



STATUTORY INSTRUMENTS.

S.I. No. 158 of 2014



EUROPEAN UNION (CAPITAL REQUIREMENTS) REGULATIONS
2014

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S.I. No. 158 of 2014

EUROPEAN UNION (CAPITAL REQUIREMENTS) REGULATIONS
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I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Capital Requirements) Regulations 2014.

(2) Regulations 39, 40, 42, 45, 46 and 47 to 49 come into operation, and Part 8 is revoked on the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted pursuant to Article 460 of the Capital Requirements Regulation.

(3) By way of derogation from Article 162(1) of the Capital Requirements Directive Regulations 115 to 130 (other than Regulation 119), shall apply from 1 January 2016.

Scope

2. (1) These Regulations apply to institutions.

(2) Regulation 28 applies to local firms.

(3) Regulation 29 applies to the firms referred to in point (2)(c) of Article 4(1) of the Capital Requirements Regulation.

(4) Regulation 32(3) to (8) and Chapter 3 of Part 6 apply to financial holding companies, mixed-financial holding companies and mixed-activity holding companies which have their head offices in the Union.

(5) These Regulations do not apply to the following:

(a) access to the activity of investment firms in so far as it is regulated by Directive 2004/39/EC;

(b) central banks;

¹OJ No. L 176, 27.06.2013, p. 338

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 4th April, 2014.*

(c) post office giro institutions;

(d) credit unions and friendly societies.

(6) The entities referred to in paragraph (5)(a), (c) and (d) shall be treated as financial institutions for the purposes of—

(a) Regulation 32(3) to (8), and

(b) Chapter 3 of Part 6.

Interpretation

3. (1) In these Regulations—

“Act of 1942” means Central Bank Act 1942 (No. 22 of 1942);

“Act of 1971” means Central Bank Act 1971 (No. 24 of 1971);

“Act of 1989” means Building Societies Act 1989 (No. 17 of 1989);

“Act of 1997” means Central Bank Act 1997 (No. 8 of 1997);

“Act of 2013” means Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013);

“ancillary services undertaking” has the meaning assigned to it in point (18) of Article 4(1) of the Capital Requirements Regulation;

“assessment period” has the meaning assigned to it by Regulation 14(3);

“asset management company” has the meaning assigned to it in point (19) of Article 4(1) of the Capital Requirements Regulation;

“authorisation”, in relation to a credit institution in the State, means an authorisation or licence by the Bank to carry on the business of a credit institution in accordance with the provisions of any financial services legislation, other than an authorisation granted under section 9A of the Act of 1971;

“Bank” means Central Bank of Ireland;

“branch” has the meaning assigned to it in point (17) of Article 4(1) of the Capital Requirements Regulation;

“building society” has the same meaning as it has in section 2 of the Act of 1989;

“Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC¹;

“Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012²;

“central banks” has the meaning assigned to it in point (46) of Article 4(1) of the Capital Requirements Regulation;

“close links” has the meaning assigned to it in point (38) of Article 4(1) of the Capital Requirements Regulation;

“combined committee” has the meaning assigned to it by Regulation 64(11);

“Commission” means European Commission;

“competent authority” means the Bank or, in the case of another Member State, the body or bodies designated by that state to act as a competent authority for the purposes of the Capital Requirements Directive and the Capital Requirements Regulation;

“consolidated basis” has the meaning assigned to it in point (48) of Article 4(1) of the Capital Requirements Regulation;

“consolidated situation” has the meaning assigned to it in point (47) of Article 4(1) of the Capital Requirements Regulation;

“consolidating supervisor” has the meaning assigned to it in point (41) of Article 4(1) of the Capital Requirements Regulation;

“control” has the meaning assigned to it in point (37) of Article 4(1) of the Capital Requirements Regulation;

“court” means High Court;

“credit institution” has the meaning assigned to it in point (1) of Article 4(1) of the Capital Requirements Regulation;

“credit risk mitigation” has the meaning assigned to it in point (57) of Article 4(1) of the Capital Requirements Regulation;

“designated authority” means the authority designated by a Member State (other than the State) for the purposes of Article 458 of the Capital Requirements Regulation;

“Directive 83/349/EEC” means Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts³;

“Directive 2001/24/EC” means Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions⁴;

²OJ No. L 176, 27.06.2013, p. 1

³OJ No. L 193, 18.07.1983, p. 1

⁴OJ No. L 125, 05.05.2001, p. 15

“Directive 2002/87/EC” means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council⁵;

“Directive 2004/39/EC” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC⁶;

“Directive 2004/109/EC” means 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 and amending Directive 2001/34/EC⁷;

“Directive 2006/43/EC” means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC⁸;

“Directive 2009/65/EC” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)⁹;

“Directive 2009/138/EC” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)¹⁰;

“discretionary pension benefits” has the meaning assigned to it in point (73) of Article 4(1) of the Capital Requirements Regulation;

“EBA” means European Banking Authority, established pursuant to Regulation (EU) No 1093/2010;

“enactment” means an Act or Statutory Instrument, or any portion of an Act or Statutory Instrument;

“ESCB” means European System of Central Banks;

“ESCB central banks” has the meaning assigned to it in point (45) of Article 4(1) of the Capital Requirements Regulation;

⁵OJ No. L 35, 11.02.2003, p. 1

⁶OJ No. L 145, 30.04.2004, p. 1

⁷OJ No. L 390, 31.12.2004, p. 38

⁸OJ No. L 157, 09.06.2006, p. 87

⁹OJ No. L 302, 17.11.2009, p. 32

¹⁰OJ No. L 335, 17.12.2009, p. 1

“ESRB” means European Stability Review Board;

“EU parent financial holding company” has the meaning assigned to it in point (31) of Article 4(1) of the Capital Requirements Regulation;

“EU parent institution” has the meaning assigned to it in point (29) of Article 4(1) of the Capital Requirements Regulation;

“EU parent mixed-financial holding company” has the meaning assigned to it in point (33) of Article 4(1) of the Capital Requirements Regulation;

“European Banking Authority” means the authority established pursuant to Regulation (EU) No 1093/2010;

“European Stability Review Board” means the body established pursuant to Regulation (EU) No 1092/2010;

“European System of Financial Supervision” has the same meaning as it has in Article 1(3) of Regulation (EU) No 1092/2010;

“financial holding company” has the meaning assigned to it in point (20) of Article 4(1) of the Capital Requirements Regulation;

“financial institution” has the meaning assigned to it in point (26) of Article 4(1) of the Capital Requirements Regulation;

“financial instrument” has the meaning assigned to it in point (50) of Article 4(1) of the Capital Requirements Regulation;

“financial services legislation” has the meaning assigned to it in section 3(1) of the Act of 2013;

“G-SII” has the meaning assigned to it by Regulation 121(1);

“home Member State” has the meaning assigned to it in point (43) of Article 4(1) of the Capital Requirements Regulation;

“host Member State” has the meaning assigned to it in point (44) of Article 4(1) of the Capital Requirements Regulation;

“initial capital” has the meaning assigned to it in point (51) of Article 4(1) of the Capital Requirements Regulation;

“institution” has the meaning assigned to it in point (3) of Article 4(1) of the Capital Requirements Regulation;

“insurance undertaking” has the meaning assigned to it in point (5) of Article 4(1) of the Capital Requirements Regulation;

“internal approaches” means the—

- (a) internal ratings based approach referred to in Article 143(1),

- (b) internal models approach referred to in Article 221,
- (c) own estimates approach referred to in Article 225,
- (d) advanced measurement approaches referred to in Article 312(2),
- (e) internal models method referred to in Articles 283 and 363, and
- (f) internal assessment approach referred to in Article 259(3),

of the Capital Requirements Regulation;

“investment firm” has the meaning assigned to it in point (2) of Article 4(1) of the Capital Requirements Regulation;

“leverage” has the meaning assigned to it in point (93) of Article 4(1) of the Capital Requirements Regulation;

“local firm” has the meaning assigned to it in point (4) of Article 4(1) of the Capital Requirements Regulation;

“management body” means an institution's body or bodies, which are appointed in accordance with the law of the State, 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;

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

“MDA” has the meaning assigned to it in Regulation 129(2);

“Member State” means Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area¹¹ signed at Oporto on 2 May 1992 (as adjusted by the Protocol¹² signed at Brussels on 17 March 1993), as amended;

“Minister” means Minister for Finance;

“mixed-activity holding company” has the meaning assigned to it in point (22) of Article 4(1) of the Capital Requirements Regulation;

“mixed-financial holding company” has the meaning assigned to it in point (21) of Article 4(1) of the Capital Requirements Regulation;

“national macroprudential authority” means the Bank;

“O-SII” has the meaning assigned to it in Regulation 121(1);

¹¹OJ No. L 1, 03.01.1994, p. 3

¹²OJ No. L 1, 03.01.1994, p. 572

“operational risk” has the meaning assigned to it in point (52) of Article 4(1) of the Capital Requirements Regulation;

“own funds” has the meaning assigned to it in point (118) of Article 4(1) of the Capital Requirements Regulation;

“parent financial holding company in a Member State” has the meaning assigned to it in point (30) of Article 4(1) of the Capital Requirements Regulation;

“parent mixed-financial holding company in a Member State” has the meaning assigned to it in point (32) of Article 4(1) of the Capital Requirements Regulation;

“parent undertaking” has the meaning assigned to it in point (15) of Article 4(1) of the Capital Requirements Regulation;

“participation” has the meaning assigned to it in point (35) of Article 4(1) of the Capital Requirements Regulation;

“prescribed percentage” means 20 per cent, 33 per cent or 50 per cent;

“proposed acquirer” means any natural or legal person, or such persons acting in concert;

“qualifying holding” has the meaning assigned to it in point (36) of Article 4(1) of the Capital Requirements Regulation;

“regulated market” has the meaning assigned to it in point (92) of Article 4(1) of the Capital Requirements Regulation;

“Regulation (EU) No 1092/2010” means Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board¹³;

“Regulation (EU) No 1093/2010” means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC¹⁴;

“risk of excessive leverage” has the meaning assigned to it in point (94) of Article 4(1) of the Capital Requirements Regulation;

“securitisation” has the meaning assigned to it in point (61) of Article 4(1) of the Capital Requirements Regulation;

“securitisation position” has the meaning assigned to it in point (62) of Article 4(1) of the Capital Requirements Regulation;

¹³OJ No. L331, 15.12.2010, p. 1

¹⁴OJ No. L331, 15.12.2010, p. 12

“securitisation special purpose entity” has the meaning assigned to it in point (66) of Article 4(1) of the Capital Requirements Regulation;

“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;

“SSPE” means securitisation special purpose entity;

“sponsor” has the meaning assigned to it in point (14) of Article 4(1) of the Capital Requirements Regulation;

“sub-consolidated basis” has the meaning assigned to it in point (49) of Article 4(1) of the Capital Requirements Regulation;

“subsidiary” has the meaning assigned to it in point (16) of Article 4(1) of the Capital Requirements Regulation;

“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;

“systemically important institution” means an—

- (a) EU parent institution,
- (b) EU parent financial holding company,
- (c) EU parent mixed-financial holding company, or
- (d) Institution,

the failure or malfunction of which could lead to systemic risk;

“third country” means a country that is not a Member State;

“trading book” has the meaning assigned to it in point (86) of Article 4(1) of the Capital Requirements Regulation;

“TSB Act” means Trustee Savings Banks Act 1989 (No. 21 of 1989);

“UCITS management company” has the meaning assigned to it by Regulation 16.

(2) A word or expression which is used in these Regulations and is also used in the Capital Requirements Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Capital Requirements Directive.

Part 2

COMPETENT AUTHORITY

Designation of competent authority

4. (1) The Bank is designated as the competent authority that carries out the functions and duties provided for in the Capital Requirements Directive and the Capital Requirements Regulation.

(2) Institutions shall provide the Bank with all the information necessary for the assessment of their compliance with these Regulations and the Capital Requirements Regulation.

(3) Institutions shall at all times have—

- (a) internal control mechanisms, and
- (b) administrative and accounting procedures,

that permit their compliance with these Regulations and the Capital Requirements Regulation to be verified.

(4) Institutions shall—

- (a) register all their transactions, and
- (b) document systems and processes,

which are subject to these Regulations and the Capital Requirements Regulation in such a manner that the Bank is able to check their compliance with these Regulations and the Capital Requirements Regulation at all times.

Cooperation within the European System of Financial Supervision

5. (1) In the exercise of its duties as competent authority, the Bank 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 the Capital Requirements Directive and the Capital Requirement Regulation.

(2) For the purposes of paragraph (1), the Bank shall—

- (a) as a party to the ESFS, cooperate with the competent authorities of other Member States with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between it 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) participate in the activities of the EBA and, as appropriate, in the colleges of supervisors,

(c) make every effort to comply with those guidelines and recommendations issued by the 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, and

(d) cooperate closely with the ESRB.

(3) In this Regulation, “ESFS” means European System of Financial Supervision.

European Union dimension of supervision

6. The Bank shall, in the exercise of its general duties as competent authority, duly consider the potential impact of its 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.

Part 3

REQUIREMENTS FOR ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS

Chapter 1

General requirements for access to the activity of credit institutions

Branches of credit institutions authorised in another Member State

7. (1) Any provision of financial services legislation or any other enactment which has the effect of requiring a credit institution to seek, or to hold, an authorisation from the Bank, or to hold endowment capital, in order to establish or carry on business in the State, shall not apply to a branch of such a credit institution where—

(a) the credit institution is authorised to carry on such business in another Member State, and

(b) the authorisation is in accordance with the Capital Requirements Directive and the Capital Requirements Regulation.

(2) The establishment and supervision of branches referred to in paragraph (1) shall be effected in accordance with—

(a) Regulations 34(1) and (2) and 35,

(b) Regulation 37,

(c) Chapter 4 of Part 5,

(d) Regulation 45, and

(e) Regulations 61 to 63.

Name of credit institutions

8. (1) For the purposes of exercising their activities in the State, credit institutions may, notwithstanding the provisions of any enactment concerning the use of the words “bank”, “savings bank” or other banking names, use in the State the same name that they use in the Member State in which their head office is situated.

(2) In the event of there being any danger of confusion, the Bank may, for the purposes of clarification, require that the name of the credit institution be accompanied by certain explanatory particulars, and the credit institution shall comply with every such requirement.

Notification where Bank acts as consolidating supervisor

9. Where the Bank acts as consolidating supervisor, it shall provide the competent authorities concerned and the EBA with all information regarding the group of credit institutions, in accordance with—

(a) section 9G(7) of the Act of 1971 and section 17D(7) of the Act of 1989, and

(b) Regulations 61(1) and 97(2),

and, in particular, regarding the legal and organisational structure of the group and its governance.

Chapter 2

*Qualifying holding in a credit institution**Restrictions on acquiring and disposing of qualifying holdings in credit institutions*

10. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in a credit institution without having previously notified the Bank in writing of the information in paragraph (3).

(2) A proposed acquirer who has a qualifying holding in a credit institution shall not, without having previously notified the Bank in writing of the information in paragraph (3), directly or indirectly increase the size of the holding where, as a result of the increase—

(a) the percentage of the capital of, or the voting rights in, the credit institution that the proposed acquirer holds would reach or exceed a prescribed percentage, or

(b) in the case of a proposed acquirer that is a company or other body corporate, the credit institution would become the proposed acquirer’s subsidiary.

(3) A notification under paragraph (1) or (2) shall include the following information:

- (a) the size of the intended holding;
- (b) sufficient information to enable the Bank to consider the proposed acquisition concerned against the criteria in paragraphs (1) and (2) of Regulation 15, and in particular information regarding—
 - (i) the identity of the proposed acquirer,
 - (ii) the individuals to be responsible for the management of the proposed acquisition,
 - (iii) how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments), and
 - (iv) the structure of the resulting group;
- (c) the information referred to in paragraph (4).

(4) A notification under paragraph (1) or (2) shall include the information, and any document, required by the form of notification published by the Bank on 25 May 2009 entitled “Acquiring Transaction Notification Form”, as amended or updated from time to time by the Bank and which shall be made available on the official website of the Bank.

Application to court where no notification given

11. (1) A person who concludes an acquisition to which Regulation 10 applies without having notified the Bank in accordance with that Regulation may make an application to the court under this Regulation and the court may, if it is satisfied that the failure was inadvertent and that it is in the interests of justice to do so, make an order—

- (a) requiring the person to provide the Bank with the information required under Regulation 10, and
- (b) requiring the Bank to carry out an assessment in accordance with Regulations 15 and 16.

(2) An application under paragraph (1) shall be on notice to the Bank and the Bank shall be entitled to appear, be heard and adduce evidence at the hearing of the application.

(3) Notice of an application under paragraph (1) shall be served on the Bank at least 14 days before the date of hearing of the application.

(4) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of application, grounding affidavit and exhibits (if any) shall be filed by the applicant at least 4 days before the application is heard.

(5) Where any person who ought under this Regulation to have been served has not been so served, the affidavit shall state that fact and the reason for it.

(6) Where the Bank carries out an assessment on foot of an order under paragraph (1) and it is satisfied that no grounds exist to oppose the application in accordance with Regulation 18 it may—

- (a) lift a suspension of voting rights under Regulation 21(2), and
- (b) retrospectively validate the exercise of voting rights during such a suspension.

Notification in case of divestiture

12. (1) A person shall not, directly or indirectly, dispose of a qualifying holding in a credit institution without having previously notified the Bank in writing of the intended size of the holding.

(2) A person shall not, without having previously notified the Bank in writing, directly or indirectly dispose of part of a qualifying holding in a credit institution if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the credit institution that the person holds would fall to, or below, a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the credit institution would cease to be the person's subsidiary.

Credit institutions to provide information on certain acquisitions and disposals

13. (1) If a credit institution becomes aware of the acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the credit institution shall inform the Bank in writing of the acquisition or increase without delay.

(2) If a credit institution becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to, or below, a prescribed percentage, the credit institution shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition

14. (1) Within 2 working days after receiving a completed notification under paragraph (1) or (2) of Regulation 10, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Regulation 10(3) and (4) to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition (in these Regulations referred to as the “assessment period”) concerned in accordance with Regulation 15.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition.

(6) Where the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request within 2 working days.

(7) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(8) Subject to paragraph (10), where the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

(a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and

(b) 20 working days.

(9) The Bank may make further requests for further information to complete or clarify information already supplied but such a further request does not interrupt the assessment period.

(10) The Bank may, by written notice to the proposed acquirer concerned, extend to 30 working days the interruption, referred to in paragraph (8), in relation to a proposed acquisition if the proposed acquirer—

(a) is situated or regulated in a third country; or

(b) is a natural or legal person not subject to supervision under—

(i) Directive 2004/39/EC,

(ii) Directive 2009/65/EC,

(iii) Directive 2009/138/EC, or

(iv) the Capital Requirements Directive.

Assessment of proposed acquisition

15. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the credit institution concerned.

(2) In assessing a proposed acquisition, the Bank shall—

(a) have regard to the likely influence of the proposed acquirer on the credit institution concerned, and

(b) assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:

- (i) the reputation of the proposed acquirer;
- (ii) the reputation, knowledge, skills and experience, as set out in Regulation 79, of any member of the management body and any member of senior management who will direct the business of the credit institution as a result of the proposed acquisition;
- (iii) 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;
- (iv) whether the credit institution will be able to comply and continue to comply with the prudential requirements of these Regulations, the Capital Requirements Regulation and where applicable other European Union law, in particular—
 - (I) Directive 2002/87/EC, and
 - (II) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009¹⁵;
- (v) 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;
- (vi) 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 2005¹⁶) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall neither impose any prior conditions in respect of the level of holding that must be acquired nor examine a proposed acquisition in terms of the economic needs of the market.

(4) Where 2 or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

¹⁵OJ No. L 267, 10.10.2009, p. 7

¹⁶OJ No. L 309, 25.11.2005, p. 15

Bank to cooperate with competent authorities of other Member States in certain cases

16. (1) In carrying out its assessment of a proposed acquisition, the Bank shall consult with the competent authorities of other relevant Member States if the proposed acquirer concerned is—

- (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 (in these Regulations referred to as a "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, or
- (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 Bank shall, without undue delay, provide competent authorities in other Member States with any information that is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate all relevant information upon request and all essential information on its own initiative.

(3) A decision by the Bank, in the case of a proposed acquisition in a credit institution authorised by the Bank, shall indicate any views or reservations expressed by the competent authorities responsible for the proposed acquirer concerned.

(4) In this Regulation, “reinsurance undertaking” has the meaning assigned to it in point (6) of Article 4(1) of the Capital Requirements Regulation.

Bank may fix period for completion of acquisition, etc.

17. The Bank may fix a maximum period within which a proposed acquisition shall be concluded, and may extend such period where appropriate.

Notice of Bank’s decision

18. (1) Where, on completing the assessment of a proposed acquisition, the Bank decides to oppose it, the Bank shall, within 2 working days, but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) Where the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is deemed to have been approved.

Bank may oppose certain acquisitions

19. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraphs (1) and (2) of Regulation 15,
- (b) the information provided by the proposed acquirer concerned in its notification under paragraph (1) or (2) of Regulation 10 is incomplete, or
- (c) the proposed acquirer has not provided information in response to a request under paragraph (5) or (9) of Regulation 14.

Decision to oppose proposed acquisition to be appealable

20. A decision by the Bank to oppose a proposed acquisition is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Circumstances in which proposed acquisition may be concluded

21. (1) The proposed acquirer may conclude a proposed acquisition only where—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with paragraph (1) or (2) of Regulation 10,
- (b) the Bank has acknowledged that notification, in accordance with Regulation 14(1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) Where an acquisition is made other than in accordance with paragraph (1) any exercise of voting rights based on the acquisition of the holding concerned is suspended.

Effect of section 201 of Companies Act 1963

22. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the period of assessment in relation to the transaction under Regulation 14.

Credit institutions to provide information about shareholdings, etc.

23. A credit institution admitted to trading on a regulated market shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Powers in relation to certain persons with qualifying holdings

24. (1) Where the Bank has reason to believe that a proposed acquirer is exercising an influence on the direction of the affairs of the credit institution which is, or is likely to be, detrimental to the prudent and sound management of the credit institution, it shall, subject to paragraph (2), notify the persons that it so believes and direct the persons in writing to take specified measures to bring that influence to an end within a specified period.

(2) Before issuing a direction under paragraph (1), the Bank shall notify the persons concerned of its intention to issue the direction and shall give the persons an opportunity to make such representations on the matter as they may wish to make within a period specified by the Bank in the notification.

(3) A direction issued under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(4) Where the Bank is of the opinion that a direction under paragraph (1) has not been complied with by the persons concerned, or has not been complied with within the specified period of time, the Bank may, without prejudice to any of its other functions, do any one or more of the following:

(a) issue a direction to the credit institution concerned under section 21 (as amended by the Central Bank and Financial Services Authority of Ireland Act 2004 (No. 21 of 2004)) of the Act of 1971 (and for that purpose the references in that section to ‘holder of a licence’ and ‘holder’ shall be read as a reference to a credit institution and the references to ‘banking business’ and ‘banking’ shall be read as references to the taking of deposits or granting of credit by a credit institution) or section 45 of the Act of 2013;

(b) apply to the court in a summary manner—

(i) for an injunction prohibiting the persons concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the credit institution and prohibiting any director, manager, secretary, officer or staff, or any other person acting on behalf of the credit institution from seeking directions from, or consulting, the persons concerned, or from acting on such directions without the consent of the Bank,

(ii) to suspend the exercise by the persons concerned of any interest in or voting rights attaching to shares held by those persons in the credit institution concerned,

- (iii) for an order from the court requiring the persons concerned to dispose of some or all of their shareholdings, interests or rights in the credit institution within a period specified by the court, or
- (iv) for such other order as the court considers appropriate.

(5) Where the court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, then the whole or any part of proceedings before it under this Regulation may be heard otherwise than in public.

Criteria for qualifying holdings

25. (1) In determining whether the criteria for a qualifying holding as referred to in—

- (a) Regulation 10(1) and (2),
- (b) Regulation 12,
- (c) Regulation 13, and
- (d) Regulation 23,

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.

(2) In determining whether the criteria for a qualifying holding as referred to in Regulations 13 and 23 are fulfilled, 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 shall not be taken into account, 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.

Part 4

INITIAL CAPITAL OF INVESTMENT FIRMS, LOCAL FIRMS AND FIRMS NOT AUTHORISED TO HOLD CLIENT MONEY OR SECURITIES

Initial capital for investment, local and other firms

26. (1) Initial capital, in respect of—

- (a) investment firms,
- (b) local firms, and
- (c) firms referred to in subparagraph (2)(c) of Article 4(1) of the Capital Requirements Regulation,

comprises one or more of the items referred to in subparagraphs (a) to (e) of Article 26(1) of the Capital Requirements Regulation.

