 5 den Airteagal seo, go háirithe maidir le grúpaí trasteorann agus chun críche sáruithe tromchúiseacha ar rialacha frithsciúrtha airgid a shainaithint.

▼B

Article 118

Checking information concerning entities in other Member States

Where, in applying this Directive and Regulation (EU) No 575/2013, the competent authorities of one Member State wish in specific cases to check the information concerning an institution, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary as referred to in Article 125 or a subsidiary as referred to in Article 119(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that check carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the check themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the check where it does not carry out the check itself.

▼B

Section II

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

Article 119

Inclusion of holding companies in consolidated supervision

▼M5

1. Faoi réir Airteagal 21a, glacfaidh na Ballstáit aon bhearta is gá chun na cuideachtaí sealbhaíochta airgeadais agus na cuideachtaí sealbhaíochta airgeadais mheasctha a chur faoi mhaoirseacht chomhdhlúite.

▼B

2. Where a subsidiary that is an institution is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013, the competent authorities of the Member State in which that subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that subsidiary.

3. Member States shall enable their competent authorities responsible for exercising supervision on a consolidated basis to ask the subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 122. In such a case, the procedures for transmitting and checking the information set out in that Article shall apply.

Article 120

Supervision of mixed financial holding companies

1. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only Directive 2002/87/EC to that mixed financial holding company.

▼M5

2. I gcás ina mbeidh cuideachta shealbhaíochta airgeadais mheasctha faoi réir forálacha coibhéiseacha faoin Treoir seo agus faoi Threoir 2009/138/CE, go háirithe i dtéarmaí maoirseachta rioscabhunaithe, féadfaidh an maoirseoir comhdhlúthaithe, le comhaontú mhaoirseoir an ghrúpa in earnáil an árachais, gan ach forálacha na Treorach maidir leis an earnáil airgeadais is mó tábhacht mar a shainmhínítear í in Airteagal 3(2) de Threoir 2002/87/CE a chur i bhfeidhm ar an gcuideachta shealbhaíochta airgeadais mheasctha sin.

▼B

3. The consolidating supervisor shall inform EBA and EIOPA of the decisions taken under paragraphs 1 and 2.

4. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines aiming to converge supervisory practices and shall, within three years of the adoption of those guidelines, develop draft regulatory technical standards for the same purpose.

▼B

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

Article 121

Qualification of directors

Member States shall require that the members of the management body of a financial holding company or mixed financial holding company be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

Article 122

Requests for information and inspections

1. Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the authorisation and supervision of those institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are institutions, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

2. Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to check information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in Article 125 may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which a subsidiary that is an institution is situated, on-the-spot check of information shall be carried out in accordance with the procedure set out in Article 118.

Article 123

Supervision

1. Without prejudice to Part Four of Regulation (EU) No 575/2013, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of those institutions shall exercise general supervision over transactions between the institution and the mixed-activity holding company and its subsidiaries.

2. Competent authorities shall require institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the institution of any significant transaction with those entities other than the one referred to in Article 394 of Regulation (EU) No 575/2013. Those procedures and significant transactions shall be subject to overview by the competent authorities.

▼B

Article 124

Exchange of information

1. Member States shall ensure that there are no legal impediments preventing the exchange, as between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries as referred to in Article 119(3), of any information which would be relevant for the purposes of supervision in accordance with Article 110 and Chapter 3.

2. Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 111, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to those authorities.

3. Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.

Similarly, Member States shall authorise their competent authorities to exchange the information referred to in Article 122 on the understanding that the collection or possession of information does not imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries as referred to in Article 119(3).

Article 125

Cooperation

1. Where an institution, financial holding company, mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

▼M5

I gcás, de bhun Airteagal 111 den Treoir seo, nach ionann an maoirseoir comhdhlúthaithe de chuid grúpa ina bhfuil máthairchuideachta shealbhaíochta airgeadais mheasctha agus an comhordaitheoir a cinneadh i gcomhréir le hAirteagal 10 de Threoir 2002/87/CE, comhoibreoidh an maoirseoir comhdhlúthaithe agus an comhordaitheoir chun críche chur i bhfeidhm na Treorach seo agus Rialachán (AE) Uimh. 575/2013 ar bhonn comhdhlúite. D'fhonn comhar éifeachtach a éascú agus a bhunú, beidh socruithe scríofa comhordaithe comhoibrithe i bhfeidhm ag an maoirseoir comhdhlúthaithe agus ag an gcomhordaitheoir.

▼M6

2. Beidh faisnéis a fuarthas laistigh den chreat maoirseachta ar bhonn comhdhlúite, agus go háirithe aon mhalartú faisnéise idir údaráis inniúla dá bhforáiltear sa Treoir seo, faoi réir ceanglais rúndachta gairmiúla a bheidh coibhéiseach, ar a laghad, leis na ceanglais dá dtagraítear in Airteagal 53(1) den Treoir seo maidir le hinstitiúidí creidmheasa nó faoi Airteagal 15 de Threoir (AE) 2019/2034.

▼B

3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 11 of Regulation (EU) No 575/2013. Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.

Article 126

Penalties

In accordance with Chapter 1, Section IV of this Title, Member States shall ensure that administrative penalties or other administrative measures aiming to end observed breaches or the causes of such breaches may be imposed on financial holding companies, mixed financial holding companies, and mixed-activity holding companies, or their effective managers, that breach laws, regulations or administrative provisions transposing this Chapter.

Article 127

Assessment of equivalence of third countries' consolidated supervision

1. Where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under Articles 111, the competent authorities shall assess whether the institution is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by the principles set out in this Directive and the requirements of Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013.

The assessment shall be carried out by the competent authority which would be responsible for consolidated supervision if paragraph 3 were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. That competent authority shall consult the other competent authorities involved.

2. The Commission may request the European Banking Committee to give general guidance as to whether the consolidated supervision arrangements of supervisory authorities in third countries are likely to achieve the objectives of consolidated supervision as set out in this Chapter, in relation to institutions the parent undertaking of which has its head office in a third country. The European Banking Committee shall keep any such guidance under review and take into account any changes to the consolidated supervision arrangements applied by such competent authorities. EBA shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to assessing whether such guidance should be updated.

▼B

The competent authority carrying out the assessment referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For that purpose, the competent authority shall consult EBA before adopting a decision.

3. In the absence of such equivalent supervision, Member States shall apply this Directive and Regulation (EU) No 575/2013 to the institution mutatis mutandis or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of institutions.

Those supervisory techniques shall, after consulting the other competent authorities involved, be agreed upon by the competent authority which would be responsible for consolidated supervision.

Competent authorities may in particular require the establishment of a financial holding company or mixed financial holding company which has its head office in the Union, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or the consolidated position of the institutions of that mixed financial holding company.

The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as set out in this Chapter and shall be notified to the other competent authorities involved, to EBA and to the Commission.

CHAPTER 4

Capital Buffers

Section I

Buffers

Article 128

Definitions

For the purpose of this Chapter, the following definitions shall apply:

(1) “capital conservation buffer” means the own funds that an institution is required to maintain in accordance with Article 129;

(2) “institution-specific countercyclical capital buffer” means the own funds that an institution is required to maintain in accordance with Article 130;

(3) “G-SII buffer” means the own funds that are required to be maintained in accordance with Article 131(4);

(4) “O-SII buffer” means the own funds that may be required to be maintained in accordance with Article 131(5);

(5) “systemic risk buffer” means the own funds that an institution is or may be required to maintain in accordance with Article 133;

▼B

(6) “combined buffer requirement” means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:

(a) an institution-specific countercyclical capital buffer;

(b) a G-SII buffer;

(c) an O-SII buffer;

(d) a systemic risk buffer;

(7) “countercyclical buffer rate” means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Article 136, Article 137 or by a relevant third-country authority, as the case may be;

(8) “domestically authorised institution” means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting the countercyclical buffer rate;

(9) “buffer guide” means a benchmark buffer rate calculated in accordance with Article 135(1).

▼M5

Ní úsáidfidh institiúidí caipiteal Gnáthchothromas Leibhéal 1 a choimeádtar chun an ceanglas maoláin chomhcheangailte, dá dtagraítear i bpointe (6) den chéad mhír den Airteagal seo, a chomhlíonadh chun aon cheann de na ceanglais a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, na ceanglais cistí dílse breise a fhorchuirtear de bhun Airteagal 104a den Treoir seo chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh, agus an treoir arna cur in iúl i gcomhréir le hAirteagal 104b den Treoir seo chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh a chomhlíonadh.

Ní úsáidfidh institiúidí caipiteal Gnáthchothromas Leibhéal 1 a choimeádtar chun ceann de ghnéithe an cheanglais maoláin chomhcheangailte a chomhlíonadh chun gnéithe infheidhme eile den cheanglas maoláin chomhcheangailte sin a chomhlíonadh.

‘Ní úsáidfidh institiúidí caipiteal Gnáthchothromas Leibhéal 1 a choimeádtar chun an ceanglas maoláin chomhcheangailte, dá dtagraítear i bpointe (6) den chéad mhír den Airteagal seo, a chomhlíonadh chun ceanglais na gcomhpháirteanna rioscabhunaithe a leagtar amach in Airteagail 92a agus 92b de Rialachán (AE) Uimh. 575/2013 agus in Airteagail 45c agus 45d de Threoir 2014/59/AE a chomhlíonadh.

▼M6

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▼M5

Airteagal 129

Ceanglas maidir le caipiteal maolánach caomhantais a choimeád

1. Sa bhreis ar chaipiteal Gnáthchothromas Leibhéal 1 a choinnítear chun aon cheann de na ceanglais cistí dílse a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 a chomhlíonadh, ceanglóidh na Ballstáit ar institiúidí caipiteal maolánach caomhantais a choimeád de chaipiteal Gnáthchothromas Leibhéal 1 atá cothrom le 2,5 % de mhéid iomlán an riosca nach bhfuil cosaint acu air, ar riosca é arna ríomh i gcomhréir le hAirteagal 92(3) den Rialachán sin, ar bhonn aonair agus ar bhonn comhdhlúite, de réir mar is infheidhme i gcomhréir le Teideal II de Chuid a hAon den Rialachán sin.

▼M6

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▼M5

5. I gcás ina mainneoidh institiúid an ceanglas a leagtar amach i mír 1 den Airteagal seo a chomhlíonadh ina iomláine, beidh sí faoi réir na srianta ar dháileacháin a leagtar amach in Airteagal 141(2) agus (3).

Airteagal 130

Ceanglas maidir le cúlchiste fritimthriallach institiúidsonrach a choimeád

1. Ceanglóidh na Ballstáit ar institiúidí caipiteal maolánach fritimthriallach institiúidsonrach a choimeád arb ionann é agus méid iomlán na risíochtaí ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013 arna iolrú faoi mheán ualaithe na rátaí maolánacha fritimthriallacha arna ríomh i gcomhréir le hAirteagal 140 den Treoir seo, ar bhonn aonair agus ar bhonn comhdhlúite, de réir mar is infheidhme i gcomhréir le Teideal II de Chuid a hAon den Rialachán sin. Caipiteal Gnáthchothromas Leibhéal 1 a bheidh sa mhaolán sin.

▼M6

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▼M5

5. I gcás ina mainneoidh institiúid an ceanglas a leagtar amach i mír 1 den Airteagal seo a chomhlíonadh ina iomláine, beidh sí faoi réir na srianta ar dháileacháin a leagtar amach in Airteagal 141(2) agus (3).

