

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,757, 24 ta' Dicembru, 2021
Taqsima B

L.N. 494 of 2021

BANKING ACT
(CAP. 371)

Supervisory Consolidation (Credit Institutions) Regulations, 2021

IN EXERCISE of the powers conferred by article 3 of the Banking Act, the Minister for Finance and Employment, after consultation with the Malta Financial Services Authority, has made the following regulations:-

1. (1) The title of these regulations is the Supervisory Consolidation (Credit Institutions) Regulations, 2021. Citation, purpose and commencement.

(2) The purpose of these regulations is to implement Articles 2(6), 3 (partly), 20(3), 48(1) and (2), 49, 51, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123(1), 124, 125, 127, 155 and 156 of the CRD.

(3) These regulations shall come into force on such date as the Minister for Finance and Employment may, by notice in the Gazette establish and a different date or dates may be so established for different provisions of these regulations.

2. (1) In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the Banking Act; Cap. 371.

"ancillary services undertaking" shall have the same meaning as that assigned to it in point (18) of Article 4(1) of the CRR;

"consolidated situation" shall have the same meaning as that assigned to it in point (47) of Article 4(1) of the CRR;

"EU parent investment firm" shall have the same meaning as that assigned to it in point (29b) of the CRR;

"European regulatory authority" means an authority which is situated in a country or territory outside Malta that is a Member State and is empowered by law or regulation to supervise investment firms or credit institutions;

"financial institution" shall have the same meaning as that assigned to it in point (26) of Article 4(1) of the CRR and shall

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include the entities referred to in points (3) to (24) of Article 2(5) of the CRD;

"parent credit institution" shall have the same meaning as that assigned to the term "parent credit institution in a Member State" in point (29c) of the CRR;

"parent investment firm" shall have the same meaning as that assigned to the term "parent investment firm in a Member State" in point (29a) of the CRR;

"participation" shall have the same meaning as that assigned to it in point (35) of Article 4(1) of the CRR;

"third country regulatory authority" means an authority which is in a country or territory that is not a Member State and is empowered by law or regulation to supervise credit institutions.

(2) Words and expressions which are also used in the Act shall have the same meaning as assigned to them in the Act:

Provided that, in accordance with article 2(1A) of the Act, for the purposes of applying the requirements and supervisory powers laid down in these regulations on a consolidated or sub-consolidated basis in accordance with the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the terms "institution", "EU parent institution" and "parent undertaking" shall also include the entities listed in paragraphs (a), (b) and (c) of article 2(1A) of the Act:

Provided further that, for the purposes of applying the requirements and supervisory powers laid down in regulations 6(3), 9(5), 10(2), (3) and (8), 11(1), 13(1), (4) and (6), 14, 15, 17, 18(1), and 19 on a consolidated or sub-consolidated basis in accordance with the Act and any regulations and Banking Rules made or issued thereunder transposing the CRD, with any binding legal instruments issued under the CRD and with the CRR, the term "credit institution" shall also include the entities listed in paragraphs (a), (b) and (c) of article 2(1B) of the Act.

PART I
**Consolidated Supervision Responsibility of the competent
authority for consolidated supervision**

3. (1) Subject to the provisions of article 11B of the Act, the competent authority shall exercise supervision on a consolidated basis:

Responsibility of the competent authority for consolidated supervision.

(a) where the parent undertaking is a parent credit institution established in Malta or in another Member State or an EU parent credit institution supervised by the competent authority on an individual basis;

(b) where a parent undertaking is a parent investment firm established in Malta or in another Member State or an EU parent investment firm and at least one of its subsidiaries is a credit institution supervised by the competent authority:

Provided that, where there are several credit institutions, the competent authority shall exercise supervision on a consolidated basis where it supervises the credit institution with the largest balance sheet total;

(c) where the parent of a credit institution supervised by the competent authority on an individual basis is a parent financial holding company established in Malta or in another Member State, a parent mixed financial holding company established in Malta or in another Member State, an EU parent financial holding company or EU parent mixed financial holding company;

(d) where two or more institutions authorised in the European Union, one of which is a credit institution supervised by the competent authority, have the same parent financial holding company established in Malta or in another Member State, parent mixed financial holding company established in Malta or in another Member State, EU parent financial holding company or EU parent mixed financial holding company, and:

(i) the competent authority supervises the credit institution, which is the only credit institution within the group; or

(ii) the competent authority supervises the credit institution with the largest balance sheet total, where there are several credit institutions within the group:

Provided that, for the purposes of this paragraph, the

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term "institution" shall also include investment firms;

(e) where consolidation is required pursuant to Article 18(3) or (6) of the CRR and the competent authority supervises the credit institution with the largest balance sheet total.