(2) Investment firms, other than those referred to in Regulation 27, shall have initial capital of €730,000.

Initial capital for particular types of investment firms

27. (1) Where an investment firm does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis, but—

- (a) holds client moneys or securities, and
- (b) offers one or more of the services in paragraph (3),

the firm shall have initial capital of €125,000.

(2) Where an investment firm is not authorised in respect of one, or more, of the following:

- (a) to hold client money or securities;
- (b) to deal for its own account;
- (c) to underwrite issues on a firm commitment basis;

the firm shall have initial capital of €50,000.

(3) The services referred to in paragraph (1)(b) are the following:

- (a) the reception and transmission of investors' orders for financial instruments;
- (b) the execution of investors' orders for financial instruments;
- (c) the management of individual portfolios of investments in financial instruments.

(4) The Bank may allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account where the following conditions are met:

- (a) such positions arise only as a result of the firm's failure to match investors' orders precisely;
- (b) the total market value of all such positions is subject to a maximum holding of 15 per cent of the firm's initial capital;
- (c) the firm meets the requirements in Articles 92 to 95, and Part 4, of the Capital Requirements Regulation;

- (d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the relevant transaction.

(5) The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for its own account for the purposes of paragraphs (1) and (2).

Initial capital for local firms

28. Local firms shall have initial capital of €50,000 where they benefit from—

- (a) the freedom to provide services or activities, or
- (b) the freedom of establishment,

under Part 9 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

Coverage for firms not authorised to hold client money or securities

29. (1) Firms referred to in subparagraph (2)(c) of Article 4(1) of the Capital Requirements Regulation shall hold one of the following:

- (a) initial capital of €50,000;
- (b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence, with minimum cover of not less than €1,000,000 in respect of each such claim and, in the aggregate, of not less than €1,500,000 for all such claims in any calendar year;
- (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in subparagraph (a) or (b).

(2) Where a firm referred to in subparagraph (2)(c) of Article 4(1) of the Capital Requirements Regulation is also registered under the European Communities (Insurance Mediation) Regulations 2005 (S.I. No. 13 of 2005), it shall comply with Regulation 17 of those Regulations, and have coverage in one of the following forms:

- (a) initial capital of €25,000;
- (b) professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence of not less than €500,000 in respect of each such claim and, in the aggregate, of not less than €750,000 for all such claims in any year;
- (c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in subparagraph (a) or (b).

Own funds of investment firms and firms covered by Regulation 28

30. The own funds of investment firms and firms covered by Regulation 28 shall not fall below the levels specified in Regulation 26, 27 (1) or (2), 28 or 31(2) or (5), as applicable.

Grandfathering provision

31. (1) Notwithstanding Regulations 26(2), 27(1) and (2), and 28, existing investment firms, and firms referred to in Regulation 28, which were in existence on or before 31 December 1995 which have own funds, subject to paragraph (2), less than the initial capital levels specified for them in Regulations 26(2), 27(1) or (2) or 28 shall continue to be authorised.

(2) The own funds of firms referred to in paragraph (1), shall not fall below the highest reference level calculated after 23 March 1993 where that reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation, which shall be calculated every 6 months in respect of the corresponding preceding period.

(3) Where control of an investment firm, or a firm referred to in Regulation 28, is taken by a person other than the person who controlled it on or before 31 December 1995, the own funds of that investment firm, or firm referred to in Regulation 28, shall attain at least the level specified for them in Regulation 26(2), 27(1) or (2), or 28, except in the case of a first transfer by inheritance made after 31 December 1995, subject to the approval of the Bank and for a period of not more than 10 years from the date of that transfer.

(4) Where there is a merger of—

(a) 2 or more investment firms,

(b) 2 or more firms of the type referred to in Regulation 28, or

(c) a combination of investment firms and firms referred to in Regulation 28,

subject to paragraph (5) the own funds of the resulting firm need not attain the level specified in Regulation 26(2), 27(1) or (2), or 28.

(5) Where, during any period, the level specified in Regulation 26(2), 27(1) or (2), or 28 has not been attained, the own funds of the firm resulting from a merger specified in paragraph (4) shall not fall below the total own funds of the merged firms at the time of the merger.

(6) Where the Bank considers it necessary to ensure the solvency of firms referred to in paragraph (1), that such firms should have own funds of not less than the initial capital levels specified for them in Regulations 26(2), 27(1) or (2), or 28, paragraphs (1) to (5) shall not apply.

Part 5

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Chapter 1

*General principles**Mutual recognition of provision of banking services*

32. (1) A credit institution authorised and supervised by the competent authorities of another Member State may carry on business within the State by establishing a branch or any other means in any one or more of the activities set out in the Schedule provided that the undertaking or provision of these activities is in accordance with the authorisation of the credit institution in that Member State and the requirements of—

- (a) Regulation 34(1) and (2),
- (b) Regulation 35,
- (c) Regulation 38(1) and (2), and
- (d) Chapter 4 of Part 5,

are complied with in full.

(2) A credit institution referred to in paragraph (1) shall, in so far as its operations or proposed operations within the State are concerned, comply with all relevant requirements of these Regulations and with the provisions of any enactment relating to the activities set out in the Schedule.

(3) A financial institution which is a subsidiary of a credit institution, or which is a jointly owned subsidiary of 2 or more credit institutions, may carry on business in any Member State by establishing a branch or by any other means if, but only if, the following conditions are fulfilled:

- (a) the memorandum and articles of association of the financial institution expressly permit it to undertake any one or more of the activities set out at reference numbers 2 to 12 of the Schedule;
- (b) each parent undertaking of the financial institution is authorised as a credit institution in the Member State of incorporation of the financial institution;
- (c) the financial institution carries on the activities in question in the Member State in which it is incorporated;
- (d) the parent undertaking or the parent undertakings together, as the case may be, of the financial institution hold at least 90 per cent of the voting rights attaching to the shares in the financial institution;

- (e) each parent undertaking of the financial institution provides a written declaration, with the consent of the competent authorities of the Member State in which the parent undertaking is authorised, to the effect that the parent undertaking, or the parent undertakings jointly and severally, guarantee the liabilities of the financial institution in every case;
- (f) the parent undertaking or the parent undertakings together, as the case may be, of the financial institution satisfy the competent authorities referred to in subparagraph (e) that it is or they are in a position to, and will, ensure that the financial institution is run on a sound and prudent basis;
- (g) the notification and other requirements of these Regulations are complied with;
- (h) 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—
 - (i) Chapter 3 of Part 6, and
 - (ii) Articles 11 to 24 of the Capital Requirements Regulation, in particular for the purposes of the minimum own funds requirements set out in Article 92 of the Capital Requirements Regulation for the control of large exposures provided for in Part 4 of the Capital Requirements Regulation and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that Regulation.

(4) A financial institution, which carries on a business in accordance with paragraph (3), shall provide the Bank with a certificate issued by the competent authorities of the Member State in which each parent undertaking is authorised, attesting to and verifying that the conditions set out in paragraph (3) are being complied with in full by each parent undertaking and the financial institution concerned.

(5) The provisions of paragraph (3) shall cease to apply to a financial institution, which carries on a business in accordance with that paragraph, immediately upon any of the conditions set out in that paragraph ceasing to be complied with by any parent undertaking or financial institution concerned and, in the event of that happening, the Bank may—

- (a) (i) direct the financial institution to cease, within a specified period of time, undertaking in the State any one or more of the activities referred to in the Schedule and the financial institutions concerned shall comply with such direction, or
- (ii) direct that the provision in the State of any one or more of those activities, by a financial institution, shall be subject to such conditions and requirements as the Bank may set out in writing,

which, in the opinion of the Bank, are in the interests of the orderly and proper regulation of financial services or financial markets in the State or in the interests, generally, of the public good, and the financial institution concerned shall comply with such direction,

or

(b) take any other appropriate measure under financial services legislation.

(6) For the purposes of these Regulations and for the purpose of the mutual recognition of the provision of banking services in the European Union, the Bank may give a certificate, in such form and containing such particulars as the Bank decides, which shall form part of the notification referred to in Regulations 33 and 38.

(7) The Bank shall ensure that each financial institution incorporated in the State, which carries on a business in accordance with paragraph (3), shall, where appropriate, be supervised in accordance with these Regulations as if the financial institution concerned were a credit institution to which these Regulations apply.

(8) Paragraphs (3) to (7) shall apply with any necessary modifications to subsidiaries of a financial institution referred to in paragraph (3).

Chapter 2

The right of establishment of credit institutions

Provisions relating to the establishment of a branch in another Member State

33. (1) A credit institution authorised by the Bank which proposes to establish a branch in another Member State shall notify the Bank in advance of establishing the branch and shall provide the following information with the notification:

- (a) the name of the Member State in which the branch is to be situated;
- (b) a scheme setting out—
 - (i) the proposed programme of operations of the branch,
 - (ii) the business to be engaged in, and
 - (iii) the manner in which the activities of the branch will be organised;
- (c) the names of the persons who will be responsible for the management of the branch;
- (d) the address in the Member State in which the branch is to be so situated and at which the Bank may serve a notice.

(2) Subject to paragraph (5), the Bank shall transmit the information to the competent authorities of the Member State concerned not later than 3 months after the receipt of the information from the credit institution concerned and shall inform that credit institution that it has so transmitted that information.

(3) The Bank shall also transmit to the competent authorities in the Member State concerned a statement setting out the amount and composition of the own funds and the sum of own funds requirement of the credit institution under Article 92 of the Capital Requirements Regulation.

(4) This Regulation shall apply in the case of a financial institution, referred to in Regulation 32(3), which proposes to establish a branch in another Member State except that, in the case of paragraph (3), the statement shall, in lieu of stating the information required to be transmitted under that paragraph, set out details of 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 the Capital Requirements Regulation, of the credit institution which is its parent undertaking.

(5) The Bank shall refuse to transmit the information to the competent authorities of another Member State in any case in which the Bank is of the opinion that the credit institution or financial institution concerned, taking into account the activities envisaged, does not possess sufficient financial resources or adequate managerial capacity to carry on business in that other Member State.

(6) Where the Bank exercises its functions in accordance with paragraph (5), it shall inform the credit institution or financial institution concerned in writing of the reasons for the refusal within 3 months of receipt from the institution of all of the information required under paragraph (1).

(7) A decision of the Bank under paragraph (5) to refuse to transmit the information to the competent authorities of the Member State concerned is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(8) In this Regulation, “information” means the information referred to in paragraph (1).

Provisions relating to the establishment in the State of a branch from another Member State

34. (1) Where the Bank receives information (which corresponds to the information referred to in Regulation 33) from the competent authority of another Member State and which relates to a proposal by a credit institution authorised in that other Member State or a financial institution in that other Member State to which Regulation 32(3) applies to establish a branch in the State, the Bank shall within 2 months of the receipt of the information, if it considers it necessary to do so, inform the institution of any or all of the enactments and regulatory provisions applying to the conduct of banking business or of the proposed operations of the branch in the State.

(2) The credit institution or financial institution concerned may establish the branch and commence operations—

- (a) as soon as it is informed by the Bank under paragraph (1) of the matters to which that paragraph relates, or
- (b) on the expiry of the 2 month period referred to in that paragraph,

whichever event first occurs.

(3) Branches which have commenced their activities, in accordance with the provisions in force in the State, before 1 January 1993, shall be—

- (a) presumed to have been subject to the procedure set out in—
 - (i) Regulation 33, relating to the establishment of a branch in another Member State, and
 - (ii) paragraphs (1) and (2),

and

- (b) governed, on and from that date, by Regulation 35 in addition to Regulation 32, Chapter 4 of Part 5 and Regulation 50.

Change in information provided under Regulation 33

35. (1) Where—

- (a) a credit institution or financial institution carrying on activities in accordance with Regulation 34 proposes to alter any of the information to which subparagraph (b), (c) or (d) of Regulation 33(1) relates, or,
- (b) in the case of such a credit institution, there is to be a material change in the legislative provisions in the Member State in which it is authorised affecting the protection of depositors within that Member State,

the credit institution or financial institution, as the case may be, shall, in the case of subparagraph (a), notify both the competent authorities in its home Member State and the Bank and, in the case of subparagraph (b), notify the Bank accordingly.

(2) Any notification required by this Regulation shall be made in writing by the institution concerned at least one month before the proposed changes are made.

(3) Where the Bank is acting in its capacity as the competent authority of the host Member State, it may, where it considers it necessary to do so, inform the institution of any change in enactments and regulatory provisions applying to the conduct of the institution's banking business or of the proposed operations of the branch in the State arising on foot of any change of information received under this Regulation.

(4) Where a financial institution carrying on business in accordance with Regulation 32 no longer fulfils any one or more of the conditions set out in

paragraph (3) of that Regulation, it shall immediately inform the Bank in writing of that fact.

Existing branches

36. (1) A credit institution incorporated in or formed under the law of another Member State which immediately before the commencement of these Regulations—

(a) is authorised to act as a credit institution in its home Member State, and

(b) has established a branch in the State,

shall be treated for the purpose of these Regulations as if the requirements of these Regulations had been complied with in relation to its establishment of the branch.

(2) A credit institution incorporated in the State which, immediately before the commencement of these Regulations—

(a) has a subsisting authorisation from the Bank, and

(b) has established a branch in another Member State,

shall be treated for the purposes of these Regulations as if the requirements of these Regulations had been complied with in relation to its establishment of the branch.

Information about refusals

37. The Bank shall inform the Commission and the EBA of the number and type of refusals made pursuant to Regulation 33(5).

Chapter 3

Freedom to provide services

Notification procedure

38. (1) Where a credit institution established in the State which is authorised by the Bank, or a financial institution in the State carrying on business in accordance with Regulation 32(3), proposes to carry on business in another Member State in any of the categories of activities set out in the Schedule, other than by means of establishing a branch in that Member State, it shall notify the Bank of the name of that Member State and of the activities in the Schedule which it proposes to carry on in that Member State.

(2) The Bank shall, not later than one month after the date of receipt of the notification referred to in paragraph (1), send that notification to the competent authorities of the host Member State in which it proposes to carry on the business.

(3) The notification referred to in paragraph (1) shall not be required if, on 1 January 1993, the credit institution or financial institution concerned already carried on any business in the Member State concerned by means of the provision of services in that Member State.

(4) The notification referred to in paragraph (1) shall be required on the first occasion only on which the credit institution or financial institution proposes to carry on a particular activity, set out in the Schedule.

(5) Nothing in this Regulation shall—

- (a) be taken as authorising a financial institution carrying on activities in accordance with 32(3) to carry on the business of accepting deposits inside or outside the State, or
- (b) remove any existing requirements on a credit institution to seek the permission of the Bank under financial services legislation to carry on business outside the State either generally or in respect of any particular class or classes of activities.

Chapter 4

Powers of the Bank when acting as host Member State competent authority

Reporting requirements

39. (1) The Bank may require that credit institutions established in another Member State, having branches within the State, report to them periodically on their activities in the State including, in particular, requiring such information to allow the Bank to assess whether a branch is significant within the meaning of Regulation 47(1).

(2) Where information is required of a credit institution under paragraph (1), the institution shall comply with such requirement—

- (a) annually, or
- (b) within such period as may be specified by the Bank in its request.

(3) Information, referred to in paragraph (1), required of a credit institution shall only be required for—

- (a) information or statistical purposes,
- (b) the application of Regulation 47(1), or
- (c) supervisory purposes in accordance with this Chapter.

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

40. (1) Where the Bank ascertains, on the basis of information received from the competent authorities of a home Member State under Article 50 of the Capital Requirements Directive—

- (a) that a credit institution having a branch or providing services within the State does not comply with these Regulations or with the Capital Requirements Regulation, or
- (b) that there is a material risk that the credit institution referred to in subparagraph (a) will not comply with these Regulations or with the Capital Requirements Regulation,

it shall inform the competent authorities of the home Member State.

(2) Where the Bank considers that the competent authorities of a home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to Article 41(1) of the Capital Requirements Directive, it may refer the matter to the EBA and request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(3) Where the Bank receives a notification from a competent authority in a host Member State pursuant to Article 41(1) of the Capital Requirements Directive, it shall without delay take all appropriate measures using financial services legislation to ensure that the credit institution concerned—

- (a) remedies its non-compliance, or
- (b) takes measures to avert the risk of non-compliance.

(4) Measures taken under paragraph (3) may include, without limitation, directing the credit institution concerned to cease providing part of its, or all of its, services or activities within the State.

(5) The Bank shall communicate the measures taken under paragraph (3) to the competent authorities of the host Member State without delay.

(6) A decision by the Bank to take measures under paragraph (3) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Reasons and communication

41. Any measure taken pursuant to Regulation 40(1) or (3) or 42 involving penalties or restrictions on the exercise of—

- (a) the freedom to provide services, or
- (b) the freedom of establishment,

shall be properly reasoned and communicated, in writing, by the Bank to the credit institution concerned.

Precautionary measures

42. (1) Before following the procedure set out in paragraphs (1) and (2) of Regulation 40, the Bank 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 it considers necessary, including, without limitation, using its powers under financial services legislation, to protect against financial instability that would seriously threaten the collective interests of depositors, investors or clients in the State.

(2) Any precautionary measures under paragraph (1) shall be proportionate to their purpose to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in the State and such precautionary measures—

(a) may include a suspension of payment, and

(b) shall not result in a preference for the creditors of the credit institution in the State over creditors in other Member States.

(3) The Bank may apply to the court in a summary manner for an order confirming any precautionary measure taken by it under paragraph (1).

(4) Any precautionary measure taken 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.

(5) The Bank shall terminate precautionary measures taken under paragraph (1) when it considers that those measures have become obsolete under Regulation 40, unless they cease to have effect in accordance with paragraph (4).

(6) The Bank shall without undue delay inform, in writing—

(a) the Commission,

(b) the EBA, and

(c) the competent authorities of the Member State concerned,

of precautionary measures taken under paragraph (1).

(7) Where the Bank objects to precautionary measures taken pursuant to a national law measure equivalent to this Regulation by the competent authorities of a host Member State, it may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(8) A decision by the Bank to take precautionary measures under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(9) In this Regulation, “precautionary measures” include such measures which the Bank considers it necessary to take—

(a) in the collective interests of depositors, investors or clients in the State,

(b) in the interests of the proper and orderly regulation of the financial markets in the State, or

- (c) pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC.

Measures following withdrawal of authorisation

43. (1) In the event of a withdrawal of an authorisation of a credit institution, the Bank shall inform the competent authorities of the host Member State, where that institution carries out one or more of the activities in the Schedule, without delay.

(2) Where the Bank is informed in accordance with Article 45 of the Capital Requirements Directive by a home Member State competent authority of the withdrawal of the authorisation of a credit institution, it shall take appropriate measures to prevent the credit institution concerned from initiating further transactions within the State to safeguard the interests of depositors.

Advertising

44. Nothing in this Chapter shall prevent credit institutions incorporated in or formed under the law of another Member State from advertising their services through all available means of communication in the State, subject to any rules governing the form and content of such advertising adopted in the interest of the general good.

Part 6

PRUDENTIAL SUPERVISION

Chapter 1

Principles of prudential supervision

Competence and duties of home and host Member States

Competence of the Bank

45. (1) The prudential supervision of institutions which are authorised by the Bank, including the activities they carry out in accordance with Articles 33 and 34 of the Capital Requirements Directive, shall be the responsibility of the Bank.

(2) Where the prudential supervision of institutions, including the supervision of activities such institutions carry out in accordance with Articles 33 and 34 of the Capital Requirements Directive, is the responsibility of the competent authorities of the home Member State, nothing in these Regulations shall prevent the Bank from exercising powers or performing functions conferred on it in its capacity as a host Member State authority.

(3) Nothing in paragraph (1) shall prevent—

- (a) the competent authorities of other Member States from exercising powers conferred on host Member State competent authorities by the Capital Requirements Directive, in respect of branches of institutions authorised by the Bank,

(b) supervision on a consolidated basis.

Collaboration concerning supervision

46. (1) Subject to paragraph (2), the Bank shall collaborate closely with the competent authorities of other Member States to supervise the activities of—

- (a) institutions incorporated in the State which operate, in particular, through a branch in another Member State,
- (b) institutions incorporated in another Member State which operate, in particular, through a branch in the State.

(2) The Bank shall supply the competent authorities of other Member States with—

- (a) all information concerning the management and ownership of institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and
- (b) all information likely to facilitate the monitoring of institutions, in particular with regard to—
 - (i) liquidity,
 - (ii) solvency,
 - (iii) deposit guarantees,
 - (iv) the limiting of large exposures,
 - (v) other factors that may influence the systemic risk posed by the institution,
 - (vi) administrative and accounting procedures, and
 - (vii) internal control mechanisms.

(3) The Bank shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision of an institution (in accordance with Part Six of the Capital Requirements Regulation and Chapter 3 of Part 6) 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.

(4) The Bank shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur, in relation to an institution, and that information shall also include details about the planning and implementation of a recovery plan, referred to in Regulation 61, and about any prudential supervision measures taken in that context.

(5) The Bank shall communicate and explain, upon request, to the competent authorities of host Member States how information and findings relating to an institution provided to it by the host Member State have been taken into account.

(6) Where the Bank receives information, which corresponds to information referred to in paragraphs (3), (4) and (5), from the competent authority of another Member State and is of the opinion that the home Member State competent authority has failed to apply appropriate measures to address the matter within a reasonable time, the Bank may, after informing the relevant home Member State competent authority concerned and the EBA, take such appropriate measures including, without limitation, such measures under financial services legislation it considers appropriate to—

- (a) prevent further breaches in order to protect the interests of depositors, investors and others to whom the services are provided, or
- (b) protect the stability of the financial services system.

(7) Where contacted in its capacity as the competent authority of a home Member State with information equivalent to that referred to in paragraph (6), the Bank may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 where it disagrees with measures to be taken by a host Member State competent authority.

(8) The Bank may refer to the EBA situations where a request for collaboration, in particular to exchange information, with the competent authorities of another Member State has been rejected or has not been acted upon within a reasonable time.

Designation of branch of institution in State as significant

47. (1) Where an institution (other than an investment firm subject to Article 95 of the Capital Requirements Regulation) that is not authorised in the State has a branch in the State, the Bank may make a request to—

- (a) the competent authorities of the Member State in which the institution is authorised, or
- (b) a competent authority that is a consolidating supervisor in relation to the institution where Article 112 of the Capital Requirements Directive applies,

that the branch be considered as significant.

(2) A request by the Bank under paragraph (1) shall include reasons for considering the branch in the State as significant, with particular regard to the following:

- (a) whether the market share, in terms of deposits, of the branch in the State exceeds 2 per cent;

- (b) the likely effect of a suspension or closure of the operations of the institution on systemic liquidity, and the payment and clearing and settlement systems, in the 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 State.

(3) The Bank shall do everything within its power to reach a joint decision with the competent authorities, or consolidating supervisor, referred to in paragraph (1), to which the relevant request was made on the designation of a branch as significant.

(4) Where a joint decision, under paragraph (3), has not been reached within 2 months of making the relevant request, the Bank may, within a further period of 2 months, determine that the branch is significant and the Bank shall take into account any views and reservations of the competent authorities, or consolidating supervisor, referred to in paragraph (1), to which the relevant request was made.

(5) A decision under paragraph (3) or a determination under paragraph (4) shall be set out in a document by the Bank that shall also contain the reasons for the decision or determination, and this document shall be communicated to the competent authorities, or to the consolidating supervisor, referred to in paragraph (1).

(6) If, within 2 months, any of the competent authorities concerned refer a request made by the Bank under paragraph (1) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Bank shall defer making any determination under paragraph (4) pending the decision of the EBA.

(7) A determination by the Bank under paragraph (4) shall be in conformity with a decision of the EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010 following a referral in accordance with that Regulation.

(8) The Bank may not refer a request made in accordance with paragraph (1) to the EBA after the end of the 2 month period or after a joint decision has been reached in accordance with paragraph (3).

(9) Where the competent authorities of a home Member State fail to consult with the Bank in equivalent circumstances to those described in Regulation 48(8) and (9), or consults the Bank and the Bank is not satisfied that the operational steps required by Regulation 74(11) are adequate, the Bank may refer the matter to the EBA and request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

Designation of branch of an institution in another Member State as significant

48. (1) Where—

- (a) the Bank is responsible for the supervision of an institution controlled by one or more EU parent financial holding companies or is the consolidating supervisor,

- (b) the institution or EU parent institution has a branch in a host Member State, and
- (c) the Bank receives a request from the competent authorities of the host Member State to designate the branch as significant,

the Bank shall do everything in its power to reach a joint decision on the designation of the branch as significant with those competent authorities.