▼B

Article 131

Global and other systemically important institutions

▼M5

1. Ainmneoidh na Ballstáit údarás a bheidh freagrach as G-SIInna a shainaithint, ar bhonn comhdhlúite, agus as institiúidí eile a bhfuil tábhacht shistéamach ag baint leo (O-SIInna) a shainaithint, ar bhonn aonair, fo-chomhdhlúite nó comhdhlúite, de réir mar is infheidhme. Is é an t-údarás inniúil nó an t-údarás ainmnithe a bheidh san údarás sin. Féadfaidh na Ballstáit níos mó ná údarás amháin a ainmniú.

▼M5

Beidh aon cheann díobh seo a leanas ina G-SIInna:

(a) grúpa a mbeidh máthairinstitiúid AE, máthairchuideachta shealbhaíochta airgeadais AE nó máthairchuideachta shealbhaíochta airgeadais mheasctha AE i gceannas air; nó

(b) institiúid nach fochuideachta máthairinstitiúide AE, fochuideachta máthairchuideachta shealbhaíochta airgeadais AE ná fochuideachta máthairchuideachta shealbhaíochta airgeadais mheasctha AE í.

Féadfaidh O-SIInna a bheith ina n-institiúid nó ina ngrúpa ar a bhfuil máthairinstitiúid AE, máthairchuideachta shealbhaíochta airgeadais AE, máthairchuideachta shealbhaíochta airgeadais mheasctha AE, ar a bhfuil máthairinstitiúid i mBallstát, máthairchuideachta shealbhaíochta airgeadais i mBallstát nó máthairchuideachta shealbhaíochta airgeadais mheasctha i mBallstát, i gceannas.

▼B

2. The identification methodology for G-SIIs shall be based on the following categories:

(a) size of the group;

(b) interconnectedness of the group with the financial system;

(c) substitutability of the services or of the financial infrastructure provided by the group;

(d) complexity of the group;

(e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

Each category shall receive an equal weighting and shall consist of quantifiable indicators.

The methodology shall produce an overall score for each entity as referred to in paragraph 1 assessed, which allows G-SIIs to be identified and allocated into a sub-category as described in paragraph 9.

▼M5

2a. Is ar na catagóirí seo a leanas a bheidh modheolaíocht an tsainaitheantais do G-SIInna bunaithe:

(a) na catagóirí dá dtagraítear i bpointí (a) go (d) de mhír 2 den Airteagal seo;

(b) gníomhaíocht trasteorann an ghrúpa, gan gníomhaíochtaí an ghrúpa ar fud na mBallstát rannpháirteach a áireamh dá dtagraítear in Airteagal 4 de Rialachán (AE) Uimh. 806/2014 ó Pharlaimint na hEorpa agus ón gComhairle ([1]).

([1]) Rialachán (AE) Uimh. 806/2014 ó Pharlaimint na hEorpa agus ón gComhairle an 15 Iúil 2014 lena mbunaítear rialacha aonfhoirmeacha agus nós imeachta aonfhoirmeach maidir le réiteach institiúidí creidmheasa agus gnólachtaí infheistíochta áirithe faoi chuimsiú Sásra Réitigh Aonair agus Ciste Réitigh Aonair agus lena leasaítear Rialachán (AE) Uimh. 1093/2010 (IO L 225, 30.7.2014, lch. 1).

▼M5

Beidh ualú comhionann ag gach catagóir agus beidh sé comhdhéanta de tháscairí inchainníochtúla. I gcás na gcatagóirí dá dtagraítear i bpointe (a) den chéad fhomhír den mhír seo, is ionann na táscairí agus na táscairí comhfhreagracha arna gcinneadh de bhun mhír 2.

Déanfaidh an mhodheolaíocht bhreise sainaitheantais scór foriomlán breise a sholáthar do gach eintiteas dá dtagraítear i mír 1 ar a ndearnadh measúnú, ar dá bhonn a fhéadfaidh údaráis inniúla nó údaráis ainmnithe ceann de na bearta a ghlacadh dá dtagraítear i bpointe (c) de mhír 10.

▼B

3. O-SIIs shall be identified in accordance with paragraph 1. Systemic importance shall be assessed on the basis of at least any of the following criteria:

(a) size;

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

(c) significance of cross-border activities;

(d) interconnectedness of the institution or group with the financial system.

▼M5

Déanfaidh ÚBE, tar éis dó dul i gcomhairle le BERS, treoirlínte a eisiúint, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, faoin 1 Eanáir 2015 maidir leis na critéir d'fhonn na coinníollacha a chinneadh chun an mhír seo a chur i bhfeidhm i dtaca le measúnú a dhéanamh ar O-SIInna. Cuirfear san áireamh sna treoirlínte sin na creataí idirnáisiúnta d'institiúidí intíre a bhfuil tábhacht shistéamach leo agus sainiúlachtaí náisiúnta agus sainiúlachtaí an Aontais.

Tabharfaidh ÚBE, tar éis dó dul i gcomhairle le BERS, tuairisc don Choimisiún faoin 31 Nollaig 2020 maidir leis an modheolaíocht iomchuí i dtaca le dearadh agus calabrú an ráta mhaolánaigh i gcás O-SII.

▼B

4. Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

▼M5

5. Féadfaidh an t-údarás inniúil nó an t-údarás ainmnithe a cheangal ar gach O-SII, ar bhonn comhdhlúite, ar bhonn fo-chomhdhlúite nó ar bhonn aonair, de réir mar is infheidhme, maolán O-SII suas le 3 % a choimeád de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013, agus na critéir maidir le sainaithint O-SII á gcur san áireamh. Caipiteal Gnáthchothromas Leibhéal 1 a bheidh sa mhaolán sin.

5a. Faoi réir údarú an Choimisiúin dá dtagraítear sa tríú fomhír den mhír seo, féadfaidh an t-údarás inniúil nó an t-údarás ainmnithe a cheangal ar gach O-SII, ar bhonn comhdhlúite, ar bhonn fo-chomhdhlúite nó ar bhonn aonair, de réir mar is infheidhme, maolán O-SII os cionn 3 % a choimeád de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) Rialachán (AE) Uimh. 575/2013. Caipiteal Gnáthchothromas Leibhéal 1 a bheidh sa mhaolán sin.

▼M5

Laistigh de 6 seachtaine ón bhfógra dá dtagraítear i mír 7 den Airteagal seo a fháil, tabharfaidh BERS tuairim don Choimisiún cibé acu a mheastar gur iomchuí nó nach iomchuí maolán O-SII. Ina theannta sin, féadfaidh ÚEB a thuairim faoin maolán a thabhairt don Choimisiún i gcomhréir le hAirteagal 34(1) de Rialachán (AE) Uimh. 1093/2010.

Tráth nach déanaí 3 trí mhí ó chuirfidh BERS an fógra dá dtagraítear i mír 7 chuig an gCoimisiún, déanfaidh an Coimisiún — á thabhairt san áireamh dó measúnú BERS agus ÚBE más ábhartha, agus más dóigh leis nach bhfágfaidh maolán O-SII drochiarmhairt dhíréireach ar chóras airgeadais na mBallstát eile, go hiomlán nó i bpáirt, ná ar an Aontas ina iomláine ina bhfoirmeoidh nó ina gcruthóidh sé constaic roimh dhea-fheidhmiú an mhargaidh inmheánaigh —déanfaidh sé gníomh a ghlacadh lena n-údaraítear don údarás inniúil nó don údarás ainmnithe an beart atá beartaithe a ghlacadh.

▼B

6. When requiring an O-SII buffer to be maintained the competent authority or the designated authority shall comply with the following:

(a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;

(b) the O-SII buffer must be reviewed by the competent authority or the designated authority at least annually.

▼M5

7. Sula ndéantar maolán O-SII a shocrú nó a athshocrú, tabharfaidh an t-údarás inniúil nó an t-údarás ainmnithe fógra do BERS mí amháin roimh fhoilsiú an chinnidh dá dtagraítear i mír 5 agus tabharfaidh sé fógra do BERS 3 mhí roimh fhoilsiú chinneadh an údaráis inniúil nó an údaráis ainmnithe dá dtagraítear i mír 5a. Cuirfidh BERS fógraí den sórt sin ar aghaidh chuig an gCoimisiún, chuig ÚBE agus chuig údaráis inniúla agus údaráis ainmnithe na mBallstát lena mbaineann gan mhoill. Leagfar amach sna fógraí den sórt sin ar an méid seo a leanas:

▼B

(a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;

(b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the Member State;

(c) the O-SII buffer rate that the Member State wishes to set.

▼M5

8. Gan dochar d'Airteagal 133 agus do mhír 5 den Airteagal seo, i gcás inar fochuideachta de G-SII nó de O-SII é O-SII, ar institiúid nó grúpa é ar a bhfuil máthairinstitiúid AE i gceannas, agus atá faoi réir mhaolán O-SII ar bhonn comhdhlúite, ní bheidh an maolán a bhfuil feidhm aige ar bhonn aonair nó ar bhonn fo-chomhdhlúite maidir le O-SII níos mó ná pé acu is lú:

▼**M5**

(a) suim an ráta mhaolánaigh is airde i gcás G-SII nó O-SII i dtaca leis an ráta maolánach is infheidhme maidir leis an ngrúpa ar bhonn comhdhlúite agus 1 % de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013; agus

(b) 3 % de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013, nó an ráta a d'údaraigh an Coimisiún le cur i bhfeidhm ar an ngrúpa ar bhonn comhdhlúite i gcomhréir le mír 5a den Airteagal seo.

9. Beidh ar a laghad cúig fhochatagóir de G-SIInna ann. Déanfar an teorainn is ísle agus na teorainneacha idir gach fochatagóir a chinneadh ar bhonn na scór i gcomhréir le modheolaíocht an tsainaitheantais dá dtagraítear i mír 2 den Airteagal seo. Déanfar na scoithscóir idir fochatagóirí cóngaracha a shainmhíniú go soiléir agus cloífidh siad leis an bprionsabal go bhfuil síormhéadú líneach ann lena mbaineann tábhacht chórasach, idir gach fochatagóir as a dtiocfaidh méadú líneach ar an gceanglas maidir le caipiteal breise Gnáthchothromas Leibhéal 1, cé is moite d'fhochatagóir uimhir a cúig agus aon fhochatagóir bhreise níos airde. Chun críocha na míre seo, is í tábhacht shistéamach an tionchar a mheastar a bheidh ag anás G-SII ar an margadh airgeadais domhanda. Sannfar maolán G-SII 1 % de mhéid iomlán na neamhchosanta riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013 ar an bhfochatagóir is ísle agus déanfar an maolán a shanntar ar gach fochatagóir a mhéadú 0,5 % grádán ar a laghad de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) den Rialachán sin.

10. Gan dochar do mhíreanna 1 agus 9, agus é ag úsáid na bhfochatagóirí agus na scoithscór dá dtagraítear i mír 9, agus breithiúnas iontaofa maoirseachta á thabhairt aige, féadfaidh an t-údarás inniúil nó an t-údarás ainmnithe an méid seo a leanas a dhéanamh:

(a) G-SII a athdháileadh ó fhochatagóir níos ísle go fochatagóir níos airde;

(b) eintiteas dá dtagraítear i mír 1 ag a bhfuil scór foriomlán dá dtagraítear i mír 2 atá níos ísle ná scoithscór na fochatagóire is ísle a leithdháileadh ar an bhfochatagóir sin nó ar fhochatagóir níos airde, rud a fhágann go ndéanfar é a ainmniú mar G-SII;

(c) agus an Sásra Réitigh Aonair á chur san áireamh, ar bhonn an scóir fhoriomláin breise dá dtagraítear i mír 2a, G-SII a athdháileadh ó fhochatagóir níos airde go fochatagóir níos ísle.