(2) By way of derogation from sub-regulation (1)(b), (d)(ii) and (e), the competent authority shall be the consolidating supervisor where it supervises on an individual basis one or more credit institutions within a group, and the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institutions supervised on an individual basis by any other European regulatory authority.

(3) In particular cases, the criteria referred to in sub-regulation (1)(a), (b), (d) and (e) may be waived by common agreement of the competent authority with the other relevant European regulatory authorities and a European regulatory authority may be appointed to exercise supervision on a consolidated basis where the application of the criteria referred to in such sub-regulation (1)(a), (b), (d) and (e) would be inappropriate, taking into account the credit institutions or investment firms concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision on a consolidated basis by the same European regulatory authority. In these cases, before such decision is taken the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the institution with the largest balance sheet total, as applicable, shall have the right to be heard.

(4) The competent authority shall notify the Commission and the EBA without delay of any agreement falling within sub-regulation (3).

(5) Where the competent authority is the consolidating supervisor, it shall provide the relevant European regulatory authorities and EBA with all information regarding the group of credit institutions in accordance with Articles 14(3), 74(1) and 109(2) of the CRD, in particular regarding the legal and organisational structure of the group and its governance.

Functions of the competent authority with respect to supervision on a consolidated basis.

4. (1) In addition to the obligations imposed by the provisions of the Act and any regulations made or Rules issued thereunder transposing the requirements of the CRD, by any binding legal instrument issued under the CRD and by the CRR, the competent authority, acting as consolidating supervisor, shall carry out the following tasks:

(a) co-ordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations; and

(b) planning and coordination of supervisory activities in going concern situations, including in relation to the activities relating to supervision on a consolidated basis in cooperation with the European regulatory authorities; and

(c) planning and co-ordination of supervisory activities in cooperation with the European regulatory authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management. These include exceptional measures referred to in regulation 9(3)(e), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

(2) Where European regulatory authorities do not co-operate with the competent authority, to the extent required in carrying out the tasks in sub-regulation (1), the competent authority may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

(3) Where the competent authority is not the consolidating supervisor and either the consolidating supervisor fails to carry out the tasks referred to in Article 112(1) of the CRD or any European regulatory authority does not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in Article 112(1) of the CRD, it may refer the matter to the EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

5. (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 in any of the Member States where entities of a group have been authorised or where significant branches as referred to in regulation 14 are established and where the competent authority is the consolidating supervisor, it shall, subject to confidentiality requirements in the Malta Financial Services Authority Act and any other applicable law, alert as soon as is practicable the EBA and the authorities referred to in Articles 58(4) and 59 of the CRD and it shall communicate to the said authorities all the information that is essential for the pursuance of their tasks.

Notifications in emergency situations.

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(2) To the extent possible, the competent authority shall use existing channels of communication with ESCB central banks.

(3) Where the competent authority is the consolidating supervisor, it shall, when it needs information which has already been given to a European regulatory authority, contact this authority, whenever possible, in order to prevent duplication of reporting to the various authorities involved in supervision.

Written coordination and cooperation agreements with European regulatory authorities.

6. (1) Where the competent authority is the consolidating supervisor, it shall have written coordination and cooperation arrangements in place with European regulatory authorities responsible for supervising the other members of the group.

(2) Under the arrangements made pursuant to sub-regulation (1), additional tasks may be entrusted to the competent authority as consolidating supervisor and procedures for the decision-making process and for cooperation with other European regulatory authorities may be specified.

(3) Where the competent authority is responsible for the licensing of the subsidiary of a parent undertaking which is a credit institution, it may, by bilateral agreement in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate its responsibility for supervision of such subsidiary to the European regulatory authority which authorised and supervises the parent undertaking so that the latter assumes responsibility for supervising the subsidiary in accordance with the CRD. The competent authority shall forward the content of such agreements to the EBA.