(2) In endeavouring to reach a joint decision in accordance with paragraph (1), the Bank may request the competent authorities that made the request referred to in paragraph (1)(c) to provide any information that the Bank considers necessary, in particular with regard to—

- (a) whether the market share, in terms of deposits, of the branch concerned in the host Member State exceeds 2 per cent,
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, and clearing and settlement systems, in the host Member State, and
- (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.

(3) A joint decision taken pursuant to paragraph (1) shall be set out in a document that shall also contain the reasons for the decision, and this document shall be communicated to the competent authorities referred to in that paragraph.

(4) Nothing in this Regulation affects the rights and responsibilities of the Bank under financial services legislation.

(5) Where—

- (a) the Bank is responsible for the supervision of an institution or the consolidated supervision of an EU parent institution or institutions controlled by an EU parent financial holding company, and
- (b) a branch in another Member State of the institution, EU parent institution or institution controlled by an EU parent financial holding company has been designated as significant,

the Bank shall, insofar as that information is relevant to a branch in that host Member State, provide the competent authority of the host Member State with the following information:

- (i) any information that the Bank has on any adverse developments in those institutions or in other entities of the group which could seriously affect the institutions;

(ii) any information that the Bank has on any significant penalties or exceptional measures it has taken in accordance with these Regulations, including—

(I) any imposition of a specific own funds requirement under Regulation 92, and

(II) any imposition of a limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of the Capital Requirements Regulation.

(6) The Bank is responsible for the planning and coordination of supervisory activities in cooperation with the competent authorities, and if necessary with the ESCB central banks, in preparation for and during emergency situations (including adverse developments in institutions or in financial markets) using, where possible, existing defined channels of communication.

(7) Where—

(a) an emergency (including adverse developments in financial markets) arises which potentially jeopardises the market liquidity and the stability of the financial system in a Member State where entities of a group have been authorised or where significant branches are established, and

(b) the Bank is responsible for the supervision of an institution or is responsible for the exercise of supervision on a consolidated basis,

the Bank shall—

(i) as soon as is practicable, alert the other central banks concerned, the EBA and the administrative authorities of central governments concerned with financial supervision policy, and

(ii) communicate to the bodies mentioned in subparagraph (i), all information that is essential for the performance of their tasks.

(8) The Bank shall communicate to the competent authorities of the host Member State, where significant branches are established—

(a) the results of the risk assessments of institutions with such branches referred to in Regulation 85 and, where applicable, Regulation 101(2), and

(b) decisions under Regulations 92 and 93 in so far as those assessments and decisions are relevant to the branch.

(9) The Bank shall consult the competent authorities of the host Member State, where significant branches are established, about operational steps

required under Regulation 74(11) where relevant for liquidity risks in the host Member State's currency.

Bank to establish college of supervisors for significant branches

49. (1) Where—

- (a) Regulation 104 does not apply, and
- (b) the Bank is responsible for the supervision of an institution with significant branches in other Member States,

the Bank shall establish and chair a college of supervisors to facilitate cooperation with the competent authorities of those other Member States and the establishment and functioning of the college shall be based on written arrangements determined, after consultation with those competent authorities, by the Bank.

(2) The Bank shall decide which competent authorities participate in a meeting or in an activity of the college.

(3) The decision of the Bank, under paragraph (2), 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, and the obligations referred to in Regulations 6 and 48(5) to (9).

(4) The Bank shall keep all the members of the college, established under this Regulation, fully informed, in advance of—

- (a) the organisation of,
- (b) the main issues to be discussed at, and
- (c) the activities to be considered at,

meetings of the college.

(5) The Bank shall also keep all the members of the college, established under this Regulation, fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out in respect of each year commencing on, and after, 1 January 2014.

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

50. (1) The Bank may appoint any of its officers or employees, or other suitably qualified persons for the purpose of this paragraph, to carry out an inspection or investigation of the business of an institution authorised in the State, at branches of that institution in another Member State—

- (a) having informed the competent authorities of that Member State, and

(b) for the purposes of on-the-spot checks of the information referred to in Regulation 46.

(2) The Bank for the purpose of the inspection of branches referred to in paragraph (1), may have recourse to one of the procedures set out in Regulation 106.

(3) Where it considers it relevant for reasons of stability of the financial system in the State and for supervisory purposes, the Bank may carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions, authorised in another Member State, operating in the State, and require information from a branch to, and, where required, the branch shall, provide such information, about its activities.

(4) Prior to the carrying out of the checks and inspections referred to in paragraph (3), the Bank shall consult the competent authorities of the home Member State and, having carried out such checks and inspections, the Bank 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 State.

(5) Where contacted in its capacity as the competent authority of a home Member State in the circumstances referred to in paragraph (4), the Bank shall take into account information and those findings communicated to it in determining its supervisory examination programme referred to in Regulation 87 and shall have regard to the stability of the financial system in the host Member State.

(6) The competent authorities in another Member State may, having notified the Bank, inspect or investigate the business of an institution, supervised by those authorities, which has a place of business in the State, at that place of business, for the purpose of verifying any information provided to that authority by virtue of Article 50 of the Capital Requirements Directive in either of the following manners:

(a) by inspection of the institution, at that place of business or otherwise, by the authority concerned;

(b) by inspection of the institution, at that place of business or otherwise, by a person authorised in that behalf by that authority concerned.

Processing of personal data

51. The processing of personal data for the purposes of these Regulations shall be carried out in accordance with the Data Protection Acts 1988 and 2003 and, where relevant, with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁷.

¹⁷OJ No. L 8, 12.01.2001, p. 1

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

52. (1) The auditor of an institution shall communicate promptly to the Bank any fact or decision concerning that institution of which the auditor becomes aware while conducting an audit of that institution which—

(a) is liable to constitute a material breach—

- (i) of the laws, regulations or administrative provisions which lay down the conditions governing authorisation, or
- (ii) of the laws, regulations or administrative provisions which specifically govern pursuit of the activities of institutions,

or

(b) is liable to affect the ongoing functioning of the institution, or

(c) is liable to lead to a refusal by the auditor to certify the accounts of the institution or to the expression of reservations by the auditor.

(2) The auditor referred to in paragraph (1) shall communicate to the Bank any facts or decisions concerning an institution, of which he or she becomes aware while conducting an audit of that institution, where there are close links resulting from a control relationship with the institution for which the auditor conducts an audit.

(3) Any communication by an auditor under paragraph (1) or (2), made in good faith, 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 the auditor in liability of any kind.

(4) Any communication by an auditor under paragraph (1) or (2) shall be made simultaneously to the management body of the institution concerned unless there are compelling reasons not to do so.

(5) In this Regulation, "auditor" means any person authorised in accordance with Directive 2006/43/EC and performing in an institution the tasks described in—

- (a) Article 51 of Council Directive 78/660/EEC of 25 July 1978¹⁸,
- (b) Article 37 of Council Directive 83/349/EEC,
- (c) Article 73 of Directive 2009/65/EC, or
- (d) any other statutory task.

¹⁸OJ No. L 222, 14.08.1978, p. 11

Administrative penalties and other administrative measures

53. The Bank shall have all information gathering and investigatory powers that are necessary for the exercise of their functions and, without prejudice to other relevant provisions of these Regulations or the Capital Requirements Regulation, those powers shall include the power to require the following natural or legal persons to provide all information that is necessary in order to enable the Bank to carry out its tasks under these Regulations and the Capital Requirements Regulation, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

- (a) institutions established in the State;
- (b) financial holding companies established in the State;
- (c) mixed-financial holding companies established in the State;
- (d) mixed-activity holding companies established in the State;
- (e) staff of the entities referred to in subparagraphs (a) to (d);
- (f) third parties to whom the entities referred to in subparagraphs (a) to (d) have outsourced operational functions or activities.

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

54. (1) Notwithstanding Part IIIC of the Act of 1942 and the sanctions set out in section 33AQ of the Act of 1942, sanctions may be imposed by the Bank following an inquiry under section 33AO of the Act of 1942 for the contraventions listed in paragraph (2) and may include any or all of the following:

- (a) a public statement that identifies the natural person, institution, financial holding company or mixed-financial holding company responsible, and the nature of the breach concerned;
- (b) an order requiring a natural or legal person responsible for the contravention to cease, and desist from, the conduct concerned;
- (c) in the case of a body corporate or unincorporated body, administrative pecuniary penalties of up to 10 per cent of the total annual net turnover including the gross income consisting of—
 - (i) interest receivable and similar income,
 - (ii) income from shares and other variable or fixed-yield securities, and
 - (iii) commissions or fees receivable

in accordance with Article 316 of the Capital Requirements Regulation, of the undertaking in the preceding business year;

- (d) in the case of a natural person, administrative pecuniary penalties of up to €5,000,000;
 - (e) administrative pecuniary penalties of up to twice the amount of the benefit derived from the contravention where that benefit can be determined;
 - (f) suspension of the voting rights of the shareholder or shareholders held responsible for the contraventions referred to in paragraph (2).
- (2) The contraventions referred to in paragraph (1) are the following:
- (a) carrying out the business of taking deposits or other repayable funds from the public without being an authorised or licensed credit institution, as appropriate, in breach of the Act of 1971,
 - (b) commencing activities as a credit institution without obtaining a licence or authorisation, as appropriate, in breach of the Act of 1971,
 - (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 prescribed percentages referred to in Regulation 10(2) or so that the credit institution would become its subsidiary—
 - (i) without notifying the Bank in writing,
 - (ii) during the assessment period, or
 - (iii) where the Bank has opposed the acquisition or further increase;
 - (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 prescribed percentages referred to in Regulation 12 or so that the credit institution would cease to be a subsidiary, without notifying in writing the Bank.
- (3) Where the undertaking referred to in paragraph (1)(c) is a subsidiary of a parent undertaking, the relevant gross income, referred to in that paragraph, shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.
- (4) Notwithstanding the definition of regulated financial service provider as provided for in the Act of 1942, a person that engages in conduct listed in paragraph (2) shall be treated as a regulated financial services provider for the purposes of Part IIIC of the Act of 1942.

Other provisions on administrative penalties

55. (1) Notwithstanding Part IIIC of the Act of 1942 and the sanctions set out in section 33AQ of the Act of 1942, sanctions may be imposed by the Bank following an inquiry under section 33AO of the Act of 1942 for the contraventions listed in paragraph (3) and may include any or all of the following:

- (a) a public statement that identifies the natural person, institution, financial holding company or mixed-financial holding company responsible, and the nature of the breach concerned;
- (b) an order requiring the natural or legal person responsible to cease, and desist from, the conduct concerned;
- (c) in the case of an institution, withdrawal of the licence or authorisation of the institution in accordance with the enactment under which the licence or authorisation was granted;
- (d) subject to Regulation 150, 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) subject to paragraph (2), in the case of a legal person, administrative pecuniary penalties of up to 10 per cent of the total annual net turnover including the gross income consisting of—
 - (i) interest receivable and similar income,
 - (ii) income from shares and other variable or fixed-yield securities, and
 - (iii) commissions or fees receivable,
 in accordance with Article 316 of the Capital Requirements Regulation, of the undertaking in the preceding business year;
- (f) in the case of a natural person, administrative pecuniary penalties of up to €5,000,000;
- (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.

(2) Where an undertaking referred to in paragraph (1)(e) 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.

(3) The contraventions referred to in paragraph (1) are the following:

- (a) an institution has obtained a licence or 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 prescribed percentages referred to in Regulation 10(2), or 12, fails to inform the Bank of those acquisitions or disposals in breach of Regulation 13;
- (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 Bank of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of Regulation 23;
- (d) an institution fails to have in place governance arrangements required by the Bank in accordance with Regulations 61 and 62;
- (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 the Capital Requirements Regulation to the Bank in breach of Article 99(1) of that Regulation;
- (f) an institution fails to report information, or provides incomplete or inaccurate information to the Bank, in relation to the data referred to in Article 101 of the Capital Requirements Regulation;
- (g) an institution fails to report information, or provides incomplete or inaccurate information, about a large exposure to the Bank in breach of Article 394(1) of the Capital Requirements Regulation;
- (h) an institution fails to report information, or provides incomplete or inaccurate information, on liquidity to the Bank in breach of Article 415(1) and (2) of the Capital Requirements Regulation;
- (i) an institution fails to report information, or provides incomplete or inaccurate information, on the leverage ratio to the Bank in breach of Article 430(1) of the Capital Requirements Regulation;
- (j) an institution repeatedly or persistently fails to hold liquid assets in breach of Article 412 of the Capital Requirements Regulation;
- (k) an institution incurs an exposure in excess of the limits set out in Article 395 of the Capital Requirements Regulation;
- (l) an institution is exposed to the credit risk of a securitisation position without satisfying the conditions set out in Article 405 of the Capital Requirements Regulation;
- (m) an institution fails to disclose information, or provides incomplete or inaccurate information, in breach of Article 431(1), (2) or (3) or Article 451(1) of the Capital Requirements Regulation;

- (n) an institution makes payments to holders of instruments included in the own funds of the institution in breach of Regulation 129 or in cases where Articles 28, 51 or 63 of the Capital Requirements Regulation prohibit such payments to holders of instruments included in own funds;
- (o) an institution is found liable for a serious breach of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (No. 6 of 2010);
- (p) an institution allows persons who fail to comply with Regulation 79 to become, or remain, a member of the management body.

(4) In this Regulation—

“ESMA” means the European Securities and Markets Authority established pursuant to Regulation (EU) No 1095/2010;

“Regulation (EU) No 1095/2010” means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹⁹.

Publication of administrative penalties

56. (1) Subject to paragraphs (3) and (4), the Bank shall publish on its official website any administrative penalties which are imposed by the Bank for breach of these Regulations or the Capital Requirements Regulation, including information on—

- (a) the type and nature of the breach, and
- (b) 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.

(2) Where the Bank publishes penalties against which there is an appeal, the Bank shall, without undue delay, also publish on its official website information on the appeal status and outcome thereof.

(3) The Bank shall publish the administrative penalties, referred to in paragraph (1), on an anonymous basis in the following circumstances:

- (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;

¹⁹OJ No. L 331, 15.12.2010, p. 84

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

(4) Where the circumstances referred to in paragraph (3)(a) are likely to cease within a reasonable period of time, publication under paragraph (1) may be postponed for such a period of time.

(5) The Bank shall ensure that information published under paragraph (1) or (2) remains on its official website for at least 5 years but personal data shall not be retained on the official website of the Bank any longer than for the period necessary.

(6) Paragraphs (1), (2) and (3) do not apply where publication involves the disclosure of confidential information the disclosure of which is prohibited by the Rome Treaty, the ESCB Statute or the Supervisory Directives (within the meaning of section 33AK(10) of the Act of 1942).

(7) In this Regulation, “ESCB Statute” means the Statute of the European System of Central Banks and of the European Central Bank as set out in Protocol (No. 3) (annexed by the Treaty on European Union done at Maastricht on 7 February 1992) to the Rome Treaty.

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

57. (1) Subject to professional secrecy requirements, the Bank shall inform the EBA of all administrative penalties, including all permanent prohibitions, imposed under Regulations 54 and 55 including any appeal in relation thereto and the outcome thereof.

(2) Where the Bank assesses good repute for the purposes of—

(a) the Act of 1971,

(b) the Act of 1989,

(c) the TSB Act, or

(d) Regulations 79(1) and 109,

it shall consult the EBA database of administrative penalties.

(3) The Bank shall check, subject to national law, the existence of a relevant conviction in the criminal record of the person concerned and for those purposes, information shall be exchanged in accordance with Council Decision 2009/316/JHA of 6 April 2009²⁰ and Council Framework Decision 2009/315/JHA of 26 February 2009²¹.

²⁰OJ No. L 93, 07.04.2009, p. 33

²¹OJ No. L 93, 07.04.2009, p. 23

Effective application of penalties and exercise of powers to impose penalties by Bank

58. The Bank shall, when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, 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 importance of profits gained or losses avoided, insofar as they can be determined, by the natural or legal person responsible for the breach;
- (d) the losses for third parties, insofar as they can be determined, caused by the breach;
- (e) the level of cooperation with the Bank of the natural or legal person responsible for the breach;
- (f) previous breaches by the natural or legal person responsible for the breach;
- (g) any potential systemic consequences of the breach.

Reporting of breaches

59. (1) The Bank shall establish and maintain effective and reliable mechanisms to encourage reporting to it of potential or actual breaches of these Regulations and the Capital Requirements Regulation.

(2) The mechanisms referred to in paragraph (1) shall include at least the following:

- (a) specific procedures for the receipt of reports on breaches and their follow-up;
- (b) 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 the Data Protection Acts 1988 and 2003.

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

Chapter 2

Review Processes

Internal capital adequacy assessment process

Internal Capital

60. (1) 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.

(2) The strategies and processes, referred to in paragraph (1), 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.

Arrangements, processes and mechanisms of institutions

General principles

Internal governance and recovery plans

61. (1) Institutions shall put in place and maintain robust governance arrangements, which include the following:

- (a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective processes to identify, manage, monitor and report the risks they are, or might be, exposed to;
- (c) adequate internal control mechanisms, including but not limited to—
 - (i) sound administration and accounting procedures, and
 - (ii) remuneration policies and practices that are consistent with and promote sound and effective risk management.

(2) The Bank may direct an institution in writing to furnish to it, within a period specified in the direction, such information in relation to the arrangements, referred to in paragraph (1), as the Bank may require and the institution shall comply with that direction.

(3) The governance arrangements, processes and mechanisms, referred to in paragraph (1) shall—

- (a) be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities, and
- (b) take into account the technical criteria established in Regulations 64 to 83.

(4) Having regard to the nature of the business of an institution, the Bank shall direct each institution to prepare a recovery plan setting out actions that could be taken to facilitate the continuation, or secure the business or part of the business, of the institution in a situation where the institution is experiencing financial instability.

(5) A direction, issued by the Bank under paragraph (4), shall set out the following:

- (a) all terms of the direction, including any specification of a date by which, or a period within which, any provision made by it is to be complied with;
- (b) any incidental, consequential or supplemental provisions for implementing the direction and ensuring that it is fully and effectively carried out.

(6) A recovery plan, under this Regulation, shall not assume that financial support will be available from the State or the Fund.

(7) An institution shall—

- (a) comply with a direction under paragraph (4), and
- (b) shall submit its recovery plan to the Bank for assessment and, where the Bank so directs, that institution shall demonstrate to the Bank that the plan can be implemented.

(8) The Bank may direct an institution—

- (a) to provide any additional information or analysis necessary to assess that institution's recovery plan, and
- (b) to make specified changes to the plan that the Bank considers necessary to ensure that the plan can be implemented.

(9) Institutions shall comply with any direction given by the Bank under paragraph (8).

(10) An institution that fails to comply with a direction under this Regulation commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(11) Where an offence under this Regulation is committed by an institution, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the authorised credit institution or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the institution or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with paragraph (12).

(12) A person referred to in paragraph (11) is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years, or both.

(13) An institution shall maintain its recovery plan, and keep it up to date in accordance with any regulatory or technical standards issued by the EBA in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010.

(14) Prior to giving a direction under paragraph (4), the Bank shall—

- (a) have regard to whether the failure of the specific institution due to its size, to its business model, to its interconnectedness to other institutions, or to the financial system in general will have a negative effect on financial markets, on other institutions or on funding conditions, and
- (b) consult with the national macroprudential authority.

(15) The Bank shall inform the EBA, in advance of the organisation of a meeting to discuss a recovery plan, of the main issues to be discussed and of the activities to be considered.

(16) The Bank may direct an institution to implement its recovery plan, or any part of it, where the Bank is of the opinion that the actions contained in that plan or part are necessary or desirable.

(17) In this Regulation, “Fund” has the meaning assigned to it by section 10 of the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27 of 2011).

Resolution plans

62. (1) The resolution authority shall prepare a resolution plan, in accordance with the principle of proportionality, for each institution setting out options for the orderly resolution of the institution in the case of a failure.

(2) The resolution authority may direct an institution to provide such information and analysis as the resolution authority requires for the preparation of a resolution plan.

- (3) Prior to, and in, exercising its powers under paragraph (1), the resolution authority shall—
- (a) have regard to whether the failure of the specific institution due to its size, to its business model, to its interconnectedness to other institutions, or to the financial system in general will have a negative effect on financial markets, on other institutions or on funding conditions, and
 - (b) consult with the national macroprudential authority.
- (4) The resolution authority shall inform the EBA, in advance of the organisation of a meeting to discuss a resolution plan, of the main issues to be discussed and of the activities to be considered.
- (5) An institution that fails to comply with a direction under this Regulation commits an offence and is liable—
- (a) on summary conviction, to a class A fine, or
 - (b) on conviction on indictment, to a fine not exceeding €500,000.
- (6) Where an offence under this Regulation is committed by an institution, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—
- (a) a director, manager, secretary or other officer of the authorised credit institution or a person purporting to act in that capacity, or
 - (b) a member of the committee of management or other controlling authority of the institution or a person purporting to act in that capacity,
- that person is taken to have also committed an offence and may be proceeded against and punished in accordance with paragraph (7).
- (7) A person referred to in paragraph (6) is liable—
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years, or both.
- (8) Part 8 of the Central Bank and Credit Institutions (Resolution) Act 2011 shall not apply to an institution that is subject to Regulation 61 and this Regulation.
- (9) Section 5 of the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27 of 2011) applies to the functions of the resolution authority under this Regulation.

(10) In this Regulation, “resolution authority” means the Bank.

Oversight of remuneration policies

63. (1) The Bank shall collect the information disclosed in accordance with the criteria for disclosure established in subparagraphs (g), (h) and (i) of Article 450(1) of the Capital Requirements Regulation and shall use it to benchmark remuneration trends and practices.

(2) The Bank shall collect information on the number of natural persons per institution that are remunerated €1 million or more per financial year, in pay brackets of €1 million, including—

- (a) their job responsibilities,
- (b) the business area involved, and
- (c) the main elements of salary, bonus, long-term award and pension contribution.

(3) The Bank shall provide the EBA with the information collected under paragraphs (1) and (2).

Technical criteria concerning the organisation and treatment of risks

Treatment of risks — risk committee and combined committee

64. (1) Institutions shall ensure that their management bodies shall approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks that 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) Institutions shall ensure that their management bodies shall devote sufficient time to consideration of risk issues.

(3) Institutions shall ensure that their management bodies shall be actively involved in, and ensure that adequate resources are allocated to—

- (a) the management of all material risks addressed in these Regulations and in the Capital Requirements Regulation,
- (b) the valuation of assets of the institution,
- (c) the use of external credit ratings, and
- (d) internal models relating to the risks referred to in subparagraph (a).

(4) Institutions shall establish and maintain reporting lines to its management body that cover all material risks and risk management policies and changes thereof.

(5) The Bank may, having had regard to the—

- (a) size,
- (b) internal organisation, and
- (c) nature, the scope and the complexity of its activities,

designate an institution as significant.

(6) Institutions that are designated as significant by the Bank under paragraph (5) shall establish and maintain a risk committee.

(7) A risk committee, established and maintained pursuant to paragraph (6), shall be composed of members of the management body who—

- (a) do not perform any executive function in the institution concerned, and
- (b) have appropriate knowledge, skills and expertise to understand and monitor the risk strategy and the risk appetite of the institution.

(8) Institutions shall ensure that their risk committee-

- (a) advises the management body on the institution's overall current and future risk appetite and strategy, and
- (b) assists the management body in overseeing the implementation of that strategy by senior management.

(9) Notwithstanding paragraph (8), the management body of an institution shall retain overall responsibility for risks in the institution concerned.

(10) Where an institution establishes and maintains a risk committee pursuant to paragraph (6), that institution shall ensure—

- (a) that its risk committee shall review whether prices of liabilities and assets offered to clients take into account the institution's business model and risk strategy,
- (b) where prices do not properly reflect risks in accordance with the business model and risk strategy, that its risk committee presents a remedy plan to the management body, and
- (c) where a remedy plan is presented by the risk committee under subparagraph (b), that the management body takes the necessary appropriate action based on the contents of the plan.

(11) Where an institution is not designated as significant under Regulation 64(5), the Bank may, taking into account the nature, scale and complexity of the risks inherent in the business model, require an institution to establish a risk committee and may allow this committee to be combined with the audit committee (“combined committee”), as referred to in Article 41 of Directive 2006/43/EC.

(12) Institutions shall ensure that the members of—

- (a) a risk committee established and maintained pursuant to, or
- (b) a combined committee, referred to in,

paragraph (11), shall have the knowledge, skills and expertise required for the risk committee or, in the case of a combined committee, for the risk committee and the audit committee.