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12. Tabharfaidh an t-údarás inniúil nó an t-údarás ainmnithe fógra do BERS maidir le hainmneacha G-SIInna agus O-SIInna agus maidir leis an bhfochatagóir ar a leithdháiltear gach G-SII faoi seach. Beidh san fhógra na cúiseanna iomlána a bhfuil breithiúnas maoirseachta á thabhairt nó nach bhfuil, i gcomhréir le pointí (a), (b) agus (c) de mhír 10. Cuirfidh BERS fógraí den sórt sin ar aghaidh chuig an gCoimisiún agus chuig ÚBE gan mhoill, agus cuirfidh sé na hainmneacha sin ar fáil go poiblí. Cuirfidh na húdaráis inniúla nó na húdaráis ainmnithe an fhochatagóir ar a leithdháiltear gach G-SII ar fáil go poiblí.

▼M5

Déanfaidh an t-údarás inniúil nó an t-údarás ainmnithe sainaithint G-SIInna agus O-SIInna agus leithdháileadh G-SII ar na fochatagóirí faoi seach a athbhreithniú uair sa bhliain, agus tuairisceoidh sé an toradh don institiúid lena mbaineann a bhfuil tábhacht shistéamach léi, do BERS a chuirfidh na torthaí ar aghaidh chuig an gCoimisiún agus chuig ÚEB gan mhoill. Cuirfidh an t-údarás inniúil nó an t-údarás ainmnithe an liosta nuashonraithe de na hinstitiúidí arna sainaithint a bhfuil tábhacht shistéamach leo ar fáil don phobal agus an fhochatagóir ar a leithdháiltear gach G-SII arna shainaithint.

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14. I gcás ina bhfuil grúpa, ar bhonn comhdhlúite, faoi réir mhaolán G-SII agus mhaolán O-SII, beidh feidhm ag an maolán atá níos airde.

15. I gcás ina bhfuil institiúid faoi réir maolán um priacal sistéamach, arna shocrú i gcomhréir le hAirteagal 133, déanfar an maolán sin a charnadh le maolán O-SII nó maolán G-SII a chuirtear i bhfeidhm i gcomhréir leis an Airteagal seo.

I gcás inar mhó suim an ráta mhaolánaigh um priacal sistéamach arna ríomh chun críocha mhír 10, 11 nó 12 d'Airteagal 133 agus an ráta maolánach O-SII nó ráta maolánach G-SII a bhfuil an institiúid chéanna faoina réir, ná 5 %, beidh feidhm ag an nós imeachta a leagtar amach i mír 5a den Airteagal seo.

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18. Déanfaidh ÚBE dréachtchaighdeáin theicniúla rialála a fhorbairt, chun críocha an Airteagail seo, leis na modheolaíochtaí a shonrú faoina ndéanfaidh an t-údarás inniúil nó an t-údarás ainmnithe institiúid nó grúpa a shainaithint mar G-SII ar a bhfuil máthairinstitiúid AE, máthairchuideachta shealbhaíochta airgeadais AE nó máthairchuideachta shealbhaíochta airgeadais mheasctha AE i gceannas, agus leis an modheolaíocht a shonrú maidir leis an sainmhíniú ar na fochatagóirí agus maidir le leithdháileadh G-SIInna sna fochatagóirí bunaithe ar an tábhacht shistéamach a bhaineann leo, agus aon chaighdeáin a comhaontaíodh go hidirnáisiúnta á gcur san áireamh.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 30 Meitheamh 2014.

Tarmligtear an chumhacht chuig an gCoimisiún na caighdeáin theicniúla rialála dá dtagraítear sa mhír seo a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

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Airteagal 133

Ceanglas maidir le maolán um priacal sistéamach a chothabháil

1. Féadfaidh gach Ballstát maolán um priacal sistéamach maidir le caipiteal Gáthchothromas Leibhéal 1 don earnáil airgeadais nó i dtaca le fothacar amháin nó níos mó den earnáil sin maidir le gach risíocht nó le fothacar risíochtaí dá dtagraítear i mír 5 den Airteagal seo a thabhairt isteach, d'fhonn priacail mhacrastuamachta nó shistéamacha nach gcumhdaítear le Rialachán (AE) Uimh. 575/2013 ná le hAirteagal 130 agus le hAirteagal 131 den Treoir seo a chosc agus a mhaolú, sa chiall gur rioscaí iad a chuirfeadh isteach ar an gcóras airgeadais ag a mbeadh iarmhairtí tromchúiseacha diúltacha ar an gcóras airgeadais agus ar an bhfíorgheilleagar i mBallstát sonrach.

▼M5

2. Ríomhfaidh na hinstitiúidí an maolán um priacal sistéamach mar seo a leanas:

$$B_{SR} = r_T \cdot E_T + \sum_i r_i \cdot E_i$$

i gcás:

B_{SR} = an maolán um priacal sistéamach

r_T = an ráta maolánach is infheidhme maidir le méid iomlán na neamhchosanta ar riosca d'institiúid;

E_T = méid iomlán na neamhchosanta ar riosca d'institiúid arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013;

i = an t-innéacs lena gcuirtear fothacar risíochtaí in iúl dá dtagraítear i mír 5;

r_i = an ráta maolánach is infheidhme i dtaca le méid na neamhchosanta ar riosca maidir le fothacar risíochtaí i; agus

E_i = méid na neamhchosanta ar riosca d'institiúid maidir le fothacar risíochtaí i, arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013

3. Chun críocha mhír 1, ainmneoidh na Ballstáit údarás a bheidh freagrach as an maolán um priacal sistéamach a bhunú agus as risíochtaí agus fothacair na n-institiúidí a mbeidh feidhm aige ina leith a shainaithint. Is é an t-údarás inniúil nó an t-údarás ainmnithe a bheidh san údarás sin.

4. Chun críocha mhír 1 den Airteagal seo, féadfaidh an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, a cheangal ar na hinstitiúidí maolán um priacal sistéamach maidir le caipiteal Gnáthchothromas Leibhéal 1 a choimeád arna ríomh i gcomhréir le mír 2 den Airteagal seo, ar bhonn aonair, comhdhlúite, nó fo-chomhdhlúite, de réir mar is infheidhme i gcomhréir le Teideal II de Chuid a hAon de Rialachán (AE) Uimh. 575/2013.

5. Féadfaidh go mbeidh feidhm ag maolán um priacal sistéamach ar an méid seo a leanas:

(a) gach risíocht atá lonnaithe sa Bhallstát a shocraíonn an maolán sin;

(b) na risíochtaí earnála seo a leanas atá lonnaithe sa Bhallstát a shocraíonn an maolán sin:

(i) gach risíocht mhiondíola ar dhaoine nádúrtha arna hurrú le réadmhaoin chónaithe;

(ii) gach risíocht ar dhaoine dlítheanacha arna hurrú le morgáistí ar réadmhaoin tráchtála dhochorraithe;

(iii) gach risíocht ar dhaoine dlítheanacha cé is moite díobh siúd a shonraítear i bpointe (ii);

(iv) gach risíocht ar dhaoine nádúrtha cé is moite díobh siúd a shonraítear i bpointe (i);

(c) gach risíocht atá lonnaithe i mBallstáit eile, faoi réir mhíreanna 12 agus 15;

▼M5

(d) risíochtaí earnála, mar a shainítear i bpointe (b) den mhír seo iad, atá lonnaithe i mBallstáit eile amháin lena bhféadfar aitheantas a thabhairt do ráta maolánach arna shocrú ag Ballstát eile i gcomhréir le hAirteagal 134;

(e) risíochtaí atá lonnaithe i dtríú tíortha;

(f) fothacair d'aon cheann de na catagóirí neamhchosanta a aithnítear i bpointe (b).

6. Tar éis dó dul i gcomhairle le BERS, eiseoidh ÚBE treoirlínte, i gcomhréir le hAirteagal 16 de Rialachán (AE) Uimh. 1093/2010, faoin 30 Meitheamh 2020 maidir leis na fo-earnálacha iomchuí risíochtaí ar ar féidir leis an údarás inniúil nó an t-údarás ainmnithe maolán um priacal sistéamach a chur i bhfeidhm i gcomhréir le pointe (f) de mhír 5 den Airteagal seo.

7. Beidh feidhm ag maolán um priacal sistéamach maidir le gach risíocht, nó fothacar risíochtaí dá dtagraítear i mír 5 den Airteagal seo, de na hinstitiúidí go léir, nó ceann amháin nó níos mó d'fhothacair na n-institiúidí sin, ar a bhfuil na húdaráis den Bhallstát lena mbaineann inniúil i gcomhréir leis an Treoir seo agus socraítear é de réir céimeanna coigeartaithe de phointe céatadáin 0,5 nó den mhéid sin iolraithe. Féadfar ceanglais éagsúla a thabhairt isteach i gcomhair fothacair éagsúla institiúidí agus risíochtaí. Ní thabharfaidh an maolán um priacal sistéamach aghaidh ar na rioscaí a chumhdaítear le hAirteagal 130 agus le hAirteagal 131.

8. Agus é á chur de cheangal maolán um priacal sistéamach a choimeád comhlíonfaidh an t-údarás inniúil nó an t-údarás ainmnithe an méid seo a leanas:

(a) ní bheidh éifeachtaí díobhálacha díréireacha i gceist leis an maolán um priacal sistéamach do chóras airgeadais Ballstát eile i bpáirt nó ina iomláine nó do chóras airgeadais Ballstát de chuid an Aontais ina iomláine ina bhfoirmeoidh nó ina gcruthóidh sé constaic i gcoinne fheidhmiú ceart an mhargaidh inmheánaigh;

(b) déanfaidh an t-údarás inniúil nó an t-údarás ainmnithe an maolán um priacal sistéamach a athbhreithniú ar a laghad gach re bliain;

(c) ní bhainfear úsáid as an maolán um priacal sistéamach chun aghaidh a thabhairt ar na rioscaí a chumhdaítear le hAirteagal 130 agus le hAirteagal 131.

9. Tabharfaidh an t-údarás inniúil nó an t-údarás ainmnithe, mar is infheidhme, fógra do BERS roimh fhoilsiú an chinnidh dá dtagraítear i mír 13. Cuirfidh BERS fógraí den sórt sin ar aghaidh chuig an gCoimisiún, ÚBE agus údaráis inniúla agus údaráis ainmnithe na mBallstát lena mbaineann gan mhoill.

I gcás gur fochuideachta a bhfuil a máthairghnóthas lonnaithe i mBallstát eile í an institiúid a bhfuil feidhm ag ráta maolánach um priacal sistéamach amháin nó níos mó ina leith, tabharfaidh an t-údarás inniúil nó an t-údarás ainmnithe fógra d'údaráis an Bhallstáit sin.

I gcás ina mbeidh feidhm ag ráta maolánach um priacal sistéamach maidir le risíochtaí atá lonnaithe i dtríú tíortha, tabharfaidh an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, fógra do BERS. Cuirfidh BERS fógraí den sórt sin ar aghaidh chuig údaráis mhaoirseachta na dtríú tíortha sin gan mhoill.

▼**M5**

Leagfar amach sna fógraí den sórt sin t an méid seo a leanas:

(a) na priacail mhacrastuamachta nó na priacail shistéamacha sa Bhallstát;

(b) na cúiseanna le méid na bpriacal macrastuamachta nó sistéamach a bheith ina mbagairt ar chobhsaíocht an chórais airgeadais ar an leibhéal náisiúnta lena dtugtar bonn cirt leis an ráta maolánach um priacal sistéamach;

(c) an bonn cirt lena meastar gur dóigh go mbeidh an maolán um priacal sistéamach éifeachtach comhréireach chun an riosca a mhaolú;

(d) measúnú ar thionchar dóchúil dearfach nó diúltach an mhaoláin um priacal sistéamach ar an margadh inmheánach, bunaithe ar fhaisnéis atá ar fáil don Bhallstát;

(e) an ráta nó na rátaí maolánacha um priacal sistéamach a bheartaíonn an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, a fhorchur agus na risíochtaí a mbeidh feidhm ag na rátaí ina leith agus na hinstitiúidí a bheidh faoi réir na gceanglas i ndáil leis na rátaí sin;

(f) i gcás ina bhfuil feidhm ag an ráta maolánach um priacal sistéamach maidir le gach risíocht, beidh bonn cirt leis an bhfáth a bhfuil an t-údarás den tuairim nach dúbláil é maolán um priacal sistéamach ar fheidhmiú mhaolán O-SII dá bhforáiltear in Airteagal 131.