(4) Where the competent authority is the consolidating supervisor, and a financial holding company or a mixed financial holding company that has been granted approval in accordance with article 11B of the Act is established in a Member State other than Malta, the co-ordination and co-operation arrangements referred to in sub-regulations (1) and (2) shall also be concluded with the European regulatory authority where the parent undertaking is established.

(5) Where the competent authority is not the consolidating supervisor, but a financial holding company or a mixed financial holding company has been granted approval in accordance with Article 21a of the CRD and is established in Malta, the coordination and cooperation arrangements referred to sub-regulations (1) and (2) shall be concluded with the European regulatory authority acting as the consolidating supervisor.

7. (1) Where the competent authority is the consolidating supervisor, it shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in regulation 4, regulation 5(1) and (2) and regulation 8, and it shall also, subject to the confidentiality requirements of sub-regulation (4) and compatibility with European Union law, ensure appropriate coordination and cooperation with third country regulatory authorities where appropriate.

Establishment of the colleges of supervisors by the consolidating supervisor.

(2) When forming part of a college of supervisors, the competent authority shall contribute towards the provision of a framework for the consolidating supervisor, EBA and other European regulatory authorities or third country regulatory authorities forming part of that college, to carry out the following tasks:

(a) exchange information with European regulatory authorities and third country regulatory authorities forming part of that college and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes referred to in Article 99 of the CRD based on a risk assessment of the group in accordance with Article 97 of the CRD;

(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 114 and Article 117(3) of the CRD;

(e) consistently applying the prudential requirements under the CRD and the CRR across all entities within a group of institutions, without prejudice to the options and discretions available in European Union law; and

(f) applying Article 112(1)(c) of the CRD taking into account the work of other fora that may be established in that area.

(3) In order to facilitate the tasks referred to in sub-regulation (1) and regulations 4(1) and 5(1), where the competent authority is the consolidating supervisor, it shall also establish colleges of supervisors where all the cross-border subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company have their head offices in third countries:

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Cap. 330. Provided that the third countries' regulatory authorities are subject to confidentiality requirements that are equivalent to the requirements laid down in the Malta Financial Services Authority Act and any other applicable law.

Cap. 330. (4) The competent authority, when forming part of a college of supervisors, shall co-operate closely with the EBA and all the European regulatory authorities and third country regulatory authorities forming part of the relevant college of supervisors. The confidentiality requirements under the Malta Financial Services Authority Act and any other applicable law shall not prevent the competent authority from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authority under the provisions of the Act, and any regulations made or Rules issued thereunder transposing the requirements of the CRD, under any binding legal instrument issued under the CRD, and under the CRR.

(5) Where the competent authority is the consolidating supervisor of these regulations, it shall establish and manage the colleges of supervisors based on written arrangements referred to in regulation 6, determined after consultation with European regulatory authorities and third country regulatory authorities concerned.

(6) The competent authority may form part of a college of supervisors when:

(a) it is responsible for the supervision of credit institutions which are subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company; and

(b) Malta is the host Member State where significant branches as referred to in regulation 14 are established.

(7) Where the competent authority is the consolidating supervisor, it shall chair the meetings of the college and shall decide which European regulatory authorities and third country regulatory authorities, where relevant, participate in a meeting or in an activity of the college. The decision shall take into account the relevance of the supervisory activity to be planned or coordinated for those authorities, and in particular, the potential impact on the stability of the financial system in the Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time and the obligations referred to in regulation 14(6) and (7).

(8) The competent authority, as consolidating supervisor, shall keep all members of the college fully informed, in advance, of the organisation of the meetings of the college, about the main issues to be discussed and the activities to be considered and shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(9) The competent authority as consolidating supervisor shall, subject to the confidentiality requirements of the Malta Financial Services Authority Act and any other applicable law, inform the EBA of the activities of the college of supervisors, including in emergency situations, and communicate to the EBA all information that is of particular relevance for the purposes of supervisory convergence. Cap. 330.