(13) Institutions shall ensure that the management body in its supervisory function and, where established, the risk committee or combined committee, as the case may be, 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.

(14) Institutions shall ensure that its management body in its supervisory function and, where established, its risk committee or combined committee, as the case may be, determines—

- (a) the nature,
- (b) the amount,
- (c) the format, and
- (d) the frequency,

of the information on risk which it is to receive that is adequate to fulfil its obligations under this Regulation.

(15) Institutions shall ensure that in order to assist in the establishment of sound remuneration policies and practices, their risk committee or combined committee, as the case may be, without prejudice to the tasks of the remuneration committee, examines whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

(16) Subject to paragraphs (17) and (18), institutions authorised in the State shall establish and maintain a risk management function.

(17) Subject to paragraph (22), institutions shall ensure that its risk management function—

- (a) is independent from its operational functions, and
- (b) has sufficient authority, stature, resources and access to the management body.

(18) Institutions shall ensure that its risk management function—

- (a) identifies, measures and properly reports all material risks in the institution,
- (b) is actively involved in elaborating the institution's risk strategy and in all material risk management decisions,
- (c) has the capacity to deliver a complete view of the whole range of risks of the institution, and
- (d) shall have, where necessary, the authority to—
 - (i) report directly to the management body in its supervisory function, independent from senior management,
 - (ii) raise concerns and warn the management 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 or managerial functions pursuant to these Regulations and the Capital Requirements Regulation.

(19) Subject to paragraph (20), institutions shall—

- (a) appoint a head of its risk management function, and
- (b) ensure that the person appointed under subparagraph (a) is an independent senior manager with distinct responsibility for the risk management function.

(20) Where the nature, scale and complexity of the activities of an institution do not justify a specially appointed person, that institution may appoint another senior person within the institution to fulfil that function, provided there is no conflict of interest.

(21) Institutions shall ensure that the head of its risk management function—

- (a) is not removed without the prior approval of the management body in its supervisory function, and
- (b) has direct access to the management body in its supervisory function, where necessary.

(22) This Regulation is without prejudice to the application of Regulation 36(2) of the European Communities (Markets in Financial Instruments) Regulations 2007 (No. 60 of 2007) to investment firms.

Internal approaches for calculating own funds requirements

65. (1) The Bank may require institutions that are designated as significant, under Regulation 64(5), to develop internal credit risk assessment capacity and 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.

(2) Paragraph (1) is without prejudice to the fulfilment of criteria laid down in Part Three, Title I, Chapter 3, Section 1 of the Capital Requirements Regulation.

(3) The Bank shall, taking into account the nature, scale and complexity of the activities of institutions, monitor that those institutions do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

(4) The Bank may require institutions to—

- (a) develop an internal specific risk assessment capacity,
- (b) develop or increase their use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, and
- (c) develop or increase their use of 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.

(5) In deciding whether to exercise its powers under paragraph (4), the Bank shall take into account the institution's size, internal organisation and the nature, scale and complexity of its activities.

(6) Paragraphs (4) and (5) are without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5 of the Capital Requirements Regulation.

Supervisory benchmarking of internal approaches for calculating own funds requirements

66. (1) Where permitted by the Bank to use internal approaches, pursuant to the Capital Requirements Regulation, for the calculation of—

- (a) risk weighted exposure amounts, or
- (b) own fund requirements, except for operational risk,

the institutions concerned shall comply with the reporting obligations in paragraph (2).

(2) Where permitted by the Bank to use internal approaches for the calculations, referred to in paragraph (1), institutions shall report the results of the calculations of their internal approaches for their exposures or positions that

are included in the benchmark portfolios to the Bank in accordance with paragraph (3).

(3) Institutions shall submit the results of their calculations, referred to in paragraph (1), to the Bank and the EBA at an appropriate frequency, as determined by the Bank, and at least annually, in accordance with the template developed by the EBA under paragraph (8) of Article 78 of the Capital Requirements Directive.

(4) When submitting the results, referred to in paragraph (3), to the Bank, institutions shall also submit an explanation of the methodologies used to produce them.

(5) Where the Bank has decided to develop specific benchmark portfolios, referred to in Article 78(2) of the Capital Requirements Directive, it shall do so in consultation with the EBA.

(6) Institutions shall report the results of the calculations concerning the portfolios, referred to in paragraph (5), separately from the results of the calculations for the EBA portfolios.

(7) The Bank shall, on the basis of the information submitted by institutions in accordance with paragraphs (2) and (3), 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.

(8) The Bank shall, at least annually, make an assessment of the quality of those approaches, referred to in paragraph (7), paying particular attention to:

- (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
- (c) approaches where there is a significant and systematic under-estimation of own funds requirements.

(9) Where, after considering the information provided by institutions pursuant to this Regulation, the Bank identifies situations where—

- (a) particular institutions diverge significantly from the majority of their peers, or
- (b) there is little commonality in approach leading to a wide variance of results,

the Bank shall investigate the reasons for those situations and, if it can be clearly identified that any 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 such corrective measures as it considers appropriate including under financial services legislation.

(10) The Bank shall ensure that measures taken under paragraph (9) shall comply with the principle that such measures 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.

(11) The corrective measures referred to in paragraph (9) are in addition to, and not in substitution for, financial services legislation.

Credit and counterparty risk

67. (1) Institutions 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) subject to paragraph (2), they 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,
- (c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems, and
- (d) diversification of credit portfolios is adequate having regard to the target markets and overall credit strategy of the institution concerned.

(2) Internal methodologies referred to in paragraph (1)(b) shall, in particular, not rely solely or mechanistically on external credit ratings.

(3) Where own funds requirements are based on—

- (a) a rating by an external credit assessment institution, or
- (b) 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.

(4) In this Regulation, “external credit assessment institution” has the meaning assigned to it in point (98) of Article 4(1) of the Capital Requirements Regulation.

Residual risk

68. Institutions shall address and control the risk that recognised credit risk mitigation techniques, in accordance with the Capital Requirements Regulation, used by them may prove less effective than expected, including by means of written policies and procedures.

Concentration risk

69. Institutions shall ensure that—

- (a) the concentration risk arising from exposures to each counterparty, including—
 - (i) central counterparties,
 - (ii) groups of connected counterparties, and
 - (iii) counterparties in the same economic sector, geographic region or from the same activity or commodity,

and

- (b) the application of credit risk mitigation techniques and, in particular, risks associated with large indirect credit exposures such as a single collateral issuer,

is addressed and controlled including through the establishment and implementation of written policies and procedures.

Securitisation risk

70. (1) Institutions shall ensure that the risks arising from securitisation transactions in relation to which the 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 reflected in the risk assessment and management decisions.

(2) Institutions which are originators of revolving securitisation transactions involving early amortisation provisions shall establish and implement liquidity plans to address the implications of both scheduled and early amortisation.

(3) In this Regulation, “originator” has the meaning assigned to it in point (13) of Article 4(1) of the Capital Requirements Regulation.

Market risk

71. (1) Institutions shall ensure that policies and processes for the identification, measurement and management of all material sources and effects of market risks are established, maintained and implemented.

(2) Where the short position falls due before the long position, institutions shall ensure that it also takes such measures as are appropriate to address the risk of a shortage of liquidity.

(3) Where an institution takes significant measures to address a risk of a shortage of liquidity, under paragraph (2), it shall notify the Bank in writing.

(4) Institutions shall ensure that their internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

(5) Institutions which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2 of the Capital Requirements Regulation, 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.

(6) Institutions shall ensure that, where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both, they have adequate internal capital.

(7) Institutions shall ensure, where using the treatment in Article 345 of the Capital Requirements Regulation, 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.

Interest risk arising from non-trading book activities

72. Institutions shall implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect an institution's non-trading activities.

Operational risk

73. (1) Institutions shall implement policies and processes to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events.

(2) Institutions shall articulate what constitutes operational risk for the purposes of the policies and procedures referred to in paragraph (1).

(3) Institutions shall put in place contingency and business continuity plans to ensure the institution's ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

(4) In this Regulation, "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.

Liquidity risk

74. (1) Institutions shall 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 the institution maintains adequate levels of liquidity buffers.

- (2) The strategies, policies, processes and systems, referred to in paragraph (1), shall be—
- (a) tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks, and
 - (b) proportionate to the complexity, risk profile, scope of operation of the institutions concerned and risk tolerance set by the management body and reflect the institution's importance in each Member State in which it carries out business.
- (3) Institutions shall communicate its risk tolerance, referred to in subparagraph (b) of paragraph (2), to all relevant business lines.
- (4) Institutions shall, taking into account the nature, scale and complexity of their activities, establish and maintain liquidity risk profiles that are consistent with, and not in excess of, those required for a well-functioning and robust system.
- (5) The Bank shall monitor developments in relation to liquidity risk profiles, referred to in paragraph (4), for example product design and volumes, risk management, funding policies and funding concentrations.
- (6) The Bank shall take effective action, using its powers under financial services legislation, where developments referred to in paragraph (5) may lead to individual institution or systemic instability.
- (7) The Bank shall inform the EBA about any actions carried out pursuant to paragraph (6).
- (8) Institutions shall develop methodologies for the identification, measurement, management and monitoring of funding positions and 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.
- (9) Institutions shall—
- (a) distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations,
 - (b) 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,
 - (c) 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,

- (d) 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, and shall review those arrangements regularly,
- (e) subject to paragraph (10), consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually,
- (f) consider the potential impact of institution-specific, market-wide and combined alternative scenarios and, for the purposes of this subparagraph, institutions shall consider different time periods and varying degrees of stress conditions,
- (g) 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 subparagraph (e),
- (h) have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State,
- (i) ensure that the recovery plans, referred to in subparagraph (h), are tested at least annually, updated on the basis of the outcome of the alternative scenarios referred to in subparagraph (e), reported to and approved by senior management, and that internal policies and processes can be adjusted accordingly, and
- (j) subject to paragraph (11) in respect of credit institutions, institutions shall take the necessary operational steps to ensure that liquidity recovery plans can be implemented immediately.

(10) For the purposes of paragraph (9)(e), alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of SSPEs or other special purpose entities, as referred to in the Capital Requirements Regulation, in relation to which the institution acts as sponsor or provides material liquidity support.

(11) For credit institutions, the operational steps, referred to in paragraph (9)(j), shall include holding collateral immediately available for central bank funding which shall include holding collateral where necessary in the currency of another Member State, or the currency of a third country to which the institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

Risk of excessive leverage

75. (1) Institutions shall—

- (a) have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage, and
- (b) subject to paragraph (3), 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.

(2) For the purposes of paragraph (1)(a), indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of the Capital Requirements Regulation and mismatches between assets and obligations.

(3) Institutions shall, for the purposes of paragraph (1)(b), ensure that they have arrangements in place to withstand a range of different stress events with respect to the risk of excessive leverage.

Governance

Governance arrangements

76. (1) Institutions shall ensure that its management body—

- (a) defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the institution, including the segregation of duties in the organisation and the prevention of conflicts of interest, and
- (b) monitors, and periodically assesses, the effectiveness of the institution's governance arrangements and takes appropriate steps to address any deficiencies.

(2) The governance arrangements, referred to in paragraph (1)(a), shall comply with the following principles:

- (a) the management body shall 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 shall 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 shall oversee the process of disclosure and communications;
- (d) the management body shall be responsible for providing effective oversight of senior management;
- (e) the chairman of the management body, in its supervisory function of an institution, shall not exercise simultaneously the functions of a

chief executive officer within the same institution, unless justified by the institution and authorised by the Bank.

(3) Institutions which are designated as significant under Regulation 64(5) shall establish and maintain a nomination committee composed of members of the management body who do not perform any executive function in the institution concerned.

(4) A nomination committee, referred to in paragraph (3), shall—

- (a) (i) identify and recommend, for the approval of the management body or for approval of a general meeting, candidates to fill management body vacancies,
 - (ii) evaluate the balance of knowledge, skills, diversity and experience of the management body,
 - (iii) prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected, and
 - (iv) 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,
- (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, and
 - (d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

(5) The target, policy and its implementation, referred to in paragraph (4)(a)(iv) shall be made public in accordance with Article 435(2)(c) of the Capital Requirements Regulation.

(6) The nomination committee, referred to in paragraph (3), shall in performing its duties—

- (a) 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, and

- (b) 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.

Country-by-country reporting

77. (1) Subject to paragraph (2), each institution shall, from 1 January 2015, 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, 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) Institutions shall disclose the information referred to in subparagraphs (a), (b) and (c) of paragraph (1) not later than 1 July 2014.

(3) Not later than 1 July 2014, all global systemically important institutions authorised within the State, as identified internationally, shall submit to the Commission on a confidential basis the information referred to in subparagraphs (d), (e) and (f) of paragraph (1).

(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.

Public disclosure of return on assets

78. 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.

Management body

79. (1) Institutions shall ensure that they are satisfied, based on reasonable grounds, that—

- (a) members of its management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties, and
- (b) the overall composition of its management body shall reflect an adequately broad range of experiences.

- (2) Institutions shall ensure that the members of its management body shall, in particular, fulfil the requirements set out in paragraphs (3) to (7).
- (3) Institutions shall ensure that all members of its management body shall commit sufficient time to perform their functions in the institution.
- (4) Subject to paragraph (7), institutions shall ensure that the number of directorships which may be held by a member of the management body in that institution at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.
- (5) Institutions shall ensure that the members of its management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.
- (6) Institutions shall ensure that each member of its management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.
- (7) Unless representing the State, members of the management body of an institution that is designated as significant by the Bank under Regulation 64(5) shall, subject to paragraphs (8) and (9), from 1 July 2014, not hold more than one of the following combinations of directorships at the same time:
- (a) one executive directorship with 2 non-executive directorships;
 - (b) 4 non-executive directorships.
- (8) For the purposes of paragraph (7), 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 the Capital Requirements Regulation are fulfilled, or
 - (ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding.
- (9) Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraphs (4) or (7).
- (10) The Bank may authorise members of the management body of an institution to hold one additional non-executive directorship.
- (11) The Bank shall regularly inform the EBA of authorisations under paragraph (10).

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

(13) Institutions shall ensure that they, and their nomination committees, engage a broad set of qualities and competences when recruiting members to the management body and for that purpose put in place a policy promoting diversity on the management body.

(14) The Bank shall collect, and provide to the EBA, the information disclosed in accordance with Article 435(2)(c) of the Capital Requirements Regulation and use it to benchmark diversity practices.

(15) In compliance with its obligations under this Regulation, institutions shall have regard to guidelines, if any, issued by the EBA under paragraph (12) of Article 91 of the Capital Requirements Directive.

(16) This Regulation shall be without prejudice to provisions on the representation of employees in the management body as provided for by law.

(17) In complying with paragraphs (1), (3), (4), (5), (6) and (13), institutions shall have regard to any code setting out standards of fitness and probity issued by the Bank under section 50 of the Central Bank Reform Act 2010 (No. 23 of 2010).

Remuneration policies

80. (1) Institutions shall ensure the application of—

- (a) paragraphs (2) and (3), and
- (b) Regulations 81 to 83,

at group, parent company and subsidiary levels, including those established in offshore financial centres.

(2) Institutions shall comply with the principles in paragraph (3), in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including—

- (a) senior management,
- (b) risk takers,
- (c) staff engaged in control functions, and
- (d) any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers,

whose professional activities have a material impact on the risk profile of that institution.

(3) The principles referred to in paragraph (2) are the following:

- (a) the institution's 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;
- (b) the institution's 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;
- (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 institution's 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) that staff engaged in control functions in the institution 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 of the institution is directly overseen by the remuneration committee referred to in Regulation 83 or, if such a committee has not been established, by the management body in its supervisory function;
- (g) the remuneration policy of the institution, 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.

(4) In addition to the principles in paragraph (3), where an institution benefits from exceptional government intervention, the additional principles in Regulation 81 shall apply.

Institutions that benefit from government intervention

81. The additional principles, referred to in Regulation 80(4), are the following:

- (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 Bank requires the institution 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.

Variable elements of remuneration

82. (1) For variable elements of remuneration, the following principles shall apply in addition to, and under the same conditions as, those set out in Regulation 80(3):

- (a) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of—
 - (i) the performance of the individual, taking into account financial and non-financial criteria,
 - (ii) the performance of the business unit concerned, and
 - (iii) of the overall results of the institution;
- (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 institution concerned 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 flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- (g) subject to paragraph (9), 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 per cent of the fixed component of the total remuneration for each individual;
 - (ii) subject to paragraph (2), shareholders or owners or members of the institution may 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 per cent of the fixed component of the total remuneration for each individual;
 - (iii) institutions may apply the notional discount rate, calculated in accordance with guidelines published by the EBA under Article 94(1)(g)(iii) of the Capital Requirements Directive, to a maximum of 25 per cent of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than 5 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 claw-back 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 per cent, of any variable remuneration shall consist of a balance of the following:
 - (i) shares or equivalent ownership interests, subject to the legal structure of the institution concerned or share-linked instruments or

equivalent non-cash instruments, in the case of a non-listed institution;

- (ii) where possible, other instruments within the meaning of Article 52 or 63 of the Capital Requirements Regulation or other instruments which can be fully converted to Common Equity Tier 1 instruments, within the meaning of Part Two, Title I, Chapter 1 of the Capital Requirements Regulation, 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;
 - (m) subject to paragraph (4), a substantial portion, and in any event not less than 40 per cent, of the variable remuneration component is deferred over a period which is not less than 3 to 5 years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question;
 - (n) subject to paragraphs (5), (6) and (7), 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;
 - (o) subject to paragraph (8), the pension policy is in line with the business strategy, objectives, values and long-term interests of the institution;
 - (p) staff members are required to undertake not to use—
 - (i) personal hedging strategies,
 - (ii) remuneration-related insurance, or
 - (iii) 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 these Regulations or the Capital Requirements Regulation.
- (2) Any approval of a higher ratio in accordance with subparagraph (g)(ii) of paragraph (1) shall be carried out in accordance with the following procedure:
- (a) 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;

- (b) shareholders or owners or members of the institution shall act by a majority of at least 66 per cent provided that at least 50 per cent of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75 per cent of the ownership rights represented;
 - (c) the institution shall notify all shareholders or owners or members of the institution, providing a reasonable notice period in advance, that an approval under subparagraph (a) will be sought;
 - (d) the institution shall, without delay, inform the Bank of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefor and shall be able to demonstrate to the Bank that the proposed higher ratio does not conflict with the institution's obligations under these Regulations and under the Capital Requirements Regulation, having regard in particular to the institution's own funds obligations;
 - (e) the institution shall, without delay, inform the Bank of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to subparagraph (a), and the Bank shall use the information received to benchmark the practices of institutions in that regard and shall provide the EBA with that information;
 - (f) staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this paragraph 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.
- (3) (a) Institutions shall ensure that the instruments referred to in paragraph (1)(l) shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the institution.
- (b) The Minister may place restrictions on the types and designs of those instruments or prohibit certain instruments, as appropriate.
- (c) This paragraph applies to both the portion of the variable remuneration component deferred in accordance with subparagraph (m) of paragraph (1) and the portion of the variable remuneration component not deferred.
- (4) Remuneration payable under deferral arrangements referred to in paragraph (1)(m) shall vest no faster than on a pro-rata basis. In the case of a variable remuneration component of a particularly high amount, at least 60 per cent of the amount shall be deferred and the length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question.

(5) Without prejudice to the general principles of contract law and employment law, the total variable remuneration, referred to in paragraph (1)(n), 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.

(6) Up to 100 per cent of the total variable remuneration, referred to in subparagraph (n) of paragraph (1), shall be subject to malus or clawback arrangements and institutions shall set specific criteria for the application of malus and clawback.

(7) The arrangements, referred to in paragraphs (5) and (6), shall, in particular, cover situations where the staff member concerned—

- (i) participated in or was responsible for conduct which resulted in significant losses to the institution, or
- (ii) failed to meet appropriate standards of fitness and probity which, at a minimum, shall include standards in any code issued by the Bank under section 50 of the Central Bank Reform Act 2010 (No. 23 of 2010).

(8) (a) Where an individual referred to in this Regulation who is an employee leaves an institution before retirement, discretionary pension benefits shall be held by the institution for a period of 5 years in the form of instruments referred to in paragraph (1)(l).

(b) Where an individual referred to in this Regulation who is an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in paragraph (1)(l), subject to a five-year retention period.

(9) Institutions shall apply the principles laid down in paragraphs (1)(g) and (2) to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before or after 31 December 2013.

Remuneration committee

83. (1) Institutions that are designated as significant by the Bank under Regulation 64(5) shall establish and maintain a remuneration committee.

(2) Institutions shall ensure that the remuneration committee established under paragraph (1) 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.

(3) Institutions shall ensure that—

- (a) the remuneration committee established under paragraph (1) 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, and

- (b) 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.

(4) Where employee representation on the management body is provided for in the law of the State, the remuneration committee established under paragraph (1) shall include one or more employee representatives.

(5) When preparing decisions referred to in paragraph (3)(a), the relevant institutions shall ensure that the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the institution and the public interest.

Maintenance of website on corporate governance and remuneration

84. Where institutions maintain a website on the internet, such website shall contain an explanation of how the institution complies with the requirements of Regulations 76 to 83.

Supervisory review and evaluation process

Supervisory review and evaluation

85. (1) Subject to paragraph (2), having regard to the technical criteria set out in Regulation 86, the Bank shall review the arrangements, strategies, processes and mechanisms implemented by institutions to comply with these Regulations and the Capital Requirements Regulation and evaluate the following:

- (a) the risks to which the institutions are, or might be, exposed;
- (b) the risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010, and recommendations of the ESRB, where appropriate;
- (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 shall cover all requirements of these Regulations and the Capital Requirements Regulation.

(3) On the basis of a review and evaluation, the Bank shall determine whether—

- (a) the arrangements, strategies, processes and mechanisms implemented by institutions, and
- (b) the own funds and liquidity held by institutions,

ensure a sound management and coverage of their risks.

(4) Subject to paragraph (5), the Bank shall establish the frequency and intensity of the review and evaluation—

- (a) having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned, and
- (b) taking into account the principle of proportionality.

(5) The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Regulation 87(2).

(6) Where a review shows that an institution may pose systemic risk, in accordance with Article 23 of Regulation (EU) No 1093/2010, the Bank shall communicate with the EBA without delay regarding those results.

(7) In this Regulation, “review and evaluation” means a review and evaluation by the Bank under paragraph (1).

Technical criteria for the supervisory review and evaluation

86. (1) In addition to credit, market and operational risks, the review and evaluation performed by the Bank pursuant to Regulation 85 shall include, at least, the following technical criteria:

- (a) the results of stress tests carried out in accordance with Article 177 of the Capital Requirements Regulation by institutions applying an internal ratings based approach;
- (b) the exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of the Capital Requirements Regulation and Regulation 69;
- (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 institutions, in respect of assets which they have 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 the Capital Requirements Regulation;
- (h) the geographical location of an institution's exposures;
- (i) the business model of institutions concerned;
- (j) the assessment of systemic risk, in accordance with the criteria set out in Regulation 85.

(2) Subject to paragraph (3), for the purposes of subparagraph (e) of paragraph (1), the Bank shall regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions and promote the development of sound internal methodologies.

(3) While conducting assessments under paragraph (2), the Bank shall have regard to the role played by institutions in the financial markets and duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned.

(4) The Bank shall—

- (a) monitor whether an institution has provided implicit support to a securitisation, and
- (b) where an institution is found to have provided such implicit support on more than one occasion, 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.

(5) For the purposes of the determination to be made under Regulation 85(3), the Bank shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the Capital Requirements Regulation, enables the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(6) The review and evaluation performed by the Bank pursuant to Regulation 85 shall include the exposure of institutions to the interest rate risk arising from non-trading activities.

(7) Measures shall be taken by the Bank, at a minimum, in respect of institutions whose economic value declines by more than 20 per cent of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

(8) The review and evaluation performed by the Bank pursuant to Regulation 85 shall include—

- (a) 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 the Capital Requirements Regulation, and

- (b) the arrangements, strategies, processes and mechanism implemented by institutions to manage the risk of excessive leverage.

(9) For the purposes of paragraph (8), the Bank shall take into account the business model of the institution concerned in determining the adequacy of the leverage ratio.

(10) The review and evaluation performed by the Bank pursuant to Regulation 85, referred to in paragraph (8), shall also include—

- (a) the governance arrangements of institutions,
- (b) their corporate culture and values, and
- (c) the ability of members of the management body to perform their duties.

(11) For the purposes of paragraph (10), institutions shall facilitate access by the Bank to at least the following:

- (a) agendas and supporting documents for meetings of the management body and its committees;
- (b) the results of the internal or external evaluation of performance of the management body.