I gcás, mar thoradh ar an gcinneadh an ráta maolánach um priacal sistéamach a shocrú, ina mbeidh laghdú nó nach mbeidh aon athrú ar an ráta maolánach a socraíodh roimhe sin, ní dhéanfaidh an t-údarás inniúil ná an t-údarás ainmnithe, de réir mar is infheidhme, ach an mhír seo a chomhlíonadh.

10. I gcás nach mbeidh mar thoradh, le socrú nó athshocrú ráta nó rátaí maolánacha um priacal sistéamach i ndáil le haon tacar nó fothacar risíochtaí dá dtagraítear i mír 5 atá faoi réir ráta maolánach um riosca comhcheangailte sistéamach atá os cionn 3 % d'aon cheann de na risíochtaí sin, déanfaidh an t-údarás inniúil nó an t-údarás ainmnithe de réir mar is infheidhme, fógra a thabhairt do BERS, i gcomhréir leis an nós imeachta a leagtar síos i mír 9, mí amháin roimh fhoilsiú an chinnidh dá dtagraítear i mír 13.

Chun críocha na míre seo, ní chuirfear san áireamh sa tairseach 3 % an t-aitheantas a thugtar do ráta maolánach um priacal sistéamach arna shocrú ag Ballstát eile i gcomhréir le hAirteagal 134.

11. I gcás ina mbeidh ráta maolánach um riosca comhcheangailte sistéamach atá ar leibhéal idir 3 % agus 5 % maidir le haon cheann de na risíochtaí sin mar thoradh ar shocrú nó athshocrú ráta nó rátaí maolánacha um priacal sistéamach i dtaca le haon tacar nó aon fhothacar de neamhchosantaí dá dtagraítear i mír 5 faoi réir mhaolán um priacal sistéamach aonair nó níos mó, iarrfaidh údarás inniúil nó údarás ainmnithe an Bhallstáit a shocraíonn an maolán sin san fhógra a chuirfear isteach i gcomhréir le mír 9 tuairim an Choimisiúin. Tabharfaidh an Coimisiún a thuairim laistigh de 1 mhí amháin tar éis dó an fógra a fháil.

▼M5

Más tuairim dhiúltach í an tuairim a fhaightear ón gCoimisiún, déanfaidh údarás inniúil nó údarás ainmnithe, de réir mar is infheidhme, an Bhallstáit a shocraíonn an maolán um priacal sistéamach sin an tuairim a chomhlíonadh nó cúiseanna a thabhairt gan déanamh amhlaidh.

I gcás gur fochuideachta a bhfuil a máthairghnóthas lonnaithe i mBallstát eile í institiúid a bhfuil feidhm ag ráta maolánach um priacal sistéamach amháin nó níos mó ina leith, iarrfaidh an t-údarás inniúil nó an t-údarás ainmnithe san fhógra a cuireadh isteach i gcomhréir le mír 9 moladh ón gCoimisiún agus ó BERS.

Tabharfaidh an Coimisiún agus BERS araon a moladh ar fáil laistigh de 6 seachtaine tar éis an fógra a fháil.

I gcás nach n-aontaíonn údaráis na fochuideachta agus na máthairchuideachta faoin ráta nó na rátaí maolánacha um priacal sistéamach is infheidhme i leith na hinstitiúide sin agus i gcás moladh diúltach a fháil ón gCoimisiún agus ó BERS, féadfaidh an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, an t-ábhar a chuir faoi bhráid ÚBE agus a chúnamh a lorg i gcomhréir le hAirteagal 19 de Rialachán (AE) Uimh. 1093/2010. Cuirfear an cinneadh ráta nó rátaí maolánacha um priacal sistéamach a shocrú maidir leis na risíochtaí sin ar fionraí go dtí go mbeidh cinneadh glactha ag ÚBE.

12. I gcás ina n-eascraíonn ráta maolánach um riosca comhcheangailte sistéamach atá os cionn 5 % maidir le haon cheann de na risíochtaí sin as socrú nó athshocrú ráta nó rátaí maolánacha um priacal sistéamach i dtaca le haon cheann de na catagóirí neamhchosanta a liostaítear i mír 5, féachfaidh an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, le húdarú a fháil ón gCoimisiún sula ndéanfar maolán um priacal sistéamach a chur chun feidhme.

Laistigh de 6 seachtaine tar éis an fógra dá dtagraítear i mír 9 den Airteagal seo a fháil, tabharfaidh BERS tuairim don Choimisiún cibé acu a mheastar gur iomchuí nó nach iomchuí an maolán um priacal sistéamach. Ina theannta sin, féadfaidh ÚBE a thuairim faoin maolán um priacal sistéamach a thabhairt don Choimisiún i gcomhréir le hAirteagal 34(1) de Rialachán (AE) Uimh. 1093/2010.

Laistigh de thrí mhí tar éis an fógra dá dtagraítear i mír 9 a fháil, glacfaidh an Coimisiún gníomh lena n-údaraítear an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, an beart atá beartaithe a ghlacadh, agus measúnú BERS agus ÚBE á gcur san áireamh, más ábhartha, agus má tá sé sásta nach bhfuil éifeachtaí díobhálacha i gceist le ráta nó rátaí maolánacha um priacal sistéamach do chóras airgeadais Ballstát eile i bpáirt nó ina iomláine nó do chóras airgeadais Ballstáit de chuid an Aontais ina iomláine ina bhfoirmeoidh nó ina gcruthóidh sé constaic i gcoinne dhea-fheidhmiú an mhargaidh inmheánaigh.

13. Tabharfaidh gach údarás inniúil, nó údarás ainmnithe, de réir mar is infheidhme, fógra maidir le socrú nó athshocrú ceann amháin nó níos mó de na rátaí maolánacha um priacal sistéamach trína fhoilsiú ar an suíomh gréasáin iomchuí. Áireofar san fhoilsiú sin an fhaisnéis seo a leanas ar a laghad:

(a) an ráta nó na rátaí maolánacha um priacal sistéamach;

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(b) na hinstitiúidí lena mbaineann an maolán um priacal sistéamach;

(c) na risíochtaí lena mbaineann an ráta nó na rátaí maolánacha um priacal sistéamach;

(d) bonn cirt leis an ráta nó na rátaí maolánacha um priacal sistéamach a shocrú nó a athshocrú;

(e) an dáta óna gcuirfidh na hinstitiúidí i bhfeidhm an maolán um priacal sistéamach a shocrú nó a athshocrú; agus

(f) ainmneacha na dtíortha ina dtugtar aitheantas sa mhaolán um priacal sistéamach do na risíochtaí atá lonnaithe sna tíortha sin.

I gcás ina bhféadfaidh foilseachán na faisnéise dá dtagraítear i bpointe (d) den chéad fhomhír cobhsaíocht an chórais airgeadais a chur i mbaol, ní chuirtear an fhaisnéis san áireamh san fhoilseachán.

14. I gcás ina mainneoidh institiúid an ceanglas a leagtar amach i mír 1 den Airteagal seo a chomhlíonadh ina iomláine, beidh sí faoi réir na srianta ar dháileacháin a leagtar amach in Airteagal 141(2) agus (3).

Más rud é go bhfágann cur chun feidhme na srianta ar dháileacháin nach sásúil an dul chun cinn a dhéantar i dtaobh Chaipiteal Gnáthcho-thromas Leibhéal 1 de chuid na hinstitiúide, i bhfianaise an riosca ábhartha shistéamaigh, féadfaidh na húdaráis inniúla bearta breise a ghlacadh i gcomhréir le hAirteagal 64.

15. I gcás ina gcinneann an t-údarás inniúil nó an t-údarás ainmnithe, de réir mar is infheidhme, an maolán um priacal sistéamach a shocrú ar bhonn na risíochtaí atá lonnaithe i mBallstáit eile, déanfar an maolán a shocrú go cothrom maidir le gach risíocht atá lonnaithe laistigh den Aontas, ach amháin más rud é go bhfuil an maolán socraithe chun an ráta maolánach um priacal sistéamach arna shocrú ag Ballstát eile a shainaithint i gcomhréir le hAirteagal 134.

Airteagal 134

Aitheantas a thabhairt do ráta maolánach um priacal sistéamach

1. Féadfaidh Ballstáit eile aitheantas a thabhairt do ráta maolánach um priacal sistéamach arna shocrú i gcomhréir le hAirteagal 133 agus féadfaidh siad an ráta sin a chur i bhfeidhm maidir le hinstitiúidí atá údaraithe ar bhonn intíre i dtaca leis na risíochtaí atá lonnaithe sa Bhallstát ina socraítear an ráta sin.

2. I gcás ina dtugann na Ballstáit aitheantas do ráta maolánach um priacal sistéamach i gcomhair institiúidí atá údaraithe ar bhonn intíre i gcomhréir le mír 1, tabharfaidh siad fógra do BERS. Cuirfidh BERS fógraí den sórt sin ar aghaidh chuig an gCoimisiún, chuig ÚBE agus chuig an mBallstát lena socraítear an ráta maolánach um priacal sistéamach sin gan mhoill.

3. Agus cinneadh á dhéanamh maidir le haitheantas a thabhairt do ráta maolánach um priacal sistéamach, cuirfidh Ballstát san áireamh an fhaisnéis a thíolaic an Ballstát a shocraíonn an ráta sin i gcomhréir le hAirteagal 133(9) agus (13).

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4. I gcás ina dtugann Ballstáit aitheantas do ráta maolánach um priacal sistéamach i gcomhair institiúidí atá údaraithe ar bhonn intíre, féadfaidh an maolán um priacal sistéamach agus an maolán um priacal sistéamach a cuireadh i bhfeidhm i gcomhréir le hAirteagal 133 a charnadh, ar choinníoll go dtugtar aghaidh ar rioscaí éagsúla leis na maoláin sin. I gcás ina dtugtar aghaidh leis na maoláin ar na rioscaí céanna, ní bheidh feidhm ach ag an maolán is airde.

5. Féadfaidh Ballstát a shocraíonn ráta maolánach um priacal sistéamach i gcomhréir le hAirteagal 133 den Treoir seo a iarraidh ar BERS moladh a eisiúint dá dtagraítear in Airteagal 16 de Rialachán (AE) Uimh. 1092/2010 do Bhallstát amháin nó níos mó a fhéadfaidh an ráta maolánach um priacal sistéamach a aithint.

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Section II

Setting and calculating countercyclical capital buffers

Article 135

ESRB guidance on setting countercyclical buffer rates

1. The ESRB may give, by way of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, guidance to authorities designated by Member States under Article 136(1) on setting countercyclical buffer rates, including the following:

(a) principles to guide designated authorities when exercising their judgment as to the appropriate countercyclical buffer rate, ensure that authorities adopt a sound approach to relevant macro-economic cycles and promote sound and consistent decision-making across Member States;

(b) general guidance on:

(i) the measurement and calculation of the deviation from long term trends of ratios of credit to gross domestic product (GDP);

(ii) the calculation of buffer guides required by Article 136(2);

(c) guidance on variables that indicate the build-up of system-wide risk associated with periods of excessive credit growth in a financial system, in particular the relevant credit-to-GDP ratio and its deviation from the long-term trend, and on other relevant factors, including the treatment of economic developments within individual sectors of the economy, that should inform the decisions of designated authorities on the appropriate countercyclical buffer rate under Article 136;

(d) guidance on variables, including qualitative criteria, that indicate that the buffer should be maintained, reduced or fully released.