(10) In the case of a disagreement between the competent authorities on the functioning of the supervisory colleges, the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(11) Without prejudice to the provisions of sub-regulation (6), when the competent authority is the consolidating supervisor it may invite the following entities to participate in the college which it shall chair:

(a) the European regulatory authorities responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

(b) the European regulatory authorities of a host member state where significant branches, as referred to in Article 51 of the CRD, are established;

(c) ECSB central banks, where appropriate; and

(d) third country regulatory authorities where appropriate, subject to confidentiality requirements that are equivalent, in the opinion of the competent authority and all the European regulatory authorities concerned, to the requirements under Chapter 1, Section II of the CRD, the Malta Financial Services Authority Act and any other applicable law:

Provided that the competent authority shall, when providing its opinion on whether the confidentiality requirements of a third country regulatory authority are equivalent, take into consideration any assessment carried out by the EBA on the equivalence of the confidentiality regime of

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the relevant third country regulatory authority.

(12) Where a financial holding company or a mixed financial holding company has been granted approval in accordance with article 11B of the Act and, or Article 21a of the CRD, the competent authority may participate in the relevant college of supervisors.

Joint decisions
on specific
prudential
requirements.

8. (1) The competent authority, whether it is the consolidating supervisor or the competent authority responsible for the supervision of subsidiaries of an EU parent institution, EU parent financial holding company or EU parent mixed financial holding company which are credit institutions, shall do everything within its power to reach a joint decision with the other European regulatory authorities:

(a) on the application of Articles 73 and 97 of the CRD 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 point (a) of Article 104(1) of the CRD to each entity within the group of institutions and on a consolidated basis;

(b) on 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 Article 86 of the CRD and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of the CRD;

(c) on any guidance on additional own funds referred to in Article 104b(3) of the CRD.

(2) Where it is the consolidating supervisor, the competent authority shall submit -

(a) for the purpose of sub-regulation (1)(a), a report containing the risk assessment of the group of institutions in accordance with Article 104a of the CRD to the other relevant European regulatory authorities;

(b) for the purpose of sub-regulation (1)(b), a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Articles 86 and 105 of the CRD, to the other relevant European regulatory authorities;

(c) for the purpose of sub-regulation (1)(c), a report containing the risk assessment of the group of institutions in

accordance with Article 104b of the CRD, to the other relevant European regulatory authorities.

(3) The joint decisions referred to in sub-regulation (1) shall be reached within four (4) months from submission of the reports referred to in sub-regulation (2):

Provided that the joint decisions referred to in sub-regulation (1) shall also duly consider the risk assessment of subsidiaries performed by the competent authority and, or relevant European regulatory authorities in accordance with Articles 73, 97, 104a and 104b of the CRD.

(4) Where the competent authority is the consolidating supervisor, it shall provide the EU parent institution concerned with the joint decisions referred to in sub-regulation (1), which shall be set out in a document containing the full reasons for the decisions. In the event of disagreement, the competent authority shall, at the request of any of the other European regulatory authorities concerned, consult the EBA:

Provided that the competent authority, when it is the consolidating supervisor, may consult the EBA on its own initiative.

(5) In the absence of such a joint decision within the time period referred to in sub-regulation (3) and, or Article 113(2) of the CRD, a decision on the application of Articles 73, 86, 97, 104(1)(a), 104b and 105 of the CRD shall be taken by the competent authority, where it is acting as the consolidating supervisor, on a consolidated basis, after duly considering the risk assessment of subsidiaries performed by the relevant European regulatory authorities:

Provided that:

(a) if, at the end of the time period referred to in sub-regulation (3), any of the European regulatory authorities concerned have referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority shall defer its decision and await any decision the EBA may take in accordance with Article 19(3) of that Regulation. The competent authority shall take its decision in conformity with the decision of the EBA. The time period referred to in sub-regulation (3) shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010;

(b) where the competent authority is not acting as consolidated supervisor but is 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, it may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. The matter shall not be referred to the EBA after the end of the time period referred to above in sub-regulation (3) or after a joint decision has been reached.

(6) Where the competent authority is not the consolidating supervisor but is responsible for the supervision of a subsidiary of an EU parent credit institution or an EU parent financial holding company or an EU parent mixed financial holding company, which is a credit institution, and in the absence of a joint decision in terms of this regulation within the time period referred to in Article 113(2) of the CRD, the competent authority shall decide on the application of Articles 73, 86, 97, 104(1)(a), 104b and 105 of the CRD on an individual or sub-consolidated basis, after duly considering the views and reservations expressed by the consolidating supervisor:

Provided that if at the end of the time period referred to in Article 113(2) of the CRD, any of the European regulatory authorities concerned have referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority shall defer its decision and await any decision that the EBA shall take in accordance with Article 19(3) of the said Regulation. The competent authority shall take its decision in conformity with the decision of the EBA. The time period referred to above shall be deemed to be the conciliation period within the meaning of the said Regulation:

(7) Where the competent authority is not acting as consolidated supervisor but is 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, it may, in the event of any disagreement, refer a dispute to the EBA on its own initiative but prior to a joint decision being made, provided that no referral shall be made once the time period specified in Article 113(2) of the CRD has expired.