Supervisory examination programme

87. (1) The Bank shall, at least annually, adopt a supervisory examination programme for the institutions it supervises.

(2) A supervisory examination programme shall take into account the supervisory review and evaluation process under Regulation 85 and contain the following:

- (a) an indication of how the Bank intends to carry out its tasks and allocate its resources;
- (b) an identification of which institutions are intended to be subjected to enhanced supervision and the measures to be taken for such supervision as set out in paragraph (4);
- (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 Regulations 50, 107 and 110.

(3) A supervisory examination programme shall include the following institutions:

- (a) institutions for which—

- (i) the results of the stress tests referred to in—
 - (I) subparagraphs (a) and (g) of Regulation 86(1), and
 - (II) Regulation 88,

or

- (ii) the outcome of the supervisory review and evaluation process under Regulation 85,

indicate significant risks to their ongoing financial soundness or indicate breaches of these Regulations or the Capital Requirements Regulation;

- (b) institutions that pose systemic risk to the financial system;
- (c) any other institution for which the Bank considers it to be necessary.

(4) Where appropriate under Regulation 85, the following measures shall, in particular, be taken where necessary:

- (a) an increase in the number or frequency of on-site inspections of institutions;
- (b) a permanent presence of the Bank at an institution;
- (c) additional or more frequent reporting by an institution;
- (d) additional or more frequent review of the operational, strategic or business plans of an institution;
- (e) thematic examinations monitoring specific risks that are likely to materialise.

(5) The adoption by the Bank of a supervisory examination programme shall not prevent the competent authorities of a 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 within their territory in accordance with Article 52(3) of the Capital Requirements Directive.

(6) Where a supervisory examination programme is adopted by the competent authorities in another Member State in accordance with Article 99 of the Capital Requirements Directive, the Bank may carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions in the State in accordance with Regulation 50(3).

(7) In this Regulation, “supervisory examination programme” means a supervisory programme adopted by the Bank under paragraph (1).

Supervisory stress testing

88. (1) The Bank shall carry out as appropriate, but at least annually, supervisory stress tests on institutions it supervises, to facilitate the review and evaluation process under Regulation 85.

(2) Nothing in these Regulations, the Capital Requirements Regulation or section 33AK of the Act of 1942 shall prevent the Bank from publishing the results of supervisory stress tests carried out in accordance with paragraph (1).

Ongoing review of the permission to use internal approaches

89. (1) The Bank shall review on a regular basis, and at least every 3 years, the compliance by institutions with the requirements regarding approaches that require permission by the Bank before using such approaches for the calculation of own funds requirements in accordance with Part Three of the Capital Requirements Regulation.

- (2) When conducting a review under paragraph (1)—
- (a) the Bank shall have particular regard to—
 - (i) changes in an institution's business, and
 - (ii) the implementation of the approaches, referred to in paragraph (1), to new products,
 - (b) where material deficiencies are identified in risk capture by an institution's internal approach, the Bank shall ensure the deficiencies are rectified or take appropriate steps to mitigate their consequences, including by—
 - (i) imposing higher multiplication factors,
 - (ii) imposing capital add-ons, or
 - (iii) taking other appropriate and effective measures,
 - (c) the Bank shall in particular review and assess whether the institution uses well developed and up-to-date techniques and practices for those approaches, and
 - (d) where for an internal market risk model numerous overshootings referred to in Article 366 of the Capital Requirements Regulation indicate that the model is not, or is no longer, sufficiently accurate, the Bank shall revoke the permission for using the internal model or impose appropriate measures, including measures under financial services legislation, to ensure that the model is improved promptly.
- (3) Where an institution—
- (a) has received permission to apply an approach that requires permission by the Bank before using such an approach for the calculation of

own funds requirements in accordance with Part Three of the Capital Requirements Regulation, and

- (b) does not meet the requirements for applying that approach any longer,

the Bank shall require the institution to either—

- (i) demonstrate to the satisfaction of the Bank that the effect of non-compliance is immaterial where applicable in accordance with the Capital Requirements Regulation, or
 - (ii) present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation.
- (4) The Bank shall require improvements to the plan, referred to in paragraph (3)(ii), where—

- (a) it is unlikely to result in full compliance, or
- (b) the deadline is inappropriate.

(5) Where an institution is unlikely to be able to restore compliance in accordance with paragraph 3(ii), 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—

- (a) revoked, or
- (b) limited to compliant areas or to those where compliance can be achieved within an appropriate deadline,

by the Bank.

(6) In performing its functions under this Regulation, the Bank shall take into account any guidelines on analysis and benchmarks developed by the EBA, in accordance with Article 101 of the Capital Requirements Directive, for the review of the permissions it grants to institutions to use internal approaches.

(7) In this Regulation, "approach" means an approach for the calculation of own funds requirements in accordance with Part Three of the Capital Requirements Regulation that requires permission by the Bank.

Supervisory measures and powers

Supervisory measures

90. (1) The Bank 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 these Regulations or of the Capital Requirements Regulation;

(b) the Bank has evidence that the institution is likely to breach the requirements of these Regulations, or of the Capital Requirements Regulation, within the subsequent 12 months.

(2) For the purposes of paragraph (1), the powers of the Bank shall include the powers referred to in Regulation 92.

Application of supervisory measures to institutions with similar risk profiles

91. (1) Where the Bank determines under Regulation 85 that institutions with similar risk profiles such as similar business models or geographical location of exposures are, or might be, exposed to similar risks or pose similar risks to the financial system, they may apply the supervisory review and evaluation process referred to in that Regulation to those institutions in a similar or identical manner.

(2) For the purpose of paragraph (1)—

(a) the type of institution may in particular be determined in accordance with the criteria referred to in Regulation 86(1)(j), and

(b) the Bank may impose requirements under these Regulations, and the Capital Requirements Regulation, on institutions in a similar or identical manner, including in particular the supervisory powers under Regulations 92 to 94.

(3) The Bank shall notify the EBA where it applies paragraph (1).

Supervisory powers

92. (1) For the purposes of—

(a) Regulation 85,

(b) Regulation 86(5),

(c) Regulation 89(3) to (5),

(d) Regulations 90 and 91, and

(e) the application of the Capital Requirements Regulation,

the Bank shall have, without limitation to the Bank's powers under financial services legislation, at least, the powers set out in paragraph (2).

(2) The powers referred to in paragraph (1) are the following:

(a) to require institutions to hold own funds in excess of the requirements set out in—

(i) Regulations 115 to 130, and

(ii) the Capital Requirements Regulation, relating to elements of risks and risks not covered by Article 1 of that Regulation;

- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Regulations 60 to 62;
 - (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to these Regulations and the Capital Requirements Regulation, and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
 - (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
 - (e) to restrict or limit the business, operations or network of institutions, or to request the divestment of activities that pose excessive risks to the soundness of an institution;
 - (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;
 - (g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
 - (h) to require institutions to use net profits to strengthen own funds;
 - (i) to restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments, within the meaning of Part Two, Title I, Chapter 3 of the Capital Requirements Regulation, where the prohibition does not constitute an event of default of the institution;
 - (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
 - (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
 - (l) to require additional disclosures for the purposes of these Regulations.
- (3) Without limitation to the Bank's powers under financial services legislation, the additional own funds requirements, referred to in subparagraph (a) of paragraph (2), shall be imposed by the Bank at least where—
- (a) an institution does not meet a requirement set out in—
 - (i) Regulations 60 to 62, or
 - (ii) Article 393 of the Capital Requirements Regulation,

- (b) risks, or elements of risks, are not covered by the own funds requirements set out in Regulations 115 to 130 or in the Capital Requirements Regulation,
- (c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently, within an appropriate timeframe,
- (d) the review referred to in Regulation 86(5) or 89(3) to (5) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements,
- (e) the risks, referred to in subparagraph (b), are likely to be underestimated despite compliance with the applicable requirements of—
 - (i) these Regulations, and
 - (ii) the Capital Requirements Regulation,

or

- (f) an institution reports to the Bank in accordance with Article 377(5) of the Capital Requirements Regulation that the stress test results, referred to in that Article, materially exceed its own funds requirement for the correlation trading portfolio.

(4) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Regulations 85 to 89, the Bank shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is, or might be, exposed, taking into account the following:

- (a) the quantitative and qualitative aspects of an institution's assessment process, referred to in Regulation 60;
- (b) an institution's arrangements, processes and mechanisms referred to in Regulation 61;
- (c) the outcome of the review and evaluation carried out in accordance with Regulation 85 or 89;
- (d) the assessment of systemic risk.

(5) The powers of the Bank referred to in paragraph (2) are in addition to and not in substitution for its powers in financial services legislation.

Specific liquidity requirements

93. (1) For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance

with Regulations 85 to 89, the Bank 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 Regulations 61 to 84, in particular in Regulation 74;
- (c) the outcome of the review and evaluation carried out in accordance with Regulation 85;
- (d) systemic liquidity risk that threatens the integrity of the financial markets of the State.

(2) In particular, and without prejudice to Regulation 55, the Bank may consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relate to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at State or Union level.

Specific publication requirements

94. (1) The Bank may require an institution to, and, where required, the institution shall—

- (a) publish the information referred to in Part Eight of the Capital Requirements Regulation more than once per year, not later than the deadline for publication set out by the Bank in its requirement, and
- (b) use specific media and locations for publications, referred to in subparagraph (a), other than the financial statements.

(2) The Bank may require parent undertakings to, and, where required parent undertakings shall, publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and the organisational structure of the group of institutions in accordance with—

- (a) Regulations 61(1) and 97(2) to (4),
- (b) section 9G(7) of the Act of 1971, or
- (c) section 17D(7) of the Act of 1989.

Consistency of supervisory reviews, evaluations and supervisory measures

95. The Bank shall inform the EBA of the following:

- (a) the functioning of its review and evaluation process referred to in Regulation 85;
- (b) the methodology used to base decisions referred to in Regulations 86, 88 to 90, 92 and 93 on the process referred to in subparagraph (a);

- (c) any additional information requested by the EBA pursuant to Article 107 of the Capital Requirements Directive.

Level of application

Internal capital adequacy assessment process

96. (1) Subject to paragraph (2), each institution which is authorised and supervised by the Bank which—

- (a) is neither a subsidiary, nor a parent undertaking, in the State, or
- (b) is not included in a consolidation pursuant to Article 19 of the Capital Requirements Regulation,

shall meet the obligations set out in Regulation 60 on an individual basis.

(2) The Bank may waive the requirements set out in Regulation 60 in respect of a credit institution, in accordance with Article 10 of the Capital Requirements Regulation.

(3) Where the Bank waives the application of own funds requirements on a consolidated basis provided for in Article 15 of the Capital Requirements Regulation, the requirements of Regulation 60 shall apply on an individual basis.

(4) Parent institutions in the State, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the Capital Requirements Regulation, shall comply with the obligations set out in Regulation 60 on a consolidated basis.

(5) Subject to paragraph (6), institutions controlled by a parent financial holding company or a parent mixed-financial holding company in a Member State, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the Capital Requirements Regulation, shall comply with the obligations set out in Regulation 60 on the basis of the consolidated situation of that financial holding company or mixed-financial holding company.

(6) Where more than one institution is controlled by a parent financial holding company or a parent mixed-financial holding company in a Member State, paragraph (5) shall apply only to the institution to which supervision on a consolidated basis applies in accordance with Regulation 99.

(7) Subsidiary institutions shall apply the requirements set out in Regulation 60 on a sub-consolidated basis where 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.

Institutions' arrangements, processes and mechanisms

97. (1) Institutions shall meet the obligations set out in Regulations 61 to 84 on an individual basis, other than where the Bank avails of the derogation provided for in Article 7 of the Capital Requirements Regulation.

(2) Parent undertakings, and subsidiaries, subject to these Regulations shall comply with the obligations set out in Regulations 61 to 84 on a consolidated or sub-consolidated basis to ensure that their arrangements, processes and mechanisms required by those Regulations are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced.

(3) Parent undertakings, and subsidiaries, subject to these Regulations shall implement such arrangements, processes and mechanisms, in accordance with paragraph (2), in their subsidiaries, not subject to these Regulations or the Capital Requirements Directive.

(4) The arrangements, processes and mechanisms in subsidiaries, referred to in paragraph (3), shall also be consistent and well-integrated and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision.

(5) The obligations contained in Regulations 61 to 84 concerning subsidiary undertakings, not themselves subject to these Regulations, shall not apply where—

(a) the EU parent institution, or

(b) institutions controlled by an EU parent financial holding company or an EU parent mixed-financial holding company,

can demonstrate to the Bank that the application of those Regulations is unlawful under the laws of the third country where the subsidiary is established.

Review and evaluation and supervisory measures

98. (1) The Bank shall apply—

(a) the review and evaluation process referred to in Regulations 85 to 89, and

(b) the supervisory measures referred to in Regulations 90 to 95,

in accordance with the level of application of the requirements set out in Part One, Title II of the Capital Requirements Regulation.

(2) Where the Bank waives the application of own funds requirements on a consolidated basis, as provided for in Article 15 of the Capital Requirements Regulation, the requirements of Regulation 85 shall apply to the supervision of investment firms on an individual basis.

Chapter 3

Supervision on a consolidated basis

Principles for conducting supervision on a consolidated basis

Determination of consolidating supervisor

99. (1) The Bank is responsible for supervision on a consolidated basis where it has authorised an institution which is—

- (a) a parent institution in the State,
- (b) an EU parent institution.

(2) Subject to paragraphs (3) to (7), where the Bank has authorised an institution and the parent of that institution is one of the following:

- (a) a parent financial holding company in a Member State;
- (b) a parent mixed-financial holding company in a Member State;
- (c) an EU parent financial holding company;
- (d) an EU parent mixed-financial holding company;

the Bank is responsible for supervision on a consolidated basis.

(3) Where 2 or more institutions, authorised in 2 or more Member States, one of which is the State, have as their parent—

- (a) the same parent financial holding company or parent mixed-financial holding company established in the State, or
- (b) the same EU parent financial holding company or EU parent mixed-financial holding company established in the State,

the Bank is responsible for supervision on a consolidated basis.

(4) Where—

- (a) the parent undertakings of institutions authorised in 2 or more Member States comprise 2 or more financial holding companies or mixed-financial holding companies that have their head offices in different Member States, and
- (b) there is an institution authorised in each of those Member States, one of which is the State,

the Bank is responsible for supervision on a consolidated basis where the institution authorised by the Bank had the largest balance sheet total at the end of its immediately preceding financial year.

(5) Where—

- (a) 2 or more institutions authorised in Member States, one of which is the State, have the same financial holding company or mixed-financial holding company as their parent, and
- (b) those institutions are not authorised in the Member State in which the financial holding company or mixed-financial holding company is established,

the Bank is responsible for supervision on a consolidated basis where the institution that had the largest balance sheet total at the end of its immediately preceding financial year is an institution authorised by the Bank.

(6) In a case to which paragraph (5) applies, the institution authorised by the Bank is to be regarded, for the purposes of these Regulations, as the institution controlled by an EU parent financial holding company or an EU parent mixed-financial holding company.

(7) Notwithstanding paragraphs (3), (4) and (5), in a particular case, the Bank may agree with the competent authorities of other Member States that another competent authority is to exercise supervision on a consolidated basis where, in the opinion of the Bank and the other competent authorities concerned, it is appropriate to do so having regard to the institutions concerned and the relative importance of their activities in the State and the other Member States.

(8) In entering into an agreement under paragraph (7), the Bank and the competent authority concerned may appoint a different competent authority to exercise supervision on a consolidated basis.

(9) The Bank and the other competent authorities concerned shall not make a decision under paragraph (7) without having given the following parties, where concerned, an opportunity to state its opinion on the proposed decision:

- (a) the EU parent institution;
- (b) the EU parent financial holding company;
- (c) the EU parent mixed-financial holding company;
- (d) the institution that had, at the end of its immediately preceding financial year, the largest balance sheet total.

(10) The Bank shall notify the Commission and the EBA of any agreement falling within paragraph (7).

Coordination of supervisory activities by consolidating supervisor

100. (1) In addition to the obligations imposed by these Regulations and by the Capital Requirements Regulation, where the Bank exercises supervision on a consolidated basis, it 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 Chapter 3 of Part 6, 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 the 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 Bank is responsible for exercising supervision on a consolidated basis, it may refer to the EBA situations where a competent authority in another Member State has not cooperated with the Bank to the extent required for carrying out the tasks in paragraph (1), and request the EBA's assistance under Article 19 of Regulation (EU) No 1093/2010.

(3) Where the Bank is responsible for the supervision of subsidiaries of—

- (a) an EU parent institution,
- (b) an EU parent financial holding company, or
- (c) an EU parent mixed-financial holding company,

it may, if the competent authority responsible for exercising supervision on a consolidated basis fails to carry out the tasks referred to in Article 112(1) of the Capital Requirements Directive, refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

(4) The planning and coordination of supervisory activities referred to in paragraph (1)(c) includes—

- (a) the exceptional measures referred to in Regulation 105(4)(d) and (10)(b),
- (b) the preparation of joint assessments,
- (c) the implementation of contingency plans, and
- (d) communication to the public.

Joint decisions on institution-specific prudential requirements

101. (1) Where—

- (a) the Bank is responsible for supervision on a consolidated basis, it shall make all efforts to reach a joint decision with the competent authorities of other Member States responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or EU parent mixed-financial holding company, or

- (b) the Bank is responsible for the supervision of a subsidiary of an EU parent institution, an EU parent financial holding company or EU parent mixed-financial holding company,

the Bank shall make all efforts to reach a joint decision with the consolidating supervisor, on the following:

- (i) the application of Regulations 60 and 85 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of Regulation 92(2)(a) to each entity within the group of institutions and on a consolidated basis;
 - (ii) the measures to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks, as required pursuant to Regulation 74, and relating to the need for institution-specific liquidity requirements in accordance with Regulation 93.
- (2) The joint decisions referred to in paragraph (1) shall be reached—
- (a) for the purpose of paragraph (1)(i), not later than 4 months after submission by the competent authority, which is responsible for supervision on a consolidated basis, of a report containing the risk assessment of the group of institutions in accordance with Regulations 60, 85 and 92(2)(a) to the other relevant competent authorities, and
 - (b) for the purpose of paragraph (1)(ii), not later than one month after submission by the competent authority, which is responsible for supervision on a consolidated basis, of a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Regulations 74 and 93.
- (3) The joint decisions referred to in paragraph (1) shall—
- (a) duly consider the risk assessment of subsidiaries performed by the competent authorities in accordance with Regulations 60 and 85, and
 - (b) be set out in documents containing full reasons which shall be provided to the EU parent institution concerned by the consolidating supervisor.
- (4) In the event of disagreement with respect to the joint decisions referred to in paragraph (1), the Bank, where it is responsible for supervision on a consolidated basis—
- (a) shall, at the request of the competent authorities of another Member State, consult the EBA, or
 - (b) may consult the EBA on its own initiative.

(5) In the absence of a joint decision between the competent authorities within the time periods referred to in paragraph (2), a decision on the application of Regulations 60, 74, 85, 92(2)(a) and 93 shall be taken on a consolidated basis by the Bank, where it is responsible for supervision on a consolidated basis, after duly considering the risk assessment of subsidiaries performed by the competent authorities.

(6) The decisions referred to in paragraph (5) shall—

- (a) be set out in a document containing full reasons, and
- (b) take into account the risk assessment, views and reservations of the other competent authorities expressed during the time period referred to in paragraph (2).

(7) A decision referred to in paragraph (5) shall be provided by the Bank to all the competent authorities concerned and to the EU parent institution concerned.

(8) The decision on the application of Regulations 60, 74, 85, 92(2)(a) and 93 shall be taken by the Bank, after duly considering the views and reservations expressed by the consolidating supervisor, on an individual or sub-consolidated basis where the Bank is responsible for the supervision of subsidiaries of—

- (a) an EU parent institution,
- (b) an EU parent financial holding company, or
- (c) an EU parent mixed-financial holding company.

(9) The decision referred to in paragraph (8) shall—

- (a) be set out in a document containing full reasons, and
- (b) take into account the risk assessment, views and reservations of the other competent authorities expressed during the time period referred to in paragraph (2).

(10) Where, at the end of any of the time periods referred to in paragraph (2), any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Bank shall defer any joint decision and await any decision that the EBA shall take in accordance with Article 19(3) of that Regulation, and shall take their decision in conformity with the decision of the EBA and the time periods referred to in paragraph (2) shall be deemed the conciliation periods within the meaning of that Regulation.

(11) A matter shall not be referred by the Bank to the EBA after the end of the 4 month period or one-month period referred to in paragraph (2), as applicable, or after a joint decision has been reached.

(12) Without prejudice to paragraph (13), the joint decisions referred to in paragraph (1) and the decisions taken by other competent authorities in their capacities as consolidating supervisors in the absence of a joint decision referred to in Article 113(3) of the Capital Requirements Directive shall be recognised as determinative and applied by the Bank.

(13) (a) The joint decisions referred to in paragraph (1) and decisions taken by the Bank in the absence of a joint decision in accordance with paragraph (5) shall be updated by the Bank on an annual basis.

(b) In exceptional circumstances, where the Bank—

(i) is responsible for supervision on a consolidated basis, it may update a decision on the application of Regulations 92(2)(a) and 93 on the basis of a written and reasoned request from a competent authority responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or an EU parent mixed-financial holding company, or

(ii) is responsible for the supervision of one or more subsidiaries of an EU parent institution or an EU parent financial holding company or an EU parent mixed-financial holding company, it may make a written and reasoned request to the competent authority responsible for supervision on a consolidated basis to update a decision on the application of Regulations 92(2)(a) and 93.

(14) In the cases referred to in paragraph (13), the update may be addressed on a bilateral basis between—

(a) the competent authority responsible for consolidated supervision and the Bank, where the Bank makes the request, or

(b) the Bank, where it is responsible for consolidated supervision, and the other competent authority making the request.

Information requirements in emergency situations

102. (1) Where an emergency situation, including a situation as described in Article 18 of Regulation (EU) No 1093/2010, or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial system of any Member State where entities of a group have been authorised or where significant branches referred to in Regulation 47 are established, the Bank, where it is responsible for supervision on a consolidated basis, shall, subject to—

(a) Articles 53 to 61 of the Capital Requirements Directive,

(b) Regulation 51, and

(c) where applicable, Articles 54 and 58 of Directive 2004/39/EC,

alert, as soon as is practicable, the EBA and the authorities referred to in Articles 58(4) and 59 of the Capital Requirements Directive and shall communicate all information essential for the pursuance of their tasks.

(2) The obligations referred to in paragraph (1) shall apply to the Bank and, where possible, the Bank and the ESCB central banks shall use existing channels of communication.

(3) The Bank, where it is responsible for supervision on a consolidated basis, 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.

Coordination and cooperation arrangements

103. (1) In order to facilitate and establish effective supervision, the Bank in its capacity as consolidating supervisor and the other competent authorities shall have written coordination and cooperation arrangements in place.

(2) Under the arrangements referred to in paragraph (1), where the Bank is the consolidating supervisor, additional tasks may be entrusted to the Bank and procedures for the decision-making process and for cooperation with other competent authorities may be specified.

(3) Where—

- (a) the Bank is responsible for supervising an institution that is a subsidiary of a parent undertaking, and
- (b) the competent authority of another Member State has authorised, and is responsible for supervising, the parent undertaking referred to in subparagraph (a),

the Bank may, in accordance with Article 28 of Regulation (EU) No 1093/2010, enter into an agreement in writing with the authority, referred to in subparagraph (b), under which it delegates to that authority its supervisory responsibility regarding the subsidiary.

(4) On the making of a delegation, referred to in paragraph (3), the competent authority of that other Member State, shall become responsible for supervising the subsidiary in accordance with the Capital Requirements Directive.

(5) Where—

- (a) the competent authority of another Member State is responsible for supervising an institution that is a subsidiary of a parent undertaking, and
- (b) the Bank has authorised and is responsible for supervising the parent undertaking, referred to in subparagraph (a),

the Bank may, in accordance with Article 28 of Regulation (EU) No 1093/2010, enter into an agreement in writing with that authority, referred to in subparagraph (a), under which the competent authority's supervisory responsibilities regarding the subsidiary may be delegated to the Bank.

(6) On the making of a delegation, under paragraph (5), the Bank shall become responsible for supervising the subsidiary in accordance with these Regulations.

(7) The Bank shall keep the EBA informed of the existence and content of agreements entered into under this Regulation.

Colleges of supervisors

104. (1) The Bank, where it is responsible for supervision on a consolidated basis, shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Regulations 100, 101 and 102(1) and, subject to the confidentiality requirements of paragraph (3) and to European Union law, ensure appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate.