2. Where it issues a recommendation under paragraph 1, the ESRB shall duly take into account the differences between Member States and in particular the specificities of Member States with small and open economies.

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3. Where it has issued a recommendation under paragraph 1, the ESRB shall keep it under review and update it, where necessary, in the light of experience of setting buffers under this Directive or of developments in internationally agreed practices.

Article 136

Setting countercyclical buffer rates

1. Each Member State shall designate a public authority or body (a "designated authority") that is responsible for setting the countercyclical buffer rate for that Member State.

2. Each designated authority shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgment in setting the countercyclical buffer rate in accordance with paragraph 3. The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Member State and shall duly take into account specificities of the national economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia:

(a) an indicator of growth of levels of credit within that jurisdiction and, in particular, an indicator reflective of the changes in the ratio of credit granted in that Member State to GDP;

(b) any current guidance maintained by the ESRB in accordance with Article 135(1)(b).

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3. Déanfaidh gach údarás ainmnithe measúnú ar a dhéine atá an riosca timthriallach sistéamach ráta agus a iomchuí atá an ráta frithimthriallach maolánach dá Bhallstát gach ráithe agus an ráta frithimthriallach maolánach a shocrú nó a choigeartú de réir mar is gá. Agus é sin á dhéanamh aige, cuirfidh gach údarás ainmnithe an méid seo a leanas san áireamh:

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(a) the buffer guide calculated in accordance with paragraph 2;

(b) any current guidance maintained by the ESRB in accordance with Article 135(1)(a), (c) and (d) and any recommendations issued by the ESRB on the setting of a buffer rate;

(c) other variables that the designated authority considers relevant for addressing cyclical systemic risk.

4. The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in that Member State, shall be between 0 % and 2,5 %, calibrated in steps of 0,25 percentage points or multiples of 0,25 percentage points. Where justified on the basis of the considerations set out in paragraph 3, a designated authority may set a countercyclical buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 for the purpose set out in Article 140(2) of this Directive.

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5. Where a designated authority sets the countercyclical buffer rate above zero for the first time, or where, thereafter, a designated authority increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 7. If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

6. If a designated authority reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the designated authority.

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7. Foilseoidh gach údarás ainmnithe ar bhonn ráithiúil ar a laghad an fhaisnéis seo a leanas ar a shuíomh idirlín:

(a) an ráta fritimthriallach maolánach is infheidhme;

(b) an cóimheas ábhartha creidmheas-go-OTI agus an claonadh atá aige ón treocht fhadtéarmach;

(c) an treoir a thugtar maidir le maolán arna ríomh i gcomhréir le mír 2;

(d) bonn cirt leis an ráta maolánach sin;

(e) i gcás ina méadaítear an ráta maolánach, an dáta óna gcuirfidh na hinstitiúidí an ráta méadaithe maolánach sin i bhfeidhm chun críocha a gcúlchiste fritimthriallach institiúidsonrach a ríomh;

(f) más dáta ar lú ná 12 mhí tar éis dháta an fhoilsithe faoin mír seo é an dáta dá dtagraítear i bpointe (e), déanfar tagairt do na himthosca eisceachtúla ina dtugtar údar leis an sprioc-am níos giorra chun iarratas a dhéanamh;

(g) i gcás ina laghdaítear an ráta maolánach, an tréimhse tháscach a meastar nach dtiocfaidh méadú ar an ráta maolánach lena linn, maille le bonn cirt leis an tréimhse sin.

Déanfaidh na húdaráis ainmnithe gach beart réasúnach chun uainiú an fhoilsithe sin a chomhordú.

Tabharfaidh na húdaráis ainmnithe fógra faoi gach athrú ar an ráta fritimthriallach maolánach agus an fhaisnéis is gá mar a shonraítear i bpointí (a) go (g) den chéad fhomhír do BERS. Foilseoidh BERS ar a shuíomh gréasáin gach ráta maolánach den sórt sin ar tugadh fógra ina leith agus gach faisnéis ghaolmhar.

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Article 137

Recognition of countercyclical buffer rates in excess of 2,5 %

1. Where a designated authority, in accordance with Article 136(4), or a relevant third-country authority has set a countercyclical buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the other designated authorities may recognise that buffer rate for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffers.

2. Where a designated authority in accordance with paragraph 1 of this Article recognises a buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

(a) the applicable countercyclical buffer rate;

(b) the Member State or third countries to which it applies;

(c) where the buffer rate is increased, the date from which the institutions authorised in the Member State of the designated authority must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

(d) where the date referred to in point (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Article 138

ESRB recommendation on third country countercyclical buffer rates

The ESRB may, in accordance with Article 16 of Regulation (EU) No 1092/2010, issue a recommendation to designated authorities on the appropriate countercyclical buffer rate for exposures to that third country where:

(a) a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country (“relevant third-country authority”) to which one or more Union institutions have credit exposures;

(b) the ESRB considers that a countercyclical buffer rate which has been set and published by the relevant third-country authority for a third country is not sufficient to protect Union institutions appropriately from the risks of excessive credit growth in that country, or a designated authority notifies the ESRB that it considers that buffer rate to be insufficient for that purpose.

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Article 139

Decision by designated authorities on third country countercyclical buffer rates

1. This Article applies irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in Article 138.

2. In the circumstances referred to in point (a) of Article 138, designated authorities may set the countercyclical buffer rate that domestically authorised institutions must apply for the purposes of the calculation of their institution-specific countercyclical capital buffer.

3. Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, a designated authority may set a different buffer rate for that third country for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffer if they reasonably consider that the buffer rate set by the relevant third-country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

When exercising the power under the first subparagraph, a designated authority shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2,5 %, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in that third country.

In order to achieve coherence for the buffer settings for third countries the ESRB may give recommendations for such settings.

4. Where a designated authority sets a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 which increases the existing applicable countercyclical buffer rate, the designated authority shall decide the date from which domestically authorised institutions must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months from the date when the buffer rate is announced in accordance with paragraph 5. If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

5. Designated authorities shall publish any setting of a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 on their websites, and shall include the following information:

(a) the countercyclical buffer rate and the third country to which it applies;

(b) a justification for that buffer rate;

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(c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

(d) where the date referred to in point (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Article 140

Calculation of institution-specific countercyclical capital buffer rates

1. The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located or are applied for the purposes of this Article by virtue of Article 139(2) or (3).

Member States shall require institutions, in order to calculate the weighted average referred to in the first subparagraph, to apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

2. If, in accordance with Article 136(4), a designated authority sets a countercyclical buffer rate in excess of 2,5 % of total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, Member States shall ensure that the following buffer rates apply to relevant credit exposures located in the Member State of that designated authority (“Member State A”) for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

(a) domestically authorised institutions shall apply that buffer rate in excess of 2,5 % of total risk exposure amount;

(b) institutions that are authorised in another Member State shall apply a countercyclical buffer rate of 2,5 % of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2,5 % in accordance with Article 137(1);

(c) institutions that are authorised in another Member State shall apply the countercyclical buffer rate set by the designated authority of Member State A if the designated authority in the Member State in which they have been authorised has recognised the buffer rate in accordance with Article 137.

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3. If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2,5 % of total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, Member States shall ensure that the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

(a) institutions shall apply a countercyclical buffer rate of 2,5 % of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2,5 % in accordance with Article 137(1);

(b) institutions shall apply the countercyclical buffer rate set by the relevant third-country authority if the designated authority in the Member State in which they have been authorised has recognised the buffer rate in accordance with Article 137.

4. Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of Regulation (EU) No 575/2013, that are subject to:

(a) the own funds requirements for credit risk under Part Three, Title II of that Regulation;

(b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;

(c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

5. Institutions shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with paragraph 7.

6. For the purposes of the calculation required under paragraph 1:

(a) a countercyclical buffer rate for a Member State shall apply from the date specified in the information published in accordance with Article 136(7)(e) or Article 137(2)(c) if the effect of that decision is to increase the buffer rate;

(b) subject to point (c), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;

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(c) where the designated authority of the home Member State of the institution sets the countercyclical buffer rate for a third country pursuant to Article 139(2) or (3), or recognises the countercyclical buffer rate for a third country pursuant to Article 137, that buffer rate shall apply from the date specified in the information published in accordance with Article 139(5)(c) or Article 137(2)(c), if the effect of that decision is to increase the buffer rate;

(d) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

For the purposes of point (b), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

7. EBA shall develop draft regulatory technical standards to specify the method for the identification of the geographical location of the relevant credit exposures referred to in paragraph 5.

EBA shall submit those draft regulatory standards to the Commission by 1 January 2014.

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

Section III

Capital conservation measures

Article 141

Restrictions on distributions

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1. Ní dhéanfaidh institiúid a chomhlíonann an ceanglas maoláin chomhcheangailte dáileachán i ndáil le caipiteal Gnáthchothromas Leibhéal 1 a mhéad a laghdódh sé a caipiteal Gnáthchothromas Leibhéal 1 go leibhéal nach gcomhlíontar an ceanglas maoláin chomhcheangailte a thuilleadh.

2. Ríomhfaidh institiúid a mhainníonn an ceanglas maoláin chomhcheangailte a chomhlíonadh an t-uasmhéid indáilte (MDA) i gcomhréir le mír 4 agus tabharfaidh sí fógra don údarás inniúil ina leith sin.

I gcás ina mbeidh feidhm leis an gcéad fhomhír, ní dhéanfaidh an institiúid aon cheann de na gníomhaíochtaí seo a leanas sula mbeidh MDA ríofa aici:

(a) dáileachán a dhéanamh i ndáil le caipiteal Gnáthchothromas Leibhéal 1;

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(b) oibleagáid a chruthú chun luach saothair inathraitheach nó sochair phinsin lánroghnacha a íoc nó luach saothair inathraitheach a íoc más rud é gur cruthaíodh an oibleagáid chun íoc tráth ar mhainnigh an institiúid an ceanglas maoláin chomhcheangailte a chomhlíonadh; nó

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(c) íocaíochtaí a dhéanamh ar ionstraimí Chaipiteal Breise Leibhéal 1.

3. I gcás ina mainneoidh institiúid a ceanglas maoláin chomhcheangailte a chomhlíonadh nó bheith os a chionn, ní dháilfidh sí níos mó ná MDA arna ríomh i gcomhréir le mír 4 trí aon ghníomhaíocht dá dtagraítear i bpointí (a), (b) agus (c) den dara fomhír de mhír 2.

4. Ríomhfaidh institiúidí MDA tríd an tsuim arna ríomh i gcomhréir le mír 5 a iolrú faoin bhfachtóir arna chinneadh i gcomhréir le mír 6. Laghdófar MDA d'aon mhéid a bheidh ann mar thoradh ar aon cheann de na gníomhaíochtaí dá dtagraítear i bpointe (a), (b) nó (c) den dara fomhír de mhír 2.