(8) (a) The decisions taken by the competent authority referred to in this regulation shall be set out in a document containing fully reasoned decisions and shall take into account the risk assessment, views and reservations of the competent authority or the other European regulatory authorities, as applicable, expressed during the time period referred to in sub-regulation (3).

(b) The competent authority shall provide the document

referred to above to the European regulatory authorities concerned and to the EU parent institution. Where the EBA has been consulted, the competent authority shall consider its advice and explain any significant deviation therefrom.

(c) The joint decisions referred to in sub-regulation (1) and the decisions taken by the competent authority or European regulatory authorities in terms of Article 113(3) of the CRD shall be recognised as determinative and shall be applied by the competent authority, where applicable.

(9) The decisions referred to in sub-regulation (1) and any decision taken in terms of sub-regulations (5) and (6) shall be updated on an annual basis or, in exceptional circumstances, where the competent authority is 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 which are credit institutions, it may make a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 104(1)(a), Article 104b and Article 105 of the CRD. In those exceptional circumstances, such update may be addressed on a bilateral basis between the competent authority and the consolidating supervisor:

Provided that, where the competent authority is the consolidating supervisor, it shall update the decisions at the request of the European regulatory authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial company or an EU parent mixed financial holding company. The competent authority may address the update to the European regulatory authority making the request, on a bilateral basis.

9. (1) The competent authority shall cooperate closely with European regulatory authorities. Such cooperation shall include the provision to such authorities of any information which is essential or relevant for the exercise of their respective supervisory tasks under the CRD, and the CRR. The competent authority shall communicate on request all relevant information and shall communicate on its own initiative all essential information.

Co-operation
with other
authorities.

(2) The competent authority shall cooperate with the EBA for the purposes of the CRD and the CRR in accordance with Regulation (EU) No 1093/2010. Such cooperation shall include the provision to the EBA of all information necessary to carry out its duties under the CRD and the CRR and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

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(3) For the purpose of sub-regulation (1), information shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or a financial institution in another Member State and shall include, in particular, the following items:

(a) identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, and the parent undertakings, in accordance with the relevant provisions of the Acts and any regulations or Rules made thereunder transposing the requirements of Article 14(3), 74(1) and 109(2) of the CRD;

(b) identification of the European regulatory authorities of the regulated entities in the group, as the case may be;

(c) procedures for the collection of information from the institutions in a group and the verification of that information;

(d) adverse developments in institutions or in other entities of a group, which could seriously affect the institutions; and

(e) significant penalties and exceptional measures taken by the competent authority in accordance with the CRD, including the imposition of a specific own fund requirement under Article 104 of the CRD and the imposition of any limitation on the use of Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of the CRR.

(4) Where the competent authority is acting as consolidating supervisor, it shall provide European regulatory authorities who supervise subsidiaries of parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.

(5) Where the competent authority is responsible for the supervision of a credit 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 the CRD and the CRR that may already be available to that consolidating supervisor.

(6) The competent authority shall consult with European regulatory authorities concerned before taking a decision with respect to paragraphs (a) and (b), where such a decision is of importance for these European regulatory authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorization of the competent authority; and

(b) significant penalties or exceptional measures taken by the competent authority, including the imposition of a specific own funds requirement under the Banking Act (Supervisory Review) Regulations, 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 CRR: S.L. 371.16.

Provided that the competent authority shall always consult the consolidating supervisor for the purposes of this paragraph and may decide not to consult European regulatory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the European regulatory authorities after taking its decision.

(7) The competent authority may refer to the EBA any of the following situations:

(a) where a European regulatory authority has not communicated essential information;

(b) where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

(8) The competent authority shall cooperate closely with the financial intelligence units and authorities entrusted with the public duty of supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 for compliance with that Directive within their respective competences and shall provide them with information relevant for their respective tasks under the CRD, the CRR and under Directive (EU) 2015/849, provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law of Malta.