(2) Where the Bank establishes a college of supervisors, it shall facilitate the college by establishing a framework for—

- (a) the Bank, in its role as consolidating supervisor,
- (b) the EBA, and
- (c) the other competent authorities concerned,

for the purposes of the following:

- (i) exchanging information between each other and with the EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;
- (ii) agreeing on voluntary entrustment of tasks, and voluntary delegation of responsibilities, where appropriate;
- (iii) determining supervisory examination programmes referred to in Article 99 of the Capital Requirements Directive, based on a risk assessment of the group in accordance with Article 97 of that Directive;
- (iv) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Articles 114 and 117(3) of the Capital Requirements Directive;
- (v) consistently applying the prudential requirements under the Capital Requirements Directive, and under the Capital Requirements Regulation, across all entities within a group of institutions without prejudice to the options and discretions available in European Union law;

- (vi) applying Article 112(1)(c) of the Capital Requirements Directive, taking into account the work of other forums that may be established in that area.

(3) The Bank, when participating in the colleges of supervisors, shall cooperate closely with the other competent authorities, and the confidentiality requirements under—

- (a) Articles 53 to 61 of the Capital Requirements Directive,
- (b) Regulation 51, and
- (c) Articles 54 and 58 of Directive 2004/39/EC,

shall not prevent the Bank from exchanging confidential information within colleges of supervisors.

(4) The establishment and functioning of colleges of supervisors shall—

- (a) not affect the rights and responsibilities of the Bank under these Regulations and under the Capital Requirements Regulation,
- (b) be based on written arrangements referred to in Regulation 103, determined after the competent authorities concerned have been consulted by the consolidating supervisor.

(5) The following may participate in a college of supervisors established by the Bank:

- (a) competent authorities responsible for the supervision of subsidiaries of the EU parent institution, the EU parent financial holding company or the EU parent mixed-financial holding company concerned;
- (b) the competent authority of each host Member State where significant branches, referred to in Regulation 47, are established;
- (c) other ESCB central banks as appropriate;
- (d) third countries' competent authorities, where appropriate, and subject to confidentiality requirements that are equivalent, in the opinion of all participating competent authorities in Member States, to the requirements under Articles 53 to 62 of the Capital Requirements Directive and, where applicable, Articles 54 and 58 of Directive 2004/39/EC;
- (e) the EBA.

(6) Where the Bank has established a college of supervisors, it shall—

- (a) chair the meetings of the college,

- (b) decide which competent authorities participate in a meeting or in an activity of the college,
- (c) 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, and
- (d) 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.

(7) A decision taken by the Bank in its role as a chair of a college of supervisors shall take account of the relevance of the supervisory activity to be planned or coordinated for other competent authorities, and in particular to—

- (a) the potential impact on the stability of the financial system in the Member States concerned, as referred to in Regulation 6, and
- (b) the obligations referred to in Regulations 47(9) and 48(5) to (9).

(8) Where the Bank is the chair of a college of supervisors, it shall, subject to the confidentiality requirements of—

- (a) Articles 53 to 61 of the Capital Requirements Directive,
- (b) Regulation 51, and
- (c) where applicable, Articles 54 and 58 of Directive 2004/39/EC,

inform the EBA of the activities of the college, including in emergency situations, and shall communicate to the EBA all information that is of particular relevance for the purposes of supervisory convergence.

(9) In this Regulation, “college of supervisors” means a college of supervisors established by the Bank under paragraph (1).

Cooperation obligations

105. (1) The Bank shall cooperate closely with the competent authorities of the other Member States.

(2) Without limiting the generality of paragraph (1), the Bank shall provide other competent authorities with any information which is essential or relevant for the exercise of those other authorities’ supervisory tasks under the Capital Requirements Directive and the Capital Requirements Regulation and, in performing that function, the Bank shall—

- (a) communicate, on request, all relevant information, and
- (b) communicate, on its own initiative, all essential information.

(3) Information referred to in paragraph (2) 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.

(4) Without limiting the generality of paragraph (3), the essential information referred to in paragraph (2) shall include, in particular, the following items:

(a) identification of institutions' group legal structure and 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—

(i) Regulations 61(1) and 97(2) and (3),

(ii) section 9G(7) of the Act of 1971, or

(iii) section 17D(7) of the Act of 1989,

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 these Regulations, including—

(i) the imposition of a specific own fund requirement under Regulation 92, and

(ii) 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 the Capital Requirements Regulation.

(5) The Bank shall cooperate with the EBA for the purposes of these Regulations and the Capital Requirements Regulation, in accordance with Regulation (EU) No 1093/2010.

(6) Without prejudice to the generality of paragraph (5) the Bank shall provide the EBA with such information as is necessary for the EBA to carry out its duties under—

(a) the Capital Requirements Directive,

(b) the Capital Requirements Regulation, and

(c) Regulation (EU) No 1093/2010,

in accordance with Article 35 of Regulation (EU) No 1093/2010.

(7) In particular, where the Bank is the consolidating supervisor of EU parent institutions and institutions controlled by EU parent financial holding companies or EU parent mixed-financial holding companies, it shall provide the competent authorities in other Member States, who supervise subsidiaries of those parent undertakings, with all relevant information, and 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.

(8) The Bank may refer to the EBA any of the following situations:

- (a) where the competent authority of another Member State 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.

(9) Where the Bank is responsible for the supervision of an institution controlled by an EU parent institution, it shall, whenever possible, contact the consolidating supervisor when it needs information regarding the implementation of approaches and methodologies set out in these Regulations or in the Capital Requirements Regulation that may already be available to the consolidating supervisor.

(10) Before making a decision relating to an item that is of importance for another competent authority's supervisory tasks, the Bank shall consult that other authority with regard to the following items:

- (a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities;
- (b) significant penalties or exceptional measures taken by competent authorities, including the imposition of a specific own funds requirement under Regulation 92 and the imposition of any limitation on the use of the advanced measurement approaches for the calculation of the own funds requirements under Article 312(2) of the Capital Requirements Regulation.

(11) For the purposes of paragraph (10)(b), the consolidating supervisor shall always be consulted.

(12) Without prejudice to the obligations of the Bank under this Regulation, the Bank may decide not to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision and, in such cases, the Bank shall, without delay, inform the other competent authorities after taking its decision.

Checking information concerning entities in other Member States

106. (1) Where, in applying these Regulations and the Capital Requirements Regulation, the Bank wishes in specific cases to verify the information concerning—

- (a) an institution,
- (b) a financial holding company,
- (c) a mixed-financial holding company,
- (d) a financial institution,
- (e) an ancillary services undertaking,
- (f) a mixed-activity holding company,
- (g) a subsidiary as referred to in Regulation 107(3), or
- (h) a subsidiary as referred to in Regulation 113,

situated in another Member State, it shall request the competent authorities of that other Member State to have that verification carried out.

(2) Where the Bank receives a request from a competent authority in another Member State to verify information relating to a relevant entity that is located in the State, it shall, within the framework of its competence, act upon it either—

- (a) by carrying out,
- (b) by allowing the authorities who made the request to carry out, or
- (c) by allowing an auditor or expert to carry out,

the verification.

(3) A competent authority of another Member State that has made a request to the Bank for the verification of information under paragraph (2) is entitled to participate in the verification where that competent authority does not undertake the verification itself.

(4) Where the Bank has made a request to the competent authority of another Member State for the verification of information, referred to in paragraph (1), it is entitled to participate in the verification, if it so wishes, in accordance with Article 118 of the Capital Requirements Directive.

(5) In this Regulation, “relevant entity” means an entity referred to in subparagraphs (a) to (h) in paragraph (1).

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

Inclusion of holding companies in consolidated supervision

107. (1) Where appropriate, the Bank shall adopt such measures as are necessary to include financial holding companies and mixed-financial holding companies in consolidated supervision.

(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 the Capital Requirements Regulation, the parent undertaking of the institution shall, on being requested by the Bank to do so, provide the Bank with such information as it requires to facilitate its supervision of that subsidiary.

(3) The Bank may, for the purpose of exercising supervision on a consolidated basis, ask a subsidiary of—

- (a) an institution,
- (b) a financial holding company, or
- (c) a mixed-financial holding company,

which is not included within the scope for supervision on a consolidated basis for the information referred to in Regulation 110, and the procedures for transmitting and checking the information set out in that Regulation shall apply.

Supervision of mixed-financial holding companies

108. (1) Where a mixed-financial holding company is subject to equivalent provisions under these Regulations and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the Bank, where it is responsible for exercising supervision on a consolidated basis, 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.

(2) Where a mixed-financial holding company is subject to equivalent provisions under these Regulations and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the Bank, where it is responsible for exercising supervision on a consolidated basis, may, in agreement with the group supervisor in the insurance sector, apply to that mixed-financial holding company only the provisions of these Regulations relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC.

(3) The Bank, where responsible for consolidated supervision, shall inform the EBA and the European Insurance and Occupational Pensions Authority of the decisions taken under paragraphs (1) and (2).

Qualification of directors

109. A financial holding company or a mixed-financial holding company shall ensure that the members of its management body are of sufficiently good repute

and possess sufficient knowledge, skills and experience, referred to in Regulation 79(1), to perform their duties, taking into account the specific role of a financial holding company or mixed-financial holding company.

Requests for information and inspections

110. (1) Where the parent undertaking of one or more institutions is a mixed-activity holding company, the Bank, where it is 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) Subject to paragraphs (3) and (4), the Bank 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.

(3) Where a mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in Regulation 113 may also be used in addition to the inspections mentioned in paragraph (2).

(4) Where a mixed-activity holding company or one of its subsidiaries is situated in a Member State (other than the State) other than that in which a subsidiary that is an institution is situated, an on-the-spot check of information shall be carried out in accordance with the procedure set out in Regulation 106.

Supervision

111. (1) Without prejudice to Part Four of the Capital Requirements Regulation, where—

- (a) the parent undertaking of one or more institutions is a mixed-activity holding company, and
- (b) the Bank is responsible for the supervision of one or more of those institutions,

the Bank shall exercise general supervision over transactions between the institution and the mixed-activity holding company and its subsidiaries.

(2) Each institution supervised by the Bank shall—

- (a) 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, as appropriate, and
- (b) report to the Bank any significant transaction with entities other than the entity referred to in Article 394 of the Capital Requirements Regulation.

(3) The procedures and significant transactions referred to in paragraph (2) shall be subject to overview by the Bank.

Exchange of information

112. (1) Nothing in these Regulations shall prevent the exchange of information which would be relevant for the purposes of supervision in accordance with section 9D of the Act of 1971 and Regulations 99 to 114 between the following:

- (a) undertakings included in supervision on a consolidated basis;
- (b) mixed-activity holding companies and their subsidiaries;
- (c) subsidiaries referred to in Regulation 107(3).

(2) Where a parent undertaking and any of its subsidiaries that are institutions are located in different Member States, one of which is the State, the Bank shall communicate to the other competent authorities concerned all relevant information in its possession that could facilitate the exercise of supervision of those entities on a consolidated basis.

(3) Where a parent undertaking is located in the State, and the Bank is not itself responsible for exercising supervision on a consolidated basis pursuant to Regulation 99, the Bank shall, on being requested to do so by the competent authority responsible for supervision on a consolidated basis, take all reasonable steps to—

- (a) obtain from the parent undertaking information that is relevant to exercising that supervision, and
- (b) transmit to that other authority any information so obtained.

(4) The communication or exchange by the Bank of information referred to in paragraph (2) does not, in relation to the collection or possession of information about financial holding companies, mixed-financial holding companies, financial institutions or ancillary services undertakings, imply that the Bank is required to perform a supervisory role in relation to those institutions or undertakings standing alone.

(5) The communication or exchange by the Bank of information referred to in Regulation 110 in relation to a mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries referred to in Regulation 107(3), does not in any way imply that the Bank performs a supervisory role in relation to that company or to those of its subsidiaries which are not credit institutions, or to subsidiaries as referred to in Regulation 107(3).

Cooperation

113. (1) Where—

- (a) an institution authorised in the State, or a financial holding company, mixed-financial holding company or a mixed-activity holding company, established in the State, controls one or more subsidiaries which are insurance companies or other undertakings providing investment services, and
- (b) those insurance companies or other undertakings are subject to authorisation by the competent authorities in other Member States,

the Bank shall make every effort to co-operate closely with the competent authorities entrusted with the public task of supervising such insurance companies or undertakings that provide investment services.

(2) Without prejudice to its other responsibilities, the Bank shall provide the competent authorities of other Member States with any information that is likely to simplify their task and to allow supervision of the activities and the overall financial situation of the undertakings they supervise.

(3) Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in these Regulations, shall be subject to professional secrecy requirements at least equivalent to—

- (a) those referred to in Article 53(1) of the Capital Requirements Directive for credit institutions, or
- (b) under Directive 2004/39/EC.

(4) Where the Bank is responsible for supervision on a consolidated basis, it shall establish lists of the financial holding companies or mixed-financial holding companies referred to in Article 11 of the Capital Requirements Regulation and communicate those lists to—

- (a) the competent authorities of the other Member States,
- (b) the EBA, and
- (c) the Commission.

Assessment of equivalence of third countries' consolidated supervision

114. (1) Where an institution, the parent undertaking of which is an institution, a financial holding company or a mixed-financial holding company, the head office of which is in a third country, is not subject to supervision on a consolidated basis under Article 111 of the Capital Requirements Directive, the Bank shall assess in accordance with paragraph (2) whether the institution is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by—

- (a) the principles set out in these Regulations, and
- (b) the requirements of Part One, Title II, Chapter 2 of the Capital Requirements Regulation.

(2) The assessment, referred to in paragraph (1) shall be carried out by the Bank in instances where it would be responsible for consolidated supervision if paragraph (4) were to apply, at the request of—

- (a) the parent undertaking,
- (b) any of the regulated entities authorised in the Union, or
- (c) on its own initiative,

and the Bank shall consult the other competent authorities involved.

(3) The Bank, when carrying out the assessment referred to in paragraph (1)—

- (a) shall take into account any guidance issued by the European Banking Committee pursuant to Article 127(2) of the Capital Requirements Directive, and
- (b) shall consult the EBA,

before adopting a decision.

(4) In the absence of supervision equivalent to that referred to in this Regulation and the requirements of Part One, Title II, Chapter 2 of the Capital Requirements Regulation, the Bank shall apply these Regulations and the Capital Requirements Regulation to an institution, making any necessary changes which achieve the objectives of supervision on a consolidated basis of institutions.

(5) The supervisory techniques referred to in paragraph (4) shall, after consulting the other competent authorities involved, be agreed upon by the Bank where it is responsible for consolidated supervision.

(6) The Bank, when carrying out its functions under this Regulation, 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 of these Regulations 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.

(7) The supervisory techniques referred to in this Regulation shall be designed to achieve the objectives of supervision on a consolidated basis as set out in this Chapter, and shall be notified to—

- (a) the other competent authorities involved,
- (b) the EBA, and
- (c) the Commission.

(8) In this Regulation, “European Banking Committee” means the committee established pursuant to Commission Decision 2004/10/EC²².

Chapter 4

Capital Buffers

Buffers

Definitions

115. For the purpose of this Chapter the following definitions shall apply:

- (a) “capital conservation buffer” means the own funds that an institution is required to maintain in accordance with Regulation 117;
- (b) “institution-specific countercyclical capital buffer” means the own funds that an institution is required to maintain in accordance with Regulation 118;
- (c) “G-SII buffer” means the own funds that are required to be maintained in accordance with Regulation 123(1);
- (d) “O-SII buffer” means the own funds that may be required to be maintained in accordance with Regulation 123(2);
- (e) “relevant third-country authority” has the meaning assigned to it in Regulation 127(1);
- (f) “systemic risk buffer” means the own funds that an institution is or may be required to maintain in accordance with Article 133 of the Capital Requirements Directive;
- (g) “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:
 - (i) an institution-specific countercyclical capital buffer;
 - (ii) a G-SII buffer;
 - (iii) an O-SII buffer;
 - (iv) a systemic risk buffer;
- (h) “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 Regulations 125 to 128;
- (i) “domestically authorised institution” means an institution that has been authorised in the State;

²²OJ No. L 3, 07.01.2004, p. 36

- (j) “buffer guide” means a benchmark buffer rate calculated in accordance with Article 135(1) of the Capital Requirements Directive.

Non-application of Chapter to certain investment firms

116. This Chapter does not apply to investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to Directive 2004/39/EC.

Requirement to maintain a capital conservation buffer

117. (1) Subject to Regulation 119, institutions shall maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of the Capital Requirements Regulation, a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5 per cent of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

(2) Institutions shall not use Common Equity Tier 1 capital that is maintained in accordance with paragraph (1) to meet any requirements imposed under Regulation 92.

(3) Where an institution fails to meet the requirement under paragraph (1), it shall be subject to the restrictions on distributions set out in Regulation 129(3) and (4).

Requirement to maintain institution-specific countercyclical capital buffer

118. (1) Subject to Regulation 119, institutions shall maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with Regulations 125 to 128 on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

(2) Institutions shall meet the requirement imposed by paragraph (1) with Common Equity Tier 1 capital, which shall be additional to any Common Equity Tier 1 capital maintained to meet—

(a) the own funds requirement imposed by Article 92 of the Capital Requirements Regulation,

(b) the requirement to maintain a capital conservation buffer under Regulation 117, and

(c) any requirement imposed under Regulation 92.

(3) An institution that fails to meet the requirement imposed by paragraph (1) shall be subject to the restrictions on distributions set out in Regulation 129(3) and (4).

Transitional provisions for capital buffers

119. (1) 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 per cent of the total of the risk-weighted exposure amounts of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation, and
- (b) the institution-specific countercyclical capital buffer shall be no more than 0.625 per cent of the total of the risk-weighted exposure amounts of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation.

(2) 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 per cent of the total of the risk-weighted exposure amounts of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation, and
- (b) the institution-specific countercyclical capital buffer shall be no more than 1.25 per cent of the total of the risk-weighted exposure amounts of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation.

(3) 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 per cent of the total of the risk-weighted exposure amounts of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation, and
- (b) the institution-specific countercyclical capital buffer shall be no more than 1.875 per cent of the total of the risk-weighted exposure amounts of an institution calculated in accordance with Article 92(3) of the Capital Requirements Regulation.

(4) The requirement for a capital conservation plan and the restrictions on distributions referred to in Regulations 129 and 130 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 (1), (2) and (3).

Derogation from requirement to maintain certain buffers

120. (1) The Bank is designated as the authority in charge of the application of Regulations 117 and 118 and may exempt small and medium-sized investment firms from the requirements set out in those Regulations if such an exemption does not threaten the stability of the financial system of the State.

(2) A decision on the application of an exemption referred to in paragraph (1) shall—

- (a) be reasoned,
- (b) include an explanation why the exemption does not threaten the stability of the financial system of the State, and
- (c) specify the small and medium-sized investment firms which are exempt.

(3) Where it applies an exemption under paragraph (1), the Bank shall notify the Commission, the ESRB, the EBA and the competent authorities of any other Member States concerned.

(4) For the purposes of this Regulation, investment firms shall be categorised as small or medium-sized in accordance with Commission Recommendation 2003/361/EC of 6 May 2003²³.

Global and other systemically important institutions

121. (1) The Bank is designated for the purposes of Article 131(1) of the Capital Requirements Directive as the authority in charge of identifying, on a consolidated basis, global systemically important institutions (in these Regulations referred to as “G-SIIs”), and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (in these Regulations referred to as “O-SIIs”), which have been authorised within the State.

(2) For the purposes of paragraph (1)—

- (a) G-SIIs shall be an EU parent institution, an EU parent financial holding company, an EU parent mixed-financial holding company or an institution,
- (b) G-SIIs shall not be an institution that is a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed-financial holding company,
- (c) O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed-financial holding company or an institution,
- (d) the identification methodology for G-SIIs shall be based on the following categories:
 - (i) size of the group;
 - (ii) interconnectedness of the group with the financial system;
 - (iii) substitutability of the services or of the financial infrastructure provided by the group;
 - (iv) complexity of the group;

²³OJ No. L 124, 20.05.2003, p. 36

- (v) cross-border activity of the group, including cross-border activity between Member States and between a Member State and a third country,
- (e) each category, referred to in subparagraph (d), shall receive an equal weighting and shall consist of quantifiable indicators, and
- (f) the methodology, referred to in subparagraph (d), shall produce an overall score for each entity referred to in this Regulation that is assessed, which allows G-SIIs to be identified and allocated into a sub-category as described in Regulation 123(6).

Identification of O-SIIs

122. For the purposes of Regulation 121(1)—

- (a) O-SIIs shall be identified in accordance with that paragraph,
- (b) systemic importance shall be assessed on the basis of at least one of the following criteria:
 - (i) size;
 - (ii) importance for the economy of the Union or of the State;
 - (iii) significance of cross-border activities;
 - (iv) interconnectedness of the institution or group with the financial system.

G-SII and O-SII buffers

123. (1) 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 in accordance with paragraphs (6) and (7). That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(2) The Bank may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 2 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, taking into account the criteria for the identification of the O-SII. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(3) When requiring an O-SII buffer to be maintained, the Bank 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 European Union as a whole, forming or creating an obstacle to the functioning of the internal market;
- (b) the O-SII buffer shall be reviewed by the Bank at least annually.

(4) Before setting or resetting an O-SII buffer, the Bank shall, not later than one month before the publication of the decision referred to in paragraph (2), notify the Commission, the ESRB, the EBA, and the competent and designated authorities of the other Member States concerned, and such notification shall include details of—

- (a) the grounds on which the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk,
- (b) based on information which is available to the Bank, an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, and
- (c) the O-SII buffer rate that the Bank wishes to set.

(5) Without prejudice to Article 133 of the Capital Requirements Directive and paragraph (2), where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the O-SII shall not exceed the higher of the following:

- (a) 1 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation;
 - (b) the G-SII or O-SII buffer rate applicable to the group at consolidated level.
- (6) (a) There shall be at least 5 subcategories of G-SIIs.
- (b) The lowest boundary and the boundaries between each subcategory shall be determined by the scores under the identification methodology.
 - (c) The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category.
 - (d) For the purposes of this paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market.
 - (e) The lowest sub-category shall be assigned a G-SII buffer of 1 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation and the buffer assigned to each sub-category shall increase in gradients of 0.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation up to and including the fourth sub-category.

- (f) The highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation.
- (7) Without prejudice to Regulation 121(2)(a) to (c) and paragraph (6), the Bank may, in the exercise of sound supervisory judgment—
- (a) re-allocate a G-SII from a lower sub-category to a higher sub-category, or
 - (b) allocate an entity referred to in Regulation 121(2) that has an overall score that is lower than the cut-off score of the lowest sub-category, to that sub-category or to a higher sub-category, thereby designating it as a G-SII.
- (8) Where the Bank takes a decision in accordance with paragraph (7)(b), it shall notify the EBA accordingly, providing reasons.
- (9) The Bank shall—
- (a) notify the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, to the Commission, the ESRB and the EBA,
 - (b) disclose the names of the G-SIIs and O-SIIs and the sub-category to which each G-SII is allocated to the public,
 - (c) review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, the Commission, the ESRB and the EBA, and
 - (d) disclose the updated list of identified systemically important institutions, and the sub-category into which each identified G-SII is allocated, to the public.
- (10) Systemically important institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirements under paragraphs (1) and (2) to meet any requirements imposed under—
- (a) Article 92 of the Capital Requirements Regulation,
 - (b) Regulations 90 and 92, and
 - (c) Regulations 117 and 118.
- (11) (a) Where a group, on a consolidated basis, is subject to the following, the higher buffer shall apply in each case:
- (i) a G-SII buffer and an O-SII buffer;

(ii) a G-SII buffer, an O-SII buffer and a systemic risk buffer in accordance with Article 133 of the Capital Requirements Directive.

(b) Where an institution, on an individual or sub-consolidated basis, is subject to an O-SII buffer and a systemic risk buffer in accordance with Article 133 of the Capital Requirements Directive, the higher of the 2 shall apply.

(12) Notwithstanding paragraph (11), where the systemic risk buffer set by the Bank in accordance with Article 133 of the Capital Requirements Directive applies to all exposures located in the State to address the macroprudential risk in the State, but does not apply to exposures outside the State, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with this Regulation.

(13) Where paragraph (11) applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall not imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of—

- (a) the capital conservation buffer,
- (b) the countercyclical capital buffer, and
- (c) the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

(14) Where paragraph (12) applies and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall not imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of—

- (a) the capital conservation buffer,
- (b) the countercyclical capital buffer, and
- (c) the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

(15) From 1 January 2016, paragraph (1) shall apply in the following manner:

- (a) 25 per cent of the G-SII buffer, set in accordance with that paragraph, in 2016;
- (b) 50 per cent of the G-SII buffer, set in accordance with that paragraph, in 2017;
- (c) 75 per cent of the G-SII buffer, set in accordance with that paragraph, in 2018;

- (d) 100 per cent of the G-SII buffer, set in accordance with that paragraph, in 2019.