5. Beidh sa tsuim atá le hiolrú i gcomhréir le mír 4 na nithe seo a leanas:

(a) aon bhrabúis eatramhacha nach n-áirítear ar chaipiteal Gnáthchothromas Leibhéal 1 de bhun Airteagal 26(2) de Rialachán (AE) Uimh. 575/2013, ar glanbhrabúis iad i ndáil le haon dáileachán brabús nó aon íocaíocht a bheidh ann mar thoradh ar na gníomhaíochtaí dá dtagraítear i bpointe (a), (b) nó (c) den dara fomhír de mhír 2 den Airteagal seo;

móide

(b) aon bhrabúis deiridh bliana nach n-áirítear ar chaipiteal Gnáthchothromas Leibhéal 1 de bhun Airteagal 26(2) de Rialachán (AE) Uimh. 575/2013, ar glanbhrabúis iad i ndáil le haon dáileachán brabús nó aon íocaíocht a bheidh ann mar thoradh ar na gníomhaíochtaí dá dtagraítear i bpointe (a), i bpointe (b) nó i bpointe (c) den dara fomhír de mhír 2 den Airteagal seo;

lúide

(c) méideanna a bheadh le híoc i gcáin dá mba rud é go mbeadh na hítimí a shonraítear i bpointí (a) agus (b) den mhír seo le coimeád.

6. Déanfar an fachtóir a chinneadh mar a leanas:

(a) i gcás ina mbeidh caipiteal Gnáthchothromas Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun aon cheann de na ceanglais cistí dílse a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 a chomhlíonadh agus an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh a leagtar amach i bpointe (a) d'Airteagal 104(1) den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) den Rialachán sin, laistigh den chéad cheathairíl (is é sin an ceann is ísle) den cheanglas maoláin chomhcheangailte, is é 0 an fachtóir a bheidh ann;

▼M5

(b) i gcás ina mbeidh caipiteal Gnáthchothromas Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun aon cheann de na ceanglais cistí dílse a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 a chomhlíonadh agus an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh a leagtar amach i bpointe (a) d'Airteagal 104(1) den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) den Rialachán sin, laistigh den dara ceathairíl den cheanglas maoláin chomhcheangailte, is é 0.2 an fachtóir a bheidh ann;

(c) i gcás ina mbeidh caipiteal Gnáthchothromas Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun na ceanglais cistí dílse a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 a chomhlíonadh agus an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh a leagtar amach i bpointe (a) d'Airteagal 104(1) den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) den Rialachán sin, laistigh den tríú ceathairíl den cheanglas maoláin chomhcheangailte, is é 0,4 an fachtóir a bheidh ann;

(d) ►C4 nuair atá an caipiteal Gnáthchothromas Leibhéal 1 a choinníonn an institiúid nach n-úsáidtear chun na ceanglais cistí dílse a leagtar amach i bpointí (a), (b) agus (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 a chomhlíonadh agus ◄ an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh a leagtar amach i bpointe (a) d'Airteagal 104(1) den Treoir seo, a chuirtear in iúl mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) den Rialachán sin, laistigh den cheathrú ceathairíl (is é sin, an ceann is airde) den cheanglas maoláin chomhcheangailte, is é 0,6 an fachtóir a bheidh ann.

Déanfar cuimsí íochtair agus uachtair gach ceathairíle den cheanglas maoláin chomhcheangailte a ríomh mar a leanas:

$$\text{Cuimse íochtair na ceathairle} = \frac{\text{Ceanglas maoláin chomhcheangailte}}{4} \cdot (Q_n - 1)$$

$$\text{Cuimse uachtair na ceathairíle} = \frac{\text{Ceanglas maoláin chomhcheangailte}}{4} \cdot Q_n$$

i gcás:

Q_n = orduimhir na ceathairíle lena mbaineann.

▼B

7. The restrictions imposed by this Article shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.

8. Where an institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2, it shall notify the competent authority and provide the following information:

▼B

(a) the amount of capital maintained by the institution, subdivided as follows:

(i) Common Equity Tier 1 capital,

(ii) Additional Tier 1 capital,

(iii) Tier 2 capital;

(b) the amount of its interim and year-end profits;

(c) the MDA calculated in accordance with paragraph 4;

(d) the amount of distributable profits it intends to allocate between the following:

(i) dividend payments,

(ii) share buybacks,

(iii) payments on Additional Tier 1 instruments,

(iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

9. Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the competent authority on request.

10. For the purposes of paragraphs 1 and 2, a distribution in connection with Common Equity Tier 1 capital shall include the following:

(a) a payment of cash dividends;

(b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;

(c) a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26(1)(a) of that Regulation;

(d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of that Regulation;

(e) a distribution of items referred to in points (b) to (e) of Article 26(1) of that Regulation.

▼M5

Airteagal 141a

Mainneachtain maidir leis an gceanglas maoláin chomhcheangailte a chomhlíonadh

Measfar go mainneoidh institiúid an ceanglas maoláin chomhcheangailte a chomhlíonadh chun críocha Airteagal 141 i gcás nach mbeidh cistí dílse aici i méid agus den cháilíocht is gá chun an ceanglas agus gach ceann de na ceanglais seo a leanas a chomhlíonadh san am céanna:

▼M5

(a) pointe (a) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh faoi phointe (a) d'Airteagal 104(1) den Rialachán seo;

(b) pointe (b) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh faoi phointe (a) d'Airteagal 104(1) den Rialachán seo;

(c) pointe (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus an ceanglas cistí dílse breise chun aghaidh a thabhairt ar rioscaí seachas riosca an luamhánaithe iomarcaigh faoi phointe (a) d'Airteagal 104(1) den Rialachán seo.

Airteagal 141b

Srianta ar dháileacháin i gcás ina mainnítear an ceanglas maoláin cóimheasa luamhánaithe a chomhlíonadh

1. Ní dhéanfaidh institiúid a chomhlíonann an ceanglas maoláin um chóimheas luamhánaithe de bhun Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013 dáileachán i ndáil le caipiteal Leibhéal 1 a mhéad a laghdódh sé a caipiteal ar Leibhéal 1 go leibhéal nach gcomhlíontar an ceanglas maoláin cóimheasa luamhánaithe a thuilleadh.

2. Institiúid a mhainníonn an ceanglas maoláin um chóimheas luamhánaithe a chomhlíonadh, ríomhfaidh sí an t-uasmhéid indáilte a bhaineann le cóimheasa luamhánaithe (L-MDA) i gcomhréir le mír 4 agus tabharfaidh sí fógra don údarás inniúil faoi sin.

I gcás ina mbeidh an chéad fhomhír infheidhme, ní dhéanfaidh an institiúid aon cheann de na gníomhaíochtaí seo a leanas sula mbeidh L-MDA ríofa aici:

(a) dáileachán a dhéanamh i ndáil le caipiteal Gnáthchothromas Leibhéal 1;

▼C4

(b) oibleagáid a chruthú chun luach saothair inathraitheach nó sochair phinsin lánroghnacha a íoc nó luach saothair inathraitheach a íoc más rud é gur cruthaíodh an oibleagáid chun íoc tráth ar mhainnigh an institiúid an ceanglas maoláin um chóimheas luamhánaithe a chomhlíonadh; nó

▼M5

(c) íocaíochtaí a dhéanamh ar ionstraimí Chaipiteal Breise Leibhéal 1.

3. I gcás ina mainneoidh institiúid a ceanglas maoláin cóimheasa luamhánaithe a chomhlíonadh nó bheith os a chionn, ní dháilfidh sí níos mó ná L-MDA arna ríomh i gcomhréir le mír 4 trí aon ghníomhaíocht dá dtagraítear i bpointí (a), (b) agus (c) den dara fomhír de mhír 2.

▼**M5**

4. Ríomhfaidh institiúidí L-MDA tríd an tsuim arna ríomh i gcomhréir le mír 5 a iolrú faoin bhfachtóir arna chinneadh i gcomhréir le mír 6. Laghdófar L-MDA d'aon mhéid a bheidh ann mar thoradh ar aon cheann de na gníomhaíochtaí dá dtagraítear i bpointe (a), i bpointe (b) nó i bpointe (c) den dara fomhír de mhír 2.

5. Beidh sa tsuim atá le hiolrú i gcomhréir le mír 4 na nithe seo a leanas:

(a) aon bhrabúis eatramhacha nach n-áirítear ar chaipiteal Gnáthchothromas Leibhéal 1 de bhun Airteagal 26(2) de Rialachán (AE) Uimh. 575/2013, ar glanbhrabúis iad i ndáil le haon dáileachán brabús nó aon íocaíocht a bhaineann le haon cheann de na gníomhaíochtaí dá dtagraítear i bpointe (a), (b) nó (c) den dara fomhír de mhír 2 den Airteagal seo;

móide

(b) aon bhrabúis deiridh bliana nach n-áirítear ar chaipiteal Gnáthchothromas Leibhéal 1 de bhun Airteagal 26(2) de Rialachán (AE) Uimh. 575/2013, ar glanbhrabúis iad i ndáil le haon dáileachán brabús nó aon íocaíocht a bhaineann leis na gníomhaíochtaí dá dtagraítear i bpointe (a), i bpointe (b) nó i bpointe (c) den dara fomhír de mhír 2 den Airteagal seo;

lúide

(c) méideanna a bheadh le híoc i gcáin dá mba rud é go mbeadh na hítimí a shonraítear i bpointí (a) agus (b) den mhír seo le coimeád.

6. Déanfar an fachtóir dá dtagraítear i mír 4 a chinneadh mar seo a leanas:

(a) i gcás ina mbeidh caipiteal Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun na ceanglais a chomhlíonadh faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus faoi phointe (a) d'Airteagal 104(1) den Treoir seo agus aghaidh a thabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach le pointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 429(4) den Rialachán sin, laistigh den chéad cheathairíl (is é sin, an ceann is ísle) den cheanglas maoláin cóimheasa luamhánaithe, is é 0 an fachtóir a bheidh ann;

(b) i gcás ina mbeidh caipiteal Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun na ceanglais a chomhlíonadh faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, agus faoi phointe (a) d'Airteagal 104(1) den Treoir seo agus aghaidh á tabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach le pointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta arna ríomh i gcomhréir le hAirteagal 429(4) den Rialachán sin, laistigh den dara ceathairíl den cheanglas maoláin cóimheasa luamhánaithe, is é 0,2 an fachtóir a bheidh ann;

▼M5

(c) i gcás ina mbeidh caipiteal Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun na ceanglais a chomhlíonadh faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus faoi phointe (a) d'Airteagal 104(1) den Treoir seo agus aghaidh á tabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach le pointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, arna sloinneadh mar chéatadán de mhéid iomlán na neamhchosanta arna ríomh i gcomhréir le hAirteagal 429(4) den Rialachán sin, laistigh den tríú ceathairíl den cheanglas maoláin cóimheasa luamhánaithe, is é 0,4 an fachtóir a bheidh ann;

(d) i gcás ina mbeidh caipiteal Leibhéal 1 arna choimeád ag an institiúid nach n-úsáidtear chun na ceanglais a chomhlíonadh faoi phointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus faoi phointe (a) d'Airteagal 104(1) den Treoir seo agus aghaidh á tabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach le pointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta arna ríomh i gcomhréir le hAirteagal 429(4) den Rialachán sin, laistigh den cheathrú ceathairíl (is é sin, an ceann is airde) den cheanglas maoláin cóimheasa luamhánaithe, is é 0,6 an fachtóir a bheidh ann.

Déanfar cuimsí íochtair agus uachtair gach ceathairíle den cheanglas maoláin um chóimheas luamhánaithe a ríomh mar seo a leanas:

$$\text{Cuimse íochtair na ceathairle} = \frac{\text{Ceanglas maoláin cóimheasa luamhánaithe}}{4} \cdot (Q_n - 1)$$

$$\text{Cuimse uachtair na ceathairíle} = \frac{\text{Ceanglas maoláin cóimheasa luamhánaithe}}{4} \cdot Q_n$$

i gcás:

Q_n = orduimhir na ceathairíle lena mbaineann.’

7. Ní bheidh feidhm ag na srianta a fhorchuirtear leis an Airteagal seo ach amháin i gcás na n-íocaíochtaí a mbíonn laghdú ar chaipiteal Leibhéal 1 nó laghdú ar bhrabúis de thoradh orthu, agus i gcás nach ionann íocaíocht a fhionraí nó mainneachtain í a íoc agus cás mainneachtana nó coinníoll chun tús a chur le himeachtaí faoin réimeas dócmhainneachta is infheidhme maidir leis an institiúid.