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Exchange of
information.

10. (1) The competent authority shall ensure that there are no impediments preventing the exchange, between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis, of any information which would be relevant for the purposes of supervision in accordance with the relevant provisions of the Acts, and any regulations or Rules made thereunder transposing the requirements of Article 110 and Chapter 3 of the CRD.

(2) Where a subsidiary that is a credit institution licensed in terms of the Act is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of the CRR, the competent authority may ask the parent undertaking of such credit institution for information which may facilitate supervision of that subsidiary.

(3) The competent authority, as consolidating supervisor, may ask the subsidiaries of a credit institution, a financial holding company or mixed financial holding company which are not included within the scope of supervision on a consolidated basis for information which would be relevant for the purpose of supervising those subsidiaries. In such a case, the procedures for transmitting and verifying the information set out in regulation 16 shall apply.

(4) Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the competent authority shall communicate to the European regulatory authorities concerned all the relevant information which may allow or aid the exercise of supervision on a consolidated basis.

(5) The competent authority, as consolidating supervisor, may invite the European regulatory authorities of the parent undertaking to ask the parent undertaking to provide any information which would be relevant for the purposes of supervision on a consolidated basis. Such information shall be transmitted to the competent authority by the European regulatory authority concerned.

(6) Where a parent undertaking is situated in Malta and the competent authority does not itself exercise supervision on a consolidated basis in terms of regulation 3, it shall, upon request by the European regulatory authority responsible for exercising such supervision, require the parent undertaking to provide any information relevant for the purposes of supervision on a consolidated basis and the competent authority shall transmit such

information to the European regulatory authority making the request.

(7) The competent authority shall exchange the information referred to in sub-regulation (4) with other European regulatory authorities, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not imply that the competent authority is required to play a supervisory role in relation to those institutions or undertakings standing alone.

(8) The competent authority shall exchange the information referred to in regulation 19 with the European regulatory authorities concerned, on the understanding that the collection or possession of information does not imply that the competent authority plays a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of a credit institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis.

11. (1) Where a credit institution, financial holding company, mixed financial holding company or mixed-activity holding company is situated in Malta and controls one or more subsidiaries authorised in another Member State which are insurance undertakings or other undertakings providing investment services, the competent authority shall cooperate closely with European regulatory authorities and with other authorities entrusted with the public task of supervising insurance undertakings in other Member States. Without prejudice to its responsibilities, the competent authority shall provide the authorities referred to in this sub-regulation with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

Co-operation
with European
regulatory
authorities and
the
Commission.

(2) Where, pursuant to regulation 3, the competent authority is the consolidating supervisor of a group with a parent mixed financial holding company, but is not the coordinator in accordance with Article 10 of Directive 2002/87/EC, the competent authority shall cooperate with the coordinator for the purpose of applying the CRD and the CRR on a consolidated basis. In order to facilitate and establish effective cooperation, the competent authority shall have written coordination and cooperation arrangements with the coordinator in place.

(3) Where, pursuant to regulation 3, the competent authority is not the consolidating supervisor of a group with a mixed parent financial holding company, but is not the coordinator in accordance

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with Article 10 of Directive 2002/87/EC, the competent authority shall cooperate with the consolidating supervisor for the purposes of applying the CRD and the CRR on a consolidated basis. In order to facilitate and establish effective cooperation, the competent authority shall have written coordination and cooperation arrangements with the consolidating supervisor in place.

Cap. 330. (4) Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between the competent authority and European regulatory authorities which is provided for in the CRD, shall be subject to professional secrecy requirements at least equivalent to those pursuant to the Malta Financial Services Authority Act and the Act.

(5) The competent authority as consolidating supervisor shall establish a list of the financial holding companies or mixed financial holding companies referred to in Article 11 of the CRR. Such a list shall be communicated to the European regulatory authorities, to the EBA and to the Commission.

Request for verification of information.

12. (1) The competent authority, in applying the provisions of the Act, and of any regulations made or Rules issued thereunder transposing the requirements of the CRD, of any binding legal instrument issued under the CRD and of the CRR, may, in specific cases, request a European regulatory authority to verify information concerning an institution, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary which is an insurance company or other undertaking providing investment services which is subject to authorisation, or a subsidiary of an institution, a financial holding company or mixed financial holding company which is not included within the scope of supervision on a consolidated basis, situated in another Member State. The competent authority may carry out the verification itself, or if it so wishes participate in the verification.