Recognition of systemic risk buffer rate

124. (1) The Bank may recognise a systemic risk buffer rate set by another Member State in accordance with Article 133 of the Capital Requirements Directive and may apply that buffer rate to domestically-authorized institutions for the exposures located in the Member State that sets that buffer rate.

(2) Where the Bank recognises a systemic risk buffer rate referred to in paragraph (1) for domestically-authorized institutions they shall notify the Commission, the ESRB, the EBA and the Member State that sets that systemic risk buffer rate.

(3) When deciding whether to recognise a systemic risk buffer rate, the Bank shall take into consideration the information presented by the Member State that sets that buffer rate in accordance with Article 133(11), (12) or (13) of the Capital Requirements Directive.

Setting and calculating countercyclical capital buffers

Setting countercyclical buffer rates

125. (1) The Bank is designated as the authority that is responsible for setting the countercyclical buffer rate for the State.

(2) (a) The Bank 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).

(b) The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the State and shall duly take into account specificities of the national economy.

(c) The buffer guide shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, amongst other things—

(i) an indicator of growth of levels of credit within the State and, in particular, an indicator reflective of the changes in the ratio of credit granted in the State to GDP, and

(ii) any current guidance maintained by the ESRB in accordance with Article 135(1)(b) of the Capital Requirements Directive.

(3) The Bank shall assess and set the appropriate countercyclical buffer rate for the State on a quarterly basis, and in so doing shall take into account—

(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) of the Capital Requirements Directive

and any recommendations issued by the ESRB on the setting of a buffer rate, and

- (c) other variables that the Bank considers relevant for addressing cyclical systemic risk.
- (4) (a) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation of institutions that have credit exposures in the State, shall be between 0 and 2.5 per cent, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points.
- (b) Where justified on the basis of the considerations set out in paragraph (3), the Bank may set a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation.
- (5) (a) Where the Bank sets the countercyclical buffer rate above zero for the first time, or where, thereafter, the Bank increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions shall apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer.
- (b) The date, referred to in subparagraph (a), shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph (7).
- (c) Where the date, referred to in subparagraph (a), is less than 12 months after the increased buffer setting is announced in accordance with paragraph (7), that shorter deadline for application shall be justified on the basis of exceptional circumstances.
- (6) (a) Subject to subparagraph (b), where the Bank 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.
- (b) The indicative period, referred to in subparagraph (a), shall not bind the Bank.
- (7) The Bank shall—
- (a) announce the quarterly setting of the countercyclical buffer rate by publication on its website, including at least the following information:
 - (i) the applicable countercyclical buffer rate;
 - (ii) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;

- (iii) the buffer guide calculated in accordance with paragraph (2);
 - (iv) a justification for that buffer rate;
 - (v) where the buffer rate is increased, the date from which the institutions shall apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
 - (vi) where the date referred to in clause (v) 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;
 - (vii) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period,
- (b) take all reasonable steps to coordinate the timing of that announcement with designated authorities in other Member States, and
 - (c) notify each quarterly setting of the countercyclical buffer rate and the information specified in subparagraphs (a)(i) to (vii) to the ESRB.

Recognition of countercyclical buffer rates in excess of 2.5 per cent

126. (1) Where a designated authority in another Member State in accordance with Article 136(4) of the Capital Requirements Directive, or a relevant third-country authority, has set a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, the Bank may recognise that buffer rate for the purposes of the calculation by domestically-authorized institutions of their institution-specific countercyclical capital buffers.

(2) Where the Bank, in accordance with paragraph (1), recognises a buffer rate in excess of 2.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, it shall announce that recognition by publication on its website, including 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 State shall apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- (d) where the date, referred to in subparagraph (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.

Decision by Bank on third-country countercyclical buffer rates

127. (1) Where a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country (in this Chapter referred to as a “relevant third-country authority”) to which one or more Union institutions have credit exposures the Bank may set the countercyclical buffer rate that domestically-authorized institutions shall apply for the purposes of the calculation of their institution-specific countercyclical capital buffer.

(2) Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, the Bank may set a different buffer rate for that third country for the purposes of the calculation by domestically-authorized 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.

(3) When exercising the power under paragraph (2), the Bank shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5 per cent, expressed as a percentage of the total risk exposure amount, calculated in accordance with Article 92(3) of the Capital Requirements Regulation, of institutions that have credit exposures in that third country.

(4) (a) Where the Bank sets a countercyclical buffer rate for a third country, pursuant to paragraph (1) or (2), which increases the existing applicable countercyclical buffer rate, the Bank shall specify the date from which domestically-authorized institutions shall apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer.

(b) The date, referred to in subparagraph (a), shall be no later than 12 months from the date on which the buffer rate is announced in accordance with paragraph (5).

(c) Where the date, referred to in subparagraph (a), 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) The Bank shall publish any setting of a countercyclical buffer rate for a third country, pursuant to paragraph (1) or (2), on its website, 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;

(c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions shall apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

- (d) where the date referred to in subparagraph (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.

Calculation of institution-specific countercyclical capital buffer rates

128. (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 Regulation by virtue of Regulation 127(1) or (2).

(2) Institutions shall, in order to calculate the weighted average referred to in paragraph (1), 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 the Capital Requirements Regulation, 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.

(3) Where, in accordance with Article 136(4) of the Capital Requirements Directive, a designated authority in another Member State sets a countercyclical buffer rate in excess of 2.5 per cent of total risk exposure amount calculated in accordance with Article 92(3) of the Capital Requirements Regulation, the following buffer rates shall apply to relevant credit exposures located in the Member State of that designated authority for the purposes of the calculation required under paragraphs (1) and (2) including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- (a) where the Bank has not recognised the buffer rate in excess of 2.5 per cent in accordance with Regulation 126(1), domestically authorised institutions shall apply a countercyclical buffer of 2.5 per cent;
- (b) where the Bank has recognised the buffer rate in accordance with Regulation 126(1), domestically authorised institutions shall apply the countercyclical buffer rate set by the designated authority in the other Member State.

(4) Where the countercyclical buffer rate set by a relevant third-country authority exceeds 2.5 per cent of total risk exposure amount calculated in accordance with Article 92(3) of Capital Requirements Regulation, the following buffer rates shall apply to relevant credit exposures located in that third country for the purposes of the calculation required under paragraphs (1) and (2) including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- (a) where the Bank has not recognised the buffer rate in excess of 2.5 per cent in accordance with Regulation 126(1), domestically authorised

institutions shall apply a countercyclical buffer rate of 2.5 per cent of total risk exposure amount;

- (b) where the Bank has recognised the buffer rate in accordance with Regulation 126(1), domestically authorised institutions shall apply the countercyclical buffer rate set by the relevant third-country authority.

(5) Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of the Capital Requirements Regulation, 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, the 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, or
- (c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

(6) Institutions shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with Article 140(7) of the Capital Requirements Directive.

(7) For the purposes of the calculation required under paragraphs (1) and (2)-

- (a) a countercyclical buffer rate set by the Bank shall apply from the date specified in accordance with Regulation 125(7)(a)(v) or 126(2)(c), in the information published, where the effect of that decision is to increase the buffer rate,
- (b) subject to subparagraph (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, where the effect of that decision is to increase the buffer rate,
- (c) where the Bank sets the countercyclical buffer rate for a third country pursuant to Regulation 127(1) or (2), or recognises the countercyclical buffer rate for a third country pursuant to Regulation 126, that buffer rate shall apply from the date specified in the information published in accordance with Regulation 126(2)(c) or 127(5)(c), where the effect of that decision is to increase the buffer rate, and
- (d) a countercyclical buffer rate shall apply immediately where the effect of that decision is to reduce the buffer rate.

(8) For the purposes of paragraph (7)(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.

Capital conservation measures

Restrictions on distributions

129. (1) An institution that meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

(2) An institution that fails to meet the combined buffer requirement shall—

(a) calculate the Maximum Distributable Amount (in these Regulations referred to as “MDA”) in accordance with paragraph (5), and

(b) notify the Bank of that MDA.

(3) Prior to calculating the MDA, an institution to which paragraph (2) applies shall not—

(a) make a distribution in connection with Common Equity Tier 1 capital,

(b) create an obligation to pay variable remuneration or discretionary pension benefits, or pay variable remuneration, if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements, or

(c) make payments on Additional Tier 1 instruments.

(4) While an institution fails to meet or exceed its combined buffer requirement, it shall not distribute more than the MDA calculated in accordance with paragraph (5) through any action referred to in paragraph (3)(a), (b) or (c).

(5) (a) Institutions shall calculate the MDA by multiplying the sum calculated in accordance with paragraph (6) by the factor determined in accordance with paragraph (7).

(b) The MDA shall be reduced by any of the actions referred to in paragraph (3)(a), (b) or (c).

(6) The sum to be multiplied in accordance with paragraph (5) shall be $A + B - C$ where—

A is the interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the Capital Requirements Regulation that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in paragraph (3)(a), (b) or (c),

- B is the year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the Capital Requirements Regulation that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in subparagraphs (a), (b) and (c) of paragraph (3), and
- C is the amounts which would be payable by tax if the items specified in items A and B of this paragraph were to be retained.

(7) The factor, referred to in paragraph (5), shall be determined as follows:

- (a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of the Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be zero;
- (b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;
- (c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Capital Requirements Regulation expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;
- (d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Capital Requirements Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6;
- (e) The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

Combined buffer requirement

$$\text{Lower bound of quartile} = \frac{\quad}{4} \times (Q_n - 1)$$

Combined buffer requirement

$$\text{Upper bound of quartile} = \frac{\quad}{4} \times Q_n$$

where Q_n indicates the ordinal number of the quartile concerned.

(8) The restrictions imposed by this Regulation 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.

(9) 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 paragraph (3)(a), (b) or (c), it shall notify the Bank and provide the following information:

- (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 (5);
- (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.

(10) 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 Bank on request.

(11) For the purposes of paragraphs (1) to (3), 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 the Capital Requirements Regulation;
- (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.

Capital conservation plan

130. (1) (a) Where an institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the Bank no later than 5 working days after it identifies that it is failing to meet that requirement, unless the Bank authorises a longer period, which shall not exceed 10 days.
- (b) The Bank shall grant such authorisations only on the basis of the individual situation of a credit institution and taking into account the scale and complexity of the institution's activities.
- (2) The capital conservation plan to be prepared and submitted in accordance with paragraph (1) 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 the combined buffer requirement;
 - (d) any other information that the Bank considers to be necessary to carry out the assessment required by paragraph (3).
- (3) The Bank 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 Bank considers appropriate.

(4) If the Bank does not approve the capital conservation plan in accordance with paragraph (3), it shall do at least one of the following:

- (a) require the institution to increase own funds to specified levels within specified periods;
- (b) exercise its powers under Regulation 90 to impose more stringent restrictions on distributions than those required by Regulation 129.

Part 7

DISCLOSURE BY COMPETENT AUTHORITIES

General disclosure requirements

131. (1) The Bank shall publish the following information:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in the State in the field of prudential regulation;
- (b) the manner of exercise of the options and discretions available in European Union law;
- (c) the general criteria and methodologies it uses in the review and evaluation referred to in Regulation 85;
- (d) without prejudice to the provisions set out in—
 - (i) Articles 53 to 61 of the Capital Requirements Directive,
 - (ii) Regulation 51, and
 - (iii) Articles 54 and 58 of Directive 2004/39/EC,

aggregate statistical data on key aspects of the implementation of the prudential framework in the State, including the number and nature of supervisory measures taken in accordance with Regulation 90(1) and of administrative penalties imposed in accordance with Regulation 53 or other financial services legislation.

- (2) The information published in accordance with paragraph (1) shall be—
 - (a) sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States,
 - (b) published in accordance with technical standards adopted by the Commission, following a common format and updated regularly, and
 - (c) be accessible at a single electronic location.

Specific disclosure requirements

132. (1) For the purpose of Part Five of the Capital Requirements Regulation, the Bank shall publish the following information:

- (a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of that Regulation;
- (b) without prejudice to the provisions laid down in—
 - (i) Articles 53 to 61 of the Capital Requirements Directive, and
 - (ii) Regulation 51,

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 that Regulation, identified on an annual basis.

(2) The Bank when exercising the discretion laid down in Article 7(3) of the Capital Requirements Regulation 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—
 - (i) which benefit from the exercise of the discretion laid down in Article 7(3) of the Capital Requirements Regulation, and
 - (ii) which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for the State—
 - (i) the total amount of own funds on the consolidated basis of the parent institution in the State, which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation,
 - (ii) the percentage of total own funds on the consolidated basis of parent institutions in the State, which benefits from the exercise of the discretion laid down in Article 7(3) of that Regulation, represented by own funds, and
 - (iii) the percentage of total own funds required under Article 92 of that Regulation on the consolidated basis of parent institutions in the 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 Bank when it exercises the discretion laid down in Article 9(1) of the Capital Requirements Regulation 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 9(1) of the Capital Requirements Regulation and the number of such parent institutions which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for the 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 that Regulation,
 - (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 that Regulation represented by own funds,
 - (iii) the percentage of total own funds required under Article 92 of that Regulation 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.

Part 8

TRANSITIONAL PROVISIONS

Chapter 1

Transitional provisions on the supervision of institutions exercising the freedom of establishment and the freedom to provide services

Reporting requirements — transitional

133. (1) A credit institution established in another Member State, that has a branch within the State, shall provide the Bank with such information relating to the institution's activities within the State as the Bank requires for statistical purposes.

(2) The information referred to in paragraph (1) shall be provided monthly on a date specified by the Bank.

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

134. (1) Where the Bank ascertains that a credit institution authorised for the purposes of the Capital Requirements Directive in another Member State and having a branch or providing services within the State is not complying with the provisions of financial services legislation involving powers of the Bank, under these Regulations, it shall inform the institution accordingly and shall in writing direct the institution to comply immediately with those requirements.

(2) Before issuing a direction to an institution under paragraph (1), the Bank shall notify the institution of its intention to do so and shall give the institution

an opportunity to make representations on the matter within such time limit specified by the Bank in the notification.

(3) Where the credit institution concerned fails to comply with a direction issued under paragraph (1), the Bank shall notify the competent authorities in the home Member State of the institution concerned—

- (a) of the matters leading to the issue of the direction under paragraph (1), and
- (b) the reasons why the Bank believes that the credit institution has failed to comply with its direction.

(4) Where the Bank is satisfied that, notwithstanding the provisions of paragraphs (1) and (3) and despite the measures taken by the home Member State concerned or because such measures have proved inadequate or are not provided for in the State, the credit institution concerned has not complied with its direction, it may, exercising its powers under financial services legislation and having informed the competent authorities in the home Member State concerned, take appropriate measures to—

- (a) prevent, or to punish, further breaches, and
- (b) in so far as is necessary, prevent that credit institution from providing further services within the State.

(5) A direction issued to an institution under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

(6) Where the Bank receives a notification from a competent authority in a host Member State pursuant to Article 153(2) of the Capital Requirements Directive, it shall at the earliest opportunity—

- (a) exercising its powers under financial services legislation, take appropriate measures to ensure that the credit institution concerned remedies its non-compliance, and
- (b) communicate to the competent authorities in the host Member State the nature of those measures.

Precautionary measures — transitional

135. (1) Before following the procedure set out in Regulation 134(1) the Bank may, in emergencies, take any precautionary measures, including measures under financial services legislation, necessary to protect the interests of depositors, investors and others to whom services are provided.

(2) Where the Bank takes measures under paragraph (1) it shall inform the Commission, and the competent authorities of the other Member States concerned, at the earliest opportunity.

(3) Where the Commission issues a direction, as provided for under Article 154 of the Capital Requirements Directive, that the measures in question should be amended or terminated, the Bank shall comply with that direction without delay.

Responsibility of Bank — transitional

136. (1) The prudential supervision of institutions which are authorised by the Bank, including the activities they carry out in accordance with Articles 33 and 34 of the Capital Requirements Directive, shall be the responsibility of the Bank.

(2) Nothing in paragraph (1) shall prevent-

(a) the competent authorities of other Member States from exercising powers conferred on host Member State competent authorities by the Capital Requirements Directive, in respect of branches of institutions authorised by the Bank,

(b) supervision on a consolidated basis.

(3) Where the prudential supervision of institutions, including the supervision of activities such institutions carry out in accordance with Articles 33 and 34 of the Capital Requirements Directive, is the responsibility of the competent authorities of the home Member State, nothing in these Regulations shall prevent the Bank from exercising powers or performing functions conferred on it in its capacity as a host Member State authority.

(4) The Bank shall, in the exercise of its general duties (and particularly in an emergency situation), duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned based on the information available at the relevant time.

Liquidity supervision — transitional

137. (1) Pending further coordination, nothing in these Regulations affects the responsibility of the Bank under financial services legislation for the supervision, in cooperation with the competent authorities of home Member States, of the liquidity of the branches of credit institutions not authorised by the Bank.

(2) In discharging its responsibilities under paragraph (1), the Bank may require that branches of credit institutions authorised in other Member States provide the same information as the Bank requires from domestically authorised credit institutions for that purpose.

(3) Without prejudice to the measures necessary for the reinforcement of the European Monetary System, the Bank shall retain complete responsibility for the measures resulting from the implementation of the State's monetary policies and such measures shall not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Collaboration concerning supervision — transitional

138. (1) Subject to paragraph (2), the Bank shall collaborate closely with the competent authorities of other Member States to supervise the activities of—

- (a) institutions incorporated in the State which operate, in particular, through a branch in another Member State,
- (b) institutions incorporated in another Member State which operate, in particular, through a branch in the State.

(2) The Bank shall supply the competent authorities of other Member States with—

- (a) all information concerning the management and ownership of institutions, referred to in paragraph (1), that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and
- (b) all information likely to facilitate the monitoring of such institutions, in particular with regard to—
 - (i) liquidity,
 - (ii) solvency,
 - (iii) deposit guarantees,
 - (iv) the limiting of large exposures,
 - (v) administrative and accounting procedures, and
 - (vi) internal control mechanisms.

Designation of significant branches — transitional

139. (1) Where an institution (other than an investment firm subject to Article 95 of the Capital Requirements Regulation) that is not authorised in the State has a branch in the State, the Bank may make a request to—

- (a) the competent authorities of the Member State in which the institution is authorised, or
- (b) a competent authority that is a consolidating supervisor in relation to the institution, where Article 112(1) of the Capital Requirements Directive applies,

that the branch be considered as significant.

(2) A request by the Bank under paragraph (1) shall include reasons for considering the branch in the State as significant, with particular regard to the following:

- (a) whether the market share, in terms of deposits, of the branch in the State exceeds 2 per cent;
- (b) the likely effect of a suspension or closure of the operations of the institution on systemic liquidity, and the payment and clearing and settlement systems, in the 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 State.

(3) The Bank shall do everything within its power to reach a joint decision with the competent authorities, or consolidating supervisor, referred to in paragraph (1), to which the relevant request was made on the designation of a branch as being significant.

(4) Where a joint decision, under paragraph (3), has not been reached within 2 months of making the relevant request, the Bank may, within a further period of 2 months, determine that the branch is significant and the Bank shall take into account any views and reservations of the competent authority, or consolidating supervisor, referred to in paragraph (1), to which the relevant request was made.

(5) A decision under paragraph (3) or a determination under paragraph (4) shall be set out in a document by the Bank that shall also contain the reasons for the decision, and this document shall be communicated to the competent authorities, or to the consolidating supervisor, referred to in paragraph (1).

Designation of branch of an institution in another Member State as significant — transitional

140. (1) Where—

- (a) the Bank is responsible for the supervision of an institution controlled by one or more EU parent financial holding companies or is the consolidating supervisor,
- (b) the institution or EU parent institution has a branch in a host Member State, and
- (c) the Bank receives a request from the competent authorities of the host Member State to designate the branch as significant,

the Bank shall do everything in its power to reach a joint decision on the designation of the branch as significant with those competent authorities.

(2) In endeavouring to reach a joint decision in accordance with paragraph (1), the Bank may request the competent authorities that made the request referred to in paragraph (1)(c) to provide any information that the Bank considers necessary, in particular with regard to—

- (a) whether the market share, in terms of deposits, of the branch concerned in the host Member State exceeds 2 per cent,

- (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, and
- (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.

(3) A joint decision taken pursuant to paragraph (1) shall be set out in a document that shall also contain the reasons for the decision, and this document shall be communicated to the competent authorities referred to in that paragraph.

(4) Nothing in this Regulation affects the rights and responsibilities of the Bank under financial services legislation.

(5) Where—

- (a) the Bank is responsible for the supervision of an institution or the consolidated supervision of an EU parent institution or institutions controlled by an EU parent financial holding company, and
- (b) a branch in another Member State of the institution, EU parent institution or institution controlled by an EU parent financial holding company has been designated as significant,

the Bank shall, insofar as that information is relevant to a branch in that host Member State, provide the competent authorities of the host Member State with the following information:

- (i) any information that the Bank has on any adverse developments in those institutions or in other entities of the group which could seriously affect the institutions;
- (ii) any information that the Bank has on any major sanctions and exceptional measures taken in accordance with these Regulations, including—
 - (I) any imposition of a specific own fund requirement under Regulation 92, and
 - (II) any imposition of a limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of the Capital Requirements Regulation.

(6) The Bank is responsible for the planning and coordination of supervisory activities in cooperation with the competent authorities concerned, and if necessary with the ESCB central banks, in preparation for and during emergency situations (including adverse developments in institutions or in financial markets) using, where possible, existing defined channels of communication.

(7) Where—

- (a) an emergency (including adverse developments in financial markets) arises which potentially jeopardises the market liquidity and the stability of the financial system in a Member State where entities of a group have been authorised or where significant branches are established, and
- (b) the Bank is responsible for the supervision of an institution or is responsible for the exercise of supervision on a consolidated basis,

the Bank shall—

- (i) as soon as is practicable, alert the other central banks concerned, the ESRB, the EBA and the administrative authorities of central governments concerned with financial supervision policy, and
- (ii) communicate to the bodies mentioned in subparagraph (i) all information that is essential for the performance of their tasks.

Bank to establish college of supervisors for significant branches — transitional

141. (1) Where—

- (a) Regulation 104 does not apply, and
- (b) the Bank is responsible for the supervision of an institution with significant branches in other Member States,

the Bank 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 Regulation 140 and the exchange of information under Article 60 of the Capital Requirements Directive and the establishment and functioning of the college shall be based on written arrangements determined, after consultation with those competent authorities, by the Bank.

(2) The Bank shall decide which competent authorities participate in a meeting or in an activity of the college.

(3) The decision of the Bank, under paragraph (2), 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, and the obligations in Regulations 136 and 140.

(4) The Bank shall keep all the members of the college, established under this Regulation, informed, in advance of—

- (a) the organisation of,
- (b) the main issues to be discussed at, and
- (c) the activities to be considered at,

meetings of the college.

(5) The Bank shall also keep all the members of the college, established under this Regulation, informed, in a timely manner, of the actions taken in those meetings or the measures carried out every year starting from 1 January 2014.

On-the-spot checks — transitional

142. (1) The Bank may appoint any of its officers or employees, or other suitably qualified persons for the purpose of this paragraph, to carry out an inspection or investigation of the business of an institution authorised in the State, at branches of that institution in another Member State—

- (a) having informed the competent authorities of that Member State, and
- (b) for the purposes of on-the-spot checks of the information referred to in Regulation 138.

(2) The Bank for the purpose of the inspection of branches referred to in paragraph (1), may have recourse to one of the procedures set out in Regulation 106.

(3) The competent authorities in another Member State may, having notified the Bank, inspect or investigate the business of an institution, supervised by those authorities, which has a place of business in the State, at that place of business, for the purpose of verifying any information provided to that authority by virtue of Article 50 of the Capital Requirements Directive in either of the following manners:

- (a) by inspection of the institution, at that place of business or otherwise, by the authority concerned;
- (b) by inspection of the institution, at that place of business or otherwise, by a person authorised in that behalf by that authority concerned.

Part 9

PROVISIONS FROM STATUTORY INSTRUMENTS REVOKED BY THESE REGULATIONS

Application of certain enactments

143. (1) Section 18 of the Act of 1971 applies to and in relation to a credit institution that is subject to consolidated supervision by the Bank as if—

- (a) references in that section to a holder of a licence under that Act were references to the credit institution, and
- (b) references in that section to a related body of a holder of such a licence were references to an associated enterprise of the credit institution.