8. I gcás ina mainneoidh institiúid an ceanglas maoláin um chóimheas luamhánaithe a chomhlíonadh agus go bhfuil sé ar intinn aici aon bhrabús atá ar fáil lena dháileadh a dháileadh nó gníomhaíocht a dhéanamh dá dtagraítear i bpointí (a), (b) agus (c) den dara fomhír de mhír 2 den Airteagal seo, tabharfaidh sí fógra don údarás inniúil agus cuirfidh sí an fhaisnéis a liostaítear in Airteagal 141(8) ar fáil, cé is moite de phointe (a)(iii) de, agus de L-MDA arna ríomh i gcomhréir le mír 4 den Airteagal seo.

9. Déanfaidh na hinstitiúidí socruithe a choimeád chun a áirithiú go ndéantar méid na mbrabús atá ar fáil lena ndáileadh agus L-MDA a ríomh go cruinn, agus beidh siad in ann a léiriú don údarás inniúil a cruinne atá siad arna iarraidh sin orthu.

10. Chun críocha mhíreanna 1 agus 2 den Airteagal seo, áireofar i ndáileachán i dtaca le caipiteal Leibhéal 1 aon cheann de na míreanna a liostaítear in Airteagal 141(10).

▼M5

Airteagal 141c

Mainneachtain maidir leis an gceanglas maoláin cóimheasa luamhánaithe a chomhlíonadh

Measfar gur mhainnigh institiúid an ceanglas maoláin um chóimheas luamhánaithe a chomhlíonadh chun críocha Airteagal 141b den Treoir seo i gcás nach mbeidh Caipiteal Leibhéal 1 aici sa mhéid is gá chun an ceanglas a leagtar síos in Airteagal 92(1a) de Rialachán (AE) Uimh. 575/2013 agus an ceanglas a leagtar síos i bpointe (d) d'Airteagal 92(1) den Rialachán sin agus i bpointe (a) d'Airteagal 104(1) den Treoir seo a chomhlíonadh ag an am céanna, agus aghaidh á tabhairt ar riosca an luamhánaithe iomarcaigh nach gcumhdaítear go leordhóthanach le pointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013.

▼B

Article 142

Capital Conservation Plan

▼M5

1. I gcás ina mainneoidh institiúid an ceanglas maoláin chomhcheangailte atá uirthi nó, más infheidhme, an ceanglas maoláin um chóimheas luamhánaithe atá uirthi a chomhlíonadh, cuirfidh sí plean maidir le caomhnú caipitil le chéile agus cuirfear faoi bhráid an údaráis inniúil é tráth nach déanaí ná 5 lá oibre tar éis gur aithníodh gur mhainnigh an institiúid an ceanglas sin a chomhlíonadh, mura n-údaraíonn an t-údarás inniúil moill níos faide suas go 10 lá.

▼B

►C2 Competent authorities shall grant such authorisations only on the basis of the individual situation of an institution ◄ and taking into account the scale and complexity of the institution's activities.

2. The capital conservation plan shall include the following:

(a) estimates of income and expenditure and a forecast balance sheet;

(b) measures to increase the capital ratios of the institution;

(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;

(d) any other information that the competent authority considers to be necessary to carry out the assessment required by paragraph 3.

3. The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the competent authority considers appropriate.

4. If the competent authority does not approve the capital conservation plan in accordance with paragraph 3, it shall impose one or both of the following:

▼B

(a) require the institution to increase own funds to specified levels within specified periods;

(b) exercise its powers under Article 102 to impose more stringent restrictions on distributions than those required by Article 141.

TITLE VIII

DISCLOSURE BY COMPETENT AUTHORITIES

Article 143

General disclosure requirements

1. Competent authorities shall publish the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in their Member State in the field of prudential regulation;

(b) the manner of exercise of the options and discretions available in Union law;

▼M5

(c) na critéir ghinearálta agus na modheolaíochtaí a úsáideann siad san athbhreithniú agus sa mheastóireacht dá dtagraítear in Airteagal 97, lena n-airítear na critéir i ndáil le prionsabal na comhréireachta dá dtagraítear in Airteagal 97(4) a chur i bhfeidhm;

▼M6

(d) gan dochar do na forálacha a leagtar amach i dTeideal VII, Caibidil 1, Roinn II den Treoir seo agus, más infheidhme, na forálacha a leagtar amach i dTeideal IV, Caibidil 1, Roinn 2 de Threoir (AE) 2019/2034, sonraí staidrimh comhiomlána i ndáil le príomhghnéithe chur chun feidhme an chreata stuamachta i ngach Ballstát, lena n-airítear líon agus cineál na mbeart maoirseachta a dhéanfar i gcomhréir le pointe (a) d'Airteagal 102(1) den Treoir seo agus na bpionós riaracháin a fhorchuirfear i gcomhréir le hAirteagal 65 den Treoir seo.

▼B

2. The information published in accordance with paragraph 1 shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location.

3. EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the information listed in paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

▼B

Article 144

Specific disclosure requirements

1. For the purpose of Part Five of Regulation (EU) No 575/2013, competent authorities shall publish the following information:

(a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of Regulation (EU) No 575/2013;

(b) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU) No 575/2013, identified on an annual basis.

2. The competent authority of a Member State exercising the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 shall publish the following information:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 and the number of those which incorporate subsidiaries in a third country;

(c) on an aggregate basis for the Member State:

(i) the total amount of own funds on the consolidated basis of the parent institution in a Member State, which benefits from the exercise of the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013, which are held in subsidiaries in a third country;

(ii) the percentage of total own funds on the consolidated basis of parent institutions in a Member State which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of that Regulation on the consolidated basis of parent institutions in a Member State, which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds which are held in subsidiaries in a third country.

3. The competent authority which exercises the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 shall publish all the following:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 and the number of such parent institutions which incorporate subsidiaries in a third country;

▼B

(c) on an aggregate basis for the Member State:

(i) the total amount of own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 which are held in subsidiaries in a third country;

(ii) the percentage of total own funds of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of Regulation (EU) No 575/2013 of parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of that Regulation represented by own funds which are held in subsidiaries in a third country.

TITLE IX

DELEGATED AND IMPLEMENTING ACTS

Article 145

Delegated Acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 148 concerning the following:

(a) clarification of the definitions set out in Article 3 and Article 128 to ensure uniform application of this Directive;

(b) clarification of the definitions set out in Article 3 and Article 128 in order to take account, in the application of this Directive, of developments on financial markets;

(c) alignment of terminology on, and the framing of, definitions set out in Article 3 in accordance with subsequent acts on institutions and related matters;

(d) adjustment of the amounts referred to in Article 31(1) to take account of changes in the European Index of Consumer Prices as published by Eurostat, in line with, and at the same time as, the adjustments made under Article 4(7) of Directive 2002/92/EC;

(e) expansion of the content of the list referred to in Articles 33 and 34 and set out in Annex I or adaptation of the terminology used in that list to take account of developments on financial markets;

(f) identification of the areas in which the competent authorities must exchange information as set out in Article 50;

(g) adjustment of the provisions set out in Articles 76 to 88 and Article 98 in order to take account of developments on financial markets (in particular new financial products) or in accounting standards or requirements which take account of Union law, or with regard to the convergence of supervisory practices;

▼B

(h) deferral of the disclosure obligations in accordance with the second subparagraph of Article 89(3) where the Commission report submitted pursuant to the first subparagraph of that paragraph identifies significant negative effects;

(i) adjustments of the criteria set out in Article 23(1), in order to take account of future developments and to ensure the uniform application of this Directive.

▼M5

Airteagal 146

Gníomhartha cur chun feidhme

I gcomhréir leis an nós imeachta scrúdúcháin dá dtagraítear in Airteagal 147(2), déanfar athrú ar an méid caipitil tosaigh a leagtar síos in Airteagal 12 agus i dTeideal IV chun forbairtí eacnamaíocha agus airgeadaíochta a chur san áireamh a ghlacadh trí bhíthin gnímh cur chun feidhme.

▼B

Article 147

European Banking Committee

1. For the adoption of implementing acts, the Commission shall be assisted by the European Banking Committee. That committee shall be a committee within the meaning of Article 3(2) of Regulation (EU) No 182/2011.

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

Article 148

Exercise of the delegation

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

2. The delegation of power referred to in Article 145 shall be conferred for an indeterminate period of time from 17 July 2013.

3. The delegation of powers referred to in Article 145 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

▼B

5. A delegated act adopted pursuant to Article 145 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Article 149

Objections to regulatory technical standards

Where the Commission adopts a regulatory technical standard pursuant to this Directive which is the same as the draft regulatory technical standard submitted by EBA, the period during which the European Parliament and the Council may object to that regulatory technical standard shall be one month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by one month. By way of derogation from the second subparagraph of Article 13(1) of Regulation (EU) No 1093/2010, the period during which the European Parliament or the Council may object to that regulatory technical standard may, where appropriate, be further extended by one month.

TITLE X

AMENDMENTS OF DIRECTIVE 2002/87/EC

Article 150

Amendments of Directive 2002/87/EC

Article 21a of Directive 2002/87/EC is hereby amended as follows:

(a) in paragraph 2, point (a) is deleted;

(b) paragraph 3 is replaced by the following:

"3. In order to ensure consistent application of the calculation methods listed in Annex I, Part II, of this Directive, in conjunction with Article 49(1) of Regulation (EU) No 575/2013 and Article 228(1) of Directive 2009/138/EC, but without prejudice to Article 6(4) of this Directive, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards with regard to Article 6(2) of this Directive.

The ESA shall submit those draft regulatory technical standards to the Commission by five months before the date of application referred to in Article 309(1) of Directive 2009/138/EC.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.".

▼B

TITLE XI

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

Transitional provisions on the supervision of institutions exercising the freedom of establishment and the freedom to provide services

Article 151

Scope

1. The provisions in this Chapter shall apply instead of Articles 40, 41, 43, 49, 50 and 51 until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted pursuant to Article 460 of Regulation (EU) No 575/2013.

2. In order to ensure that the phasing in of supervisory arrangements for liquidity is fully aligned with the development of uniform liquidity rules, the Commission shall be empowered to adopt delegated acts in accordance with Article 145 postponing the date referred to in paragraph 1 by up to two years, where uniform liquidity rules have not been introduced in the Union because international standards on liquidity supervision have not yet been agreed upon at the date referred to in paragraph 1 of this Article.

Article 152

Reporting requirements

Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 156 of this Directive, host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.

Article 153

Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State

1. Where the competent authorities of a host Member State ascertain that a credit institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that Member State pursuant to this Directive involving powers of the host Member State's competent authorities, those authorities shall require the credit institution concerned to remedy its non-compliance.

2. If the credit institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly.

▼B

3. The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance. The nature of those measures shall be communicated to the competent authorities of the host Member State.

4. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not provided for in the Member State in question, the credit institution persists in violating the legal rules referred to in paragraph 1 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further breaches and, in so far as is necessary, to prevent that credit institution from initiating further transactions within its territory. Member States shall ensure that it is possible to serve the legal documents necessary for those measures on credit institutions within their territories.

Article 154

Precautionary measures

Before following the procedure provided for in Article 153, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question shall amend or abolish those measures.

Article 155

Responsibility

1. The prudential supervision of an institution, including that of the activities it carries out in accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2. Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

3. The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Article 156

Liquidity supervision

Host Member States shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.

▼B

Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of their monetary policies.

Such measures shall not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Article 157

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 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 such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

Article 158

Significant branches

1. The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 112(1) applies or to the competent authorities of the home Member State, for a branch of an institution other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.

2. That request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch in terms of deposits exceeds 2 % in the host Member State;

(b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the host Member State;

(c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and the consolidating supervisor where Article 112(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

▼B

The decisions referred to in the second and third subparagraphs shall be set out in a document containing full reasons, shall be transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the competent authorities of the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

3. The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) and carry out the tasks referred to in Article 112(1)(c) in cooperation with the competent authorities of the host Member State.

4. If a competent authority of a home Member State becomes aware of an emergency situation as referred to in Article 114(1), it shall alert as soon as practicable the authorities referred to in Article 58(4) and in Article 59(1).

►C2 5. Where Article 116 does not apply, the competent authorities supervising a institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the reaching of a joint decision on the designation of a branch as being significant under paragraph 2 of this Article and the exchange of information under Article 50. ◄ The establishment and functioning of the college shall be based on written arrangements determined, after consulting the competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

6. The decision of the competent authority of the home Member State shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 155(3) and the obligations referred to in paragraph 2 of this Article.

7. The competent authority of the home Member State shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The competent authority of the home Member State shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

Article 159

On-the-spot checks

1. Host Member States shall provide that, where an institution authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through an intermediary on-the-spot checks of the information referred to in Article 50.

▼B

2. The competent authorities of the home Member State may also, for the purposes of such on-the-spot checking of branches, have recourse to one of the other procedures set out in Article 118.

3. Paragraphs 1 and 2 shall not affect the right of the competent authorities of the host Member State to carry out, in the discharge of their responsibilities under this Directive, on-the-spot checks of branches established within their territory.

▼M5

CAIBIDIL 1A

Forálacha idirthréimhseacha maidir le cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha

Airteagal 159a

Forálacha idirthréimhseacha maidir le cuideachtaí sealbhaíochta airgeadais agus cuideachtaí sealbhaíochta airgeadais mheasctha a fhormheas

Déanfaidh máthairchuideachtaí sealbhaíochta airgeadais agus máthairchuideachtaí sealbhaíochta airgeadais mheasctha atá ann cheana ar an 27 Meitheamh 2019 iarratas ar fhormheas i gcomhréir le hAirteagal 21a faoin 28 Meitheamh 2021. I gcás ina mainneoidh cuideachta shealbhaíochta airgeadais nó cuideachta shealbhaíochta airgeadais mheasctha iarratas ar fhormheas a dhéanamh faoin 28 Meitheamh 2021, déanfar bearta iomchuí de bhun Airteagal 21a(6).

Le linn na hidirthréimhse dá dtagraítear sa chéad mhír den Airteagal seo, tabharfar na cumhachtaí maoirseachta uile is gá do na húdaráis inniúla faoin Treoir seo i dtaca le cuideachtaí sealbhaíochta airgeadais nó cuideachtaí sealbhaíochta airgeadais mheasctha faoi réir formheas i gcomhréir le hAirteagal 21a chun críocha na maoirseachta comhdhlúite.

▼B

CHAPTER 2

Transitional provisions for capital buffers

Article 160

Transitional provisions for capital buffers

1. This Article amends the requirements of Articles 129 and 130 for a transitional period between 1 January 2016 and 31 December 2018.

2. For the period from 1 January 2016 until 31 December 2016:

(a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0,625 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

▼B

(b) the institution-specific countercyclical capital buffer shall be no more than 0,625 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

3. For the period from 1 January 2017 until 31 December 2017:

(a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1,25 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

(b) the institution-specific countercyclical capital buffer shall be no more than 1,25 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

4. For the period from 1 January 2018 until 31 December 2018:

(a) the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1,875 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

(b) the institution-specific countercyclical capital buffer shall be no more than 1,875 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

5. The requirement for a capital conservation plan and the restrictions on distributions referred to in Articles 141 and 142 shall apply during the transitional period between 1 January 2016 and 31 December 2018 where institutions fail to meet the combined buffer requirement taking into account the requirements set out in paragraphs 2 to 4 of this Article.

6. Member States may impose a shorter transitional period than that specified in paragraphs 1 to 4 and thereby implement the capital conservation buffer and the countercyclical capital buffer from 31 December 2013. Where a Member State imposes such a shorter transitional period, it shall inform the relevant parties, including the Commission, the ESRB, EBA and the relevant supervisory colleges, accordingly. Such a shorter transitional period may be recognised by other Member States. Where another Member State recognises such a shorter transitional period, it shall notify the Commission, the ESRB, EBA and the relevant supervisory college accordingly.

7. Where a Member State imposes a shorter transitional period for the countercyclical capital buffer the shorter period shall apply only for the purposes of the calculation of the institution-specific countercyclical capital buffer by institutions that are authorised in the Member State for which the designated authority is responsible.

▼B

CHAPTER 3

Final provisions

Article 161

Review and report

1. The Commission shall conduct periodic reviews of the implementation of this Directive in order to ensure that its implementation does not result in manifest discrimination between institutions on the basis of their legal structure or ownership model.

2. By 30 June 2016, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, together with a legislative proposal if appropriate, on the provisions on remuneration in this Directive and in Regulation (EU) No 575/2013, following a review thereof, taking into account international developments and with particular regard to:

(a) their efficiency, implementation and enforcement, including the identification of any lacunae arising from the application of the principle of proportionality to those provisions;

(b) the impact of compliance with the principle in Article 94(1)(g) in respect of:

(i) competitiveness and financial stability; and

(ii) any staff working effectively and physically in subsidiaries established outside the EEA of parent institutions established within the EEA.

That review shall consider, in particular, whether the principle set out in Article 94(1)(g) should continue to apply to any staff covered by point (b)(ii) of the first subparagraph.

3. From 2014, EBA shall, in cooperation with EIOPA and ESMA, publish a biannual report analysing the extent to which Member States' law refers to external credit ratings for regulatory purposes and the steps taken by Member States to reduce such references. Those reports shall outline how the competent authorities meet their obligations under Article 77(1) and (3) and Article 79(b). Those reports shall also outline the degree of supervisory convergence in that regard.

4. By 31 December 2014, the Commission shall review and report on the application of Articles 108 and 109 and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

5. By 31 December 2016, the Commission shall review and report on the results achieved under Article 91(11), including the appropriateness of benchmarking diversity practices, taking into account all relevant Union and international developments, and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

6. By 31 December 2015, the Commission shall consult the ESRB, EBA, EIOPA, ESMA and other relevant parties on the effectiveness of information-sharing arrangements under this Directive, both in normal times and during times of stress.

▼B

7. By 31 December 2015, EBA shall review and submit a report to the Commission on the application of this Directive and of Regulation (EU) No 575/2013 on the cooperation of the Union and Member States with third countries. That report shall identify any areas which require further development as regards cooperation and information sharing. EBA shall publish the report on its website.

8. Upon receiving a mandate from the Commission, EBA shall explore whether financial sector entities which declare that they carry out their activities in accordance with Islamic banking principles are adequately covered by this Directive and by Regulation (EU) No 575/2013. The Commission shall review the report prepared by EBA and shall submit a legislative proposal to the European Parliament and to the Council if appropriate.

9. By 1 July 2014, EBA shall report to the Commission on credit institutions' use of and benefits from ESCB central banks longer-term refinancing operations and similar central bank funding support measures. Based on that report and after consulting the ECB, the Commission shall, by 31 December 2014, submit a report to the European Parliament and to the Council on the use of and benefits from those refinancing operations and funding support measures for credit institutions authorised in the Union, together with a legislative proposal on the use of such refinancing operations and funding support measures if appropriate.

▼M5

10. Faoin 31 Nollaig 2023, déanfaidh an Coimisiún athbhreithniú agus tuarascáil a chur i dtoll a chéile ar chur chun feidhme agus chur i bhfeidhm na gcumhachtaí maoirseachta dá dtagraítear i bpointe (j) agus (l) d'Airteagal 104(1) agus cuirfidh sé tuarascáil faoi bhráid Pharlaimint na hEorpa agus na Comhairle.

▼B

Article 162

Transposition

1. By 31 December 2013 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive.

▼C1

Member States shall apply those provisions from 1 January 2014.

▼B

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

▼B

2. By way of derogation from paragraph 1, Title VII, Chapter 4 shall apply from 1 January 2016.

3. The laws, regulations and administrative provisions necessary to comply with Article 94(1)(g) shall require institutions to apply the principles laid down therein to remuneration awarded ►C1 for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before or after 1 January 2014. ◄

4. When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

5. By way of derogation from paragraph 1 of this Article, Article 131 shall apply from 1 January 2016. Member States shall implement Article 131(4) from 1 January 2016 in the following manner:

(a) 25 % of the G-SII buffer, set in accordance with Article 131(4), in 2016;

(b) 50 % of the G-SII buffer, set in accordance with Article 131(4), in 2017;

(c) 75 % of the G-SII buffer, set in accordance with Article 131(4), in 2018; and

(d) 100 % of the G-SII buffer, set in accordance with Article 131(4), in 2019.

6. ►C1 By way of derogation from paragraph 2 of this Article, Article 133 shall apply from 1 January 2014. ◄

Article 163

Repeal

Directives 2006/48/EC and 2006/49/EC are repealed with effect from 1 January 2014.

References to the repealed Directives shall be construed as references to this Directive and to Regulation (EU) No 575/2013 and shall be read in accordance with the correlation table set out in Annex II to this Directive and in Annex IV to Regulation (EU) No 575/2013.

Article 164

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 165

Addressees

This Directive is addressed to the Member States.

▼B

ANNEX I

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.

2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3. Financial leasing.

▼M3

4. Payment services as defined in point (3) of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council ([1]).

▼B

5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.

6. Guarantees and commitments.

7. Trading for own account or for account of customers in any of the following:

   (a) money market instruments (cheques, bills, certificates of deposit, etc.);

   (b) foreign exchange;

   (c) financial futures and options;

   (d) exchange and interest-rate instruments;

   (e) transferable securities.

8. Participation in securities issues and the provision of services relating to such issues.

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management and advice.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.

15. Issuing electronic money.

The services and activities provided for in Sections A and B of Annex I to Directive 2004/39/EC, when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition in accordance with this Directive.

([1]) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and amending Directives 2002/65/EC, 2009/110/EC, 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

▼B

ANNEX II

CORRELATION TABLE

This Directive	Directive 2006/48/EC	Directive 2006/49/EC
Article 1	Article 1(1)	
Article 2(1)		
Article 2(2)		
Article 2(3)		
Article 2(4)	Article 1(2)	
Article 2(5)	Article 2	
Article 2(6)	Article 1(3)	
Article 3	Article 4	
Article 3(1), point (53)	Article 4, point (49)	
Article 4(1)		
Article 4(2)		
Article 4(3)		
Article 4(4)		
Article 4(5)		Article 35(1)
Article 4(6)		
Article 4(7)		
Article 4(8)		
Article 5	Article 128	
Article 6	Article 42b(1)	
Article 7	Article 40(3)	
Article 8(1)	Article 6(1)	
Article 8(2)	Article 6(2)	
Article 8(3)	Article 6(3)	
Article 8(4)		
Article 9	Article 5	
Article 10	Article 7	
Article 11	Article 8	
Article 12(1)	Article 9(1), first subparagraph	
Article 12(2)	Article 9(1), second subparagraph	

▼B

This Directive	Directive 2006/48/EC	Directive 2006/49/EC
Article 12(3)	Article 9(1), third subparagraph	
Article 12(4)	Article 9(2)	
Article 13(1)	Article 11(1)	
Article 13(2)	Article 11(2)	
Article 14(1)	Article 12(1)	
Article 14(2)	Article 12(2)	
Article 14(3)	Article 12(3)	
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