(2) Section 41A of the Act of 1989 applies to and in relation to a building society that is subject to consolidated supervision by the Bank as if references

in that section to a related body of a building society were references to an associated body of the building society.

(3) Section 25 of the TSB Act applies to, and in relation to, a credit institution that is subject to consolidated supervision by the Bank as if references in that section to a trustee savings bank were references to the credit institution.

Bank not to be liable for losses incurred through insolvency or default of persons subject to supervision under these Regulations

144. The supervision of a person in accordance with these Regulations or the Capital Requirements Regulation, or the investigation or inspection of, or the requiring by the Bank of any information, document, report, other material, or explanation from, a person under these Regulations or the Capital Requirements Regulation does not constitute a warranty as to the person's solvency and the Bank is not liable in respect of losses that are attributable to the person's insolvency or default.

Bank to consult competent authorities of other Member States in certain circumstances

145. (1) The Bank shall consult the competent authorities of the other Member States concerned before granting an authorisation to an insurance undertaking that is—

- (a) a subsidiary of an insurance undertaking authorised in another Member State,
- (b) a subsidiary of the parent undertaking of such an insurance undertaking, or
- (c) controlled by the same person who controls such an insurance undertaking.

(2) The Bank shall consult the competent authorities of the other Member State responsible for the supervision of credit institutions or investment firms before granting an authorisation to an insurance undertaking that is-

- (a) a subsidiary of a credit institution or investment firm authorised in another Member State,
- (b) a subsidiary of the parent undertaking of such a credit institution or investment firm, or
- (c) controlled by the same person who controls such a credit institution or investment firm.

(3) In particular, the Bank shall—

- (a) when assessing the suitability of the shareholders, and the reputation and experience of directors involved in the management, of another entity of the same group, consult with the competent authorities referred to in paragraphs (1) and (2) of this Regulation, and

- (b) either when involved in granting an authorisation to an insurance undertaking or in assessing compliance by such an undertaking with the conditions under which it is authorised to operate, inform each of the other competent authorities of the other Member States concerned of any information regarding the suitability of shareholders, and the reputation and experience of directors, that is of relevance to those authorities.

Provision of services into another Member State

146. Nothing in these Regulations shall—

- (a) be taken as authorising a financial institution to which Regulation 32 applies to carry on the business of accepting deposits inside or outside the State, or
- (b) remove any existing requirements on a credit institution to seek the permission of the Bank under financial services legislation to carry on business outside the State either generally or in respect of any particular class or classes of activities.

Offence of providing false or misleading information — Regulations 10 to 25

147. (1) A person who provides the Bank with information in purported compliance with a requirement of, or under, any of Regulations 10 to 25, knowing the information to be false or misleading, or where he or she ought reasonably to have known the information was false or misleading, commits an offence.

(2) A person who knowingly omits or withholds material information from the Bank on his or her own behalf, or on behalf of any other person or institution, in relation to any requirement imposed by these Regulations, commits an offence.

(3) A person who commits an offence under this Regulation is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or to both.

Provision of false or misleading information — general

148. (1) Any person who provides the Bank with false, misleading or inaccurate information, knowing it to be false, misleading or inaccurate, or where he or she ought reasonably to have known the information was false, misleading or inaccurate, on his or her own behalf, or on behalf of any other person or institution, in relation to any requirement imposed by these Regulations shall be guilty of an offence.

(2) A person who commits an offence under this Regulation is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or

- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or to both.

Prosecution by Bank

149. A prosecution for a summary offence under these Regulations may be taken by the Bank.

Offences by bodies corporate

150. (1) Where an offence under these Regulations is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Continuation of contravention of Regulations

151. Where a person continues to contravene a provision of these Regulations in respect of which he has been convicted, he or she shall be guilty of an offence on every day on which the contravention continues after the original conviction and for each such offence he or she shall be liable on summary conviction to a class E fine.

Construction of licence holder in enactments

152. Notwithstanding Regulation 7(1), the references, however expressed, to the holder of a licence under section 9 of the Act of 1971, in—

- (a) sections 19 to 26, section 28, sections 31 to 42 or section 58 of the Act of 1971,
- (b) section 27, sections 49 to 51, sections 90, 108, 117, 134 or 140 of the Central Bank Act 1989 (No. 16 of 1989), or
- (c) any other enactment which was in force on 1 January 1993,

shall be construed so as to include any person who, but for the application of Regulation 7(1), was or would have been required to hold a licence under section 9 of the Act of 1971.

Part 10

CONSEQUENTIAL AMENDMENTS

Amendment of Central Bank Act 1942

153. (1) Section 33AK (as amended by section 5(1) of the Act of 2013) of the Act of 1942 is amended by substituting for subsection (5)(ap) the following:

- “(ap) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the Central Bank and Credit Institutions (Resolution) Act 2011, or
- (aq) to authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macroprudential rules, or
- (ar) to reorganisation bodies or authorities aiming at protecting the stability of the financial system, or
- (as) for the purposes of contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013²⁴.”.

(2) Section 33AK (as amended by section 5(1) of the Act of 2013) of the Act of 1942 is amended, in the definition of “Supervisory Directives” by substituting for paragraphs (p) and (q) of subsection (10) the following:

- “(p) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC²⁵,
- (q) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC²⁶, and
- (r) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC²⁷.”.

(3) The Act of 1942 is amended by inserting after section 33ANB the following:

“33ANC (1) This Part applies in relation to—

- (a) the commission or suspected commission by a financial holding company, mixed-financial holding company or mixed-activity holding company of a contravention of—
 - (i) a provision of the Capital Requirements Regulations or the Capital Requirements Regulation,

²⁴OJ No. L 176, 27.06.2013, p. 1

²⁵OJ No. L 319, 05.12.2007, p. 1

²⁶OJ No. L 267, 10.10.2009, p. 7

²⁷OJ No. L 176, 27.06.2013, p. 338

- (ii) any direction given to a financial holding company, mixed-financial holding company or mixed-activity holding company, under a provision of the Regulations referred to in subparagraph (i),
- (iii) any requirement imposed on a financial holding company, mixed-financial holding company or mixed-activity holding company under a provision of the Regulations referred to in subparagraph (i) or under any direction given to a financial holding company, mixed-financial holding company or mixed-activity holding company under a provision of those Regulations, or
- (iv) any obligation imposed on a financial holding company, mixed-financial holding company or mixed-activity holding company by this Part or imposed by the Bank pursuant to a power exercised under this Part,

and

- (b) participation, by a person concerned in the management of a financial holding company, mixed-financial holding company or mixed-activity holding company, in the commission by the financial holding company, mixed-financial holding company or mixed-activity holding company of such a contravention.

(2) For the purposes of subsection (1)—

- (a) a reference in this Part to a regulated financial service provider or a financial service provider includes a reference to a financial holding company, mixed-financial holding company or mixed-activity holding company,
- (b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a financial holding company, mixed-financial holding company or mixed-activity holding company, of a provision, direction, requirement or obligation referred to in subsection (1), and
- (c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of a financial holding company, mixed-financial holding company or mixed-activity holding company.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) In this section—

- (a) ‘Capital Requirements Regulations’ means European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014);

- (b) ‘Capital Requirements Regulation’ means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;
- (c) ‘financial holding company’ has the meaning assigned to it in point (20) of Article 4(1) of the Capital Requirements Regulation;
- (d) ‘mixed-financial holding company’ has the meaning assigned to it in point (21) of Article 4(1) of the Capital Requirements Regulation;
- (e) ‘mixed-activity holding company’ has the meaning assigned to it in point (22) of Article 4(1) of the Capital Requirements Regulation.”.

(4) Section 33BC (as amended by section 71 of the Act of 2013) of the Act of 1942 is amended by inserting after subsection (5) the following:

“(6) This section does not apply where Regulation 56 the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) applies.”.

(5) Part 2 of Schedule 2 (as amended by section 5 of the Act of 2013) to the Act of 1942 is amended by inserting after the last item the following:

“

54	S.I. No. 158 of 2014	European Union (Capital Requirements) Regulations 2014	The whole instrument
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”.

Amendment of Central Bank Act 1971

154. (1) The Act of 1971 is amended—

(a) in section 2(1) (as amended by section 5(1) of the Act of 2013)—

(i) by substituting for the definition of “banking business” the following:

“ ‘banking business’, in relation to a person, means any business that consists of or includes-

(a) receiving money on the person’s own account from members of the public either on deposit or as repayable funds, and

(b) the granting of credits on own account,

but does not include such a business in so far as the business consists of or includes-

(i) receiving money on deposit by a trader either from employees of the trader in relation to the

trader's business, or from customers of the trader in the normal course of the trader's business,

- (ii) receiving money in respect of leasing or selling goods under a hire-purchase agreement, a leasing agreement or credit-sale agreement,
- (iii) receiving money as security or collateral or as a bond for the repayment of a debt or the performance of a contract related to goods or services,
- (iv) receiving money accepted by way of advance or part payment under a contract for the sale, hire or other provision of goods or services, and repayable only in the event that the goods or services are not in fact sold, hired or otherwise provided,
- (v) receiving money solely as a premium in respect of the issue or renewal of a life assurance policy issued by a holder of an authorisation under the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984),
- (vi) receiving money accepted as a contribution within the meaning of the Pensions Acts,
- (vii) receiving money where it can be shown that-
 - (I) no part of the business activities of the person receiving the money or of any other person is financed wholly or substantially out of those funds, and
 - (II) those funds are, in the normal course of business, accepted only on a casual or incidental basis,

or

- (viii) receiving money under financial contracts (within the meaning of the Netting of Financial Contracts Act 1995 (No. 25 of 1995)) (which may include the acceptance of collateral);”,

- (ii) by inserting after the definition of “banking business” the following:

“ ‘Capital Requirements Directive’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential

supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC²⁸;

‘Capital Requirements Regulation’ means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013²⁹,” and

(iii) by deleting the definition of “Recast Credit Institutions Directive”,

(b) by inserting after section 2(1) the following:

“(1A) In this Act, ‘competent authority’, ‘insurance undertaking’, ‘investment firm’, ‘management body’, ‘own funds’, ‘parent undertaking’, and ‘qualifying holding’ each has the meaning assigned to it by Regulation 3 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).”.

(c) in section 7 (as amended by section 5(1) and 72 of the Act of 2013)—

(i) in subsection (4)(c), by substituting “licensed under section 10 of the Trustee Savings Banks Act 1989” for “certified under the Trustee Savings Banks Act 1863 to 1979”,

(ii) in subsection (4)(d), by substituting “authorised under section 17 of the Building Societies Act 1989” for “, an industrial and provident society, a friendly society”,

(iii) in subsection (4)(e), by inserting “, insofar as each is subject to regulation and controls intended to protect depositors and investors” after “such an undertaking”,

(iv) in subsection (5)(a), by inserting “that is subject to regulation and controls intended to protect depositors and investors,” after “class of persons,” and

(v) in subsection (6), by substituting “European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)” for “European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No 395 of 1992)”,

(d) in section 9 (as amended by Regulation 3 of the European Communities (Directive 2006/48/EC) (Central Bank Acts) (Amendment) Regulations 2009 (S.I. No. 512 of 2009))—

(i) in subsection (1), by substituting “sections 9D to 9J” for “the provisions of this section”,

²⁸OJ No. L 176, 27.06.2013, p. 338

²⁹OJ No. L 176, 27.06.2013, p. 1

(ii) by deleting subsections (1A), (2) and (3), and

(iii) by inserting after subsection (5) the following:

“(6) The Bank shall notify the European Banking Authority of every licence granted.”,

(e) by inserting after section 9C (inserted by section 73 of the Act of 2013) the following:

“Programme of operations and structural organisation

9D. The Bank shall not grant a licence to an applicant unless the application for the licence is accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the applicant.

Initial capital

9E. (1) Subject to subsection (3), the Bank shall not grant a licence unless the applicant holds separate own funds, or has an initial capital, of at least €5,000,000.

(2) Initial capital shall comprise only one or more of the items referred to in Article 26(1)(a) to (e) of the Capital Requirements Regulation.

(3) The Bank may grant a licence to particular categories of credit institutions the initial capital of which is less than €5,000,000, subject to the following conditions:

(a) the applicant has an initial capital of at least €1,000,000;

(b) the Bank notifies the European Commission and the European Banking Authority of its reasons for exercising that option.

Effective direction of business and place of head office

9F. The Bank shall not grant a licence unless the applicant satisfies the Bank that-

(a) it is a body corporate,

(b) its registered office and its head office are both located in the State,

(c) at least 2 persons effectively direct its business, and

(d) the members of its management body meet the requirements of Regulation 79 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).

Shareholders and members

9G. (1) The Bank shall not grant a licence unless the application for the licence includes the names of-

- (a) the applicant's shareholders or members that have qualifying holdings and of the amounts of those holdings, or
- (b) where there are no qualifying holdings, the 20 largest shareholders or members.

(2) 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 2004³⁰ in relation to information about issuers whose securities are admitted to trading on a regulated market and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive shall be taken into account.

(3) 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 of the European Parliament and of the Council of 21 April 2004³¹ shall not be taken into account 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.

(4) The Bank shall not grant a licence if, taking into account the need to ensure the sound and prudent management of a credit institution, it is not satisfied, having regard to Regulations 15 and 16 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014), as to the suitability of the shareholders or members, in particular where the criteria set out in Regulation 15 are not met.

(5) Where close links exist between the credit institution and other natural or legal persons, the Bank shall grant a licence only where those links do not prevent the effective exercise of its supervisory functions.

(6) The Bank shall not grant a licence 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 its supervisory functions.

(7) The Bank shall require credit institutions to provide it with the information they require to monitor compliance with the conditions referred to in subsections (5) and (6) on an ongoing basis.

³⁰OJ No. L 390, 31.12.2004, p. 38

³¹OJ No. L 145, 30.04.2004, p. 1

Waiver for credit institutions permanently affiliated to central body

9H. (1) The Bank may waive the requirements set out in sections 9D, 9E and 9F(c) and (d) with regard to a credit institution referred to in Article 10 of the Capital Requirements Regulation in accordance with the conditions set out therein.

(2) Where the Bank exercises a waiver referred to in paragraph (1)—

- (a) Regulation 7,
- (b) Regulations 32 and 33,
- (c) Regulation 35(1) to (3),
- (d) Regulations 38 to 44,
- (e) Regulations 61 to 84, and
- (f) Regulations 115 to 130,

of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) shall apply to the whole as constituted by the central body together with its affiliated institutions.

Refusal of authorisation

9I. (1) Where the Bank refuses to grant a licence, it shall notify the applicant of the decision and the reasons therefor within 6 months of receipt of the application or, where the application is incomplete, within 6 months of receipt of the complete information required for the decision.

(2) The Bank shall, in any event, take a decision to grant or refuse a licence within 12 months of the receipt of the application.

Prior consultation of competent authorities

9J. (1) The Bank shall consult the competent authorities of another Member State before granting a licence 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, or
- (c) controlled by the same natural or legal persons as those who control a credit institution authorised in that other Member State.

(2) The Bank shall, before granting a licence, 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 European Union,
- (b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the European Union, or
- (c) controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the European Union.

(3) The Bank shall in particular—

- (a) consult, in accordance with paragraphs (1) and (2), 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, and
- (b) exchange with the competent authorities of other Member States 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.”,

(f) in section 11 (as amended by section 11 of the Act of 1997)—

(i) in subparagraph (iii) of subsection (1)(b), by substituting “section 9F(b) of this Act” for “9(1A)(b) of this Act (as amended by the Central Bank Act, 1989)”,

(ii) in subsection (1)(b), by inserting after subparagraph (viii) the following:

“(ix) no longer fulfils the conditions under which the licence was granted,

(x) no longer meets the prudential requirements—

(I) set out in Parts Three, Four or Six of the Capital Requirements Regulation, or

(II) imposed under Regulation 92(2)(a) or 93 of the Capital Requirements Directive,

or can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors, or

- (xi) commits one of the breaches referred to in Regulation 55 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).”,

(iii) by inserting after subsection (2) the following:

“(2A) The Minister’s consent shall not be withheld under subsection (2) where to do so would be inconsistent with the Capital Requirements Directive.”,

(iv) by substituting for subsection (6) the following:

“(6) In this section—

- (a) an undertaking shall be treated as a fellow subsidiary of another undertaking if both are subsidiaries of the same undertaking but neither is a subsidiary of the other undertaking,
- (b) ‘subsidiary undertaking’ shall be construed in accordance with Regulation 4 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992) and, in relation to an undertaking incorporated in, or formed under the law of another, Member State, means any undertaking which is a subsidiary undertaking within the meaning of any rule or law in force in that State for the purposes of giving effect to Council Directive No. 83/349/EEC of 13 June 1983³²,
- (c) ‘control’ has the meaning it has in the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014), and
- (d) ‘associated undertaking’ has the meaning it has in the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992).”,

and

(v) by inserting after subsection (6) the following:

“(7) The Bank shall notify the European Banking Authority of each revocation of a licence together with the reasons for such revocation.”,

³²OJ No. L 193, 18.07.1983, p. 1

- (g) in section 16(1), by substituting “European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)” for “European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992”,
- (h) in section 26(8) (as amended by section 5 of the Act of 2013), by substituting “European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)” for “European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No 395 of 1992)”, and
- (i) in section 27(2) (as amended by section 5 of the Act of 2013), by substituting “European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)” for “European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992”.

Amendment of Central Bank Act 1989

155. The Central Bank Act 1989 (No. 16 of 1989) is amended in section 75(1B) (inserted by section 16 of the Financial Measures (Miscellaneous Provisions) Act 2009 (No. 14 of 2009)), by substituting “European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)” for “European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No 395 of 1992)”.

Amendment of Building Societies Act 1989

156. The Act of 1989 is amended—

- (a) in section 2 (as amended by Regulation 2(2) of the European Union (Credit Institutions) (European Supervisory Authorities) Regulations 2011 (S.I. No. 637 of 2011))—
 - (i) in subsection (1), by inserting after the definition of “commission” the following:

“ ‘Commission’ means European Commission;”, and
 - (ii) by inserting after subsection (1) the following:

“(1A) In this Act “competent authority”, “insurance undertaking”, “investment firm”, “management body”, “own funds”, “parent undertaking”, and “qualifying holding” each has the meaning assigned to it by Regulation 3 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).”,
- (b) in section 17 (as amended by section 231 of the National Asset Management Agency Act 2009 (No. 34 of 2009))—
 - (i) in subsection (4)—

(I) by inserting “subject to sections 17A to 17F,” after “the Central Bank may,”, and

(II) by deleting subparagraph (i) of paragraph (a),

(ii) in subsection (10) by deleting the definitions of “the prescribed minimum” and of “qualifying capital”,

(iii) by inserting after subsection (10) the following:

“(11) The Central Bank shall notify the European Banking Authority of every authorisation granted.”,

(c) by inserting after section 17 the following:

“Programme of operations and structural organisation

17A. The Central Bank shall not grant an authorisation unless the application for the authorisation is accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the society.

Initial capital

17B. (1) Subject to subsection (3), the Central Bank shall not grant an authorisation unless the society holds separate own funds or has an initial capital of at least €5,000,000.

(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 of the European Parliament and of the Council of 26 June 2013³³.

(3) The Central Bank may grant an authorisation to particular categories of building society the initial capital of which is less than €5,000,000, subject to the following conditions:

(a) the applicant has an initial capital of at least €1,000,000;

(b) the Central Bank notifies the Commission and European Banking Authority of its reasons for exercising that option.

Effective direction of business and place of head office

17C. The Central Bank shall not grant an authorisation unless the society satisfies the Central Bank that-

(a) its registered office and its head office are both located in the State,

(b) at least 2 persons effectively direct its business, and

³³OJ No. L 171, 27.06.2013, p. 1

- (c) the members of its management body meet the requirements of Regulation 79 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).

Members

17D. (1) The Central Bank shall not grant an authorisation unless the application for the authorisation includes the names of—

- (a) the society's members that have qualifying holdings and of the amounts of those holdings, or
- (b) where there are no qualifying holdings, the 20 largest members.

(2) 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/EC³⁴ in relation to information about issuers whose securities are admitted to trading on a regulated market and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

(3) 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 of the European Parliament and of the Council of 21 April 2004³⁵, shall not be taken into account 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.

(4) The Central Bank shall not grant an authorisation if, taking into account the need to ensure the sound and prudent management of a credit institution, it is not satisfied, having regard to Regulations 15 and 16 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014), as to the suitability of the members, in particular where the criteria set out in Regulation 15(1) are not met.

(5) Where close links exist between the society and other natural or legal persons, the Central Bank shall grant an authorisation only if those links do not prevent the effective exercise of its supervisory functions.

(6) The Central Bank shall not grant an authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the society has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

³⁴OJ No. L 390, 31.12.2004. p.38

³⁵OJ No. L 145, 30.04.2004, p. 1

(7) The Central Bank shall require societies to provide it with the information it requires to monitor compliance with the conditions referred to in subsections (5) and (6) on an ongoing basis.

Refusal of authorisation

17E. (1) Where the Central Bank refuses to grant an authorisation it shall notify the society of the decision and the reasons therefor within 6 months of receipt of the application or, where the application is incomplete, within 6 months of receipt of the complete information required for the decision.

(2) The Central Bank shall, in any event, take a decision to grant or refuse an authorisation within 12 months of the receipt of the application.

Prior consultation of competent authorities

17F. (1) The Central Bank shall consult the competent authorities of another Member State before granting an authorisation where the society 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, or
- (c) controlled by the same natural or legal persons as those who control a credit institution authorised in that other Member State.

(2) The Central Bank shall, before granting an authorisation consult the competent authority that is responsible for the supervision of insurance undertakings or investment firms in the Member State concerned where the society is—

- (a) a subsidiary of an insurance undertaking or investment firm authorised in the European Union,
- (b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the European Union,
- (c) controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the European Union.

(3) The Central Bank shall, in particular—

- (a) consult in accordance with paragraphs (1) and (2) 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, and

(b) exchange with the competent authorities of other Member States 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.”,

(d) by deleting section 18(9),

(e) in section 40 (as amended by the European Union (Credit Institutions) (European Supervisory Authorities) Regulations 2011 (S.I. No. 637 of 2011))—

(i) in subsection (2), by inserting the following:

“(m) a society no longer fulfils the conditions under which the authorisation was granted,

(n) a society no longer meets the prudential requirements set out in Parts Three, Four or Six of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 or imposed under Regulations 92(2)(a) or 93 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) or can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors, or

(o) a society has committed one of the breaches referred to in Regulation 55 of the of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).”,

and

(ii) in subsection (8), by inserting “, together with the reasons for such a decision” after “European Banking Authority”.,

and

(f) in Schedule 3 by deleting paragraph 1(7).

Amendment of Trustee Savings Banks Act 1989

157. The TSB Act is amended—

(a) by repealing section 10, and

- (b) in section 57(1) (as amended by section 1 of the Trustee Savings Banks (Amendment) Act 2001 (No. 6 of 2001)) in the definition of “banking company” by substituting “European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)” for “European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992)”.

Amendment of Central Bank Act 1997

158. Subsection (4) of section 27B (inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2004 (No. 21 of 2004)) of the Act of 1997 is amended by substituting for paragraph (k) the following:

- “(k) Regulation 52 of the European Union (Capital Requirements) Regulations 2014 (S.I. No.158 of 2014);”.

Part 11

FINAL PROVISIONS, REVOCATIONS AND SAVER

Service of notice or other document by Bank

159. The Bank may, in addition to the methods specified in section 61G(1) of the Act of 1942, give or serve a notice or other document under these Regulations to a natural person, a partnership or body corporate, electronically, that is to say by electronic mail to an email address, or by facsimile number, furnished for that purpose by the person, partnership or body corporate, as the case may be, to the Bank.

References to repealed Directives

160. A reference in any enactment to a Directive repealed by the Capital Requirements Directive shall be construed in accordance with Article 163 of the second-mentioned Directive.

Revocations

161. The following Regulations are revoked:

- (a) the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992);
- (b) the Supervision of Credit Institutions, Stock Exchange Member Firms and Investment Business Firms Regulations 1996 (S.I. No. 267 of 1996);
- (c) the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006);
- (d) the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006); and
- (e) the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009).

Saver

162. The revocation of any enactment, or part of enactment, by these Regulations—

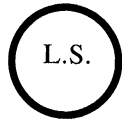
- (a) does not affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and
- (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

SCHEDULE

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.
2. Lending including, amongst other things, consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007²⁵.
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 these Regulations.



GIVEN under my Official Seal,
31 March 2014.

MICHAEL NOONAN,
Minister for Finance.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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