(2) Where the competent authority receives a request from a European regulatory authority to verify information referred to in sub-regulation (1), it shall, within the framework of its competence, act upon it by either carrying out the verification itself, by allowing the European regulatory authority making the request to carry out such verification or by allowing an auditor or expert to carry out such verification. The European regulatory authority making the request may participate in the verification where it does not carry out the verification itself.

13. (1) Where a credit institution licensed in terms of the Act, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is established in a third country, is not subject to consolidated supervision, the competent authority shall assess whether the credit institution is subject to consolidated supervision by a third country regulatory authority which is equivalent to that governed by the principles laid down in this regulation and the requirements of Part One, Title II, Chapter 2 of the CRR.

Third country consolidated supervision.

(2) The competent authority, as consolidating supervisor, if sub-regulation (4) were to apply, shall carry out the assessment at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. The competent authority shall consult the other European regulatory authorities.

(3) In carrying out the assessment referred to in sub-regulation (1), the competent authority shall take into account any guidance issued by the European Banking Committee as to whether the consolidated supervision arrangements of third country regulatory authorities are likely to achieve the objectives of consolidated supervision as defined in this regulation, in relation to credit institutions licensed in terms of the Act, the parent undertaking of which has its head office in a third country. For this purpose, the competent authority shall consult the EBA before making a decision.

(4) In the absence of such equivalent supervision, the competent authority shall apply the provisions of the Act, any regulations or Rules made thereunder transposing the requirements of the CRD, of any binding legal instrument issued under the CRD and of the CRR to the credit institution *mutatis mutandis* or apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of institutions. Such supervisory techniques shall be agreed upon by the competent authority, as consolidating supervisor, after consultation with other European regulatory authorities involved. The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as set out in this regulation and shall be notified to other European regulatory authorities involved, the EBA and the Commission.

(5) The competent authority may in particular require the establishment of a financial holding company or mixed financial holding company with its head office in the European Union, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company or the consolidated position of the institutions of that mixed financial holding company.

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(6) The competent authority may, in terms of Article 48 of the CRD, request the Commission to submit proposals to the Council to negotiate agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:

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

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

PART II

Establishment of Significant Branches

Establishment
of significant
branches (Host
Authority).

14. (1) Where a credit institution authorised in another Member State has established a branch in Malta, the competent authority may make a request to the European regulatory authority which is the consolidating supervisor, where Article 112(1) of the CRD applies, or to the European regulatory authority of the home Member State of such credit institution, for that branch to be considered as significant.

(2) The request referred to in sub-regulation (1) shall provide reasons for considering the branch to be significant with particular regard to the following:

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

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

(3) The competent authority shall do everything within its power to reach a joint decision with the European regulatory authority of the home Member State and, where Article 112(1) of the CRD applies, the European regulatory authority which is the consolidating supervisor, on the designation of a branch as being significant.

(4) If no joint decision is reached within two months of receipt

of a request under the sub-regulation (1), the competent authority shall take its own decision within a further period of two months on whether the branch is significant. In taking its decision, the competent authority shall take into account any views and reservations of the European regulatory authority which is the consolidating supervisor or the European regulatory authority of the home Member State.

(5) The decisions referred to in sub-regulations (3) and (4) shall be set out in a document containing full reasons and shall be transmitted to the European regulatory authorities concerned. It shall be recognised as determinative and applied by the European regulatory authorities in the Member States concerned.

(6) Where the European regulatory authority of the home Member State does not consult the competent authority, or where, following such consultation, the competent authority maintains that operational steps required by the Act and any regulations made or Rules issued thereunder transposing the requirements of Article 86(11) of the CRD, are not adequate, the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

15. (1) Where the competent authority is responsible for the supervision of a credit institution licensed in terms of the Act which has established a branch in another Member State or is the consolidating supervisor, it may receive a request from the European regulatory authority of the host Member State where the branch is established, for such branch to be considered as significant. This request shall provide reasons for considering the branch to be significant with particular regard to the following:

Establishment
of significant
branches (Home
Authority).

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

(b) the likely impact of a suspension or closure of the operations of the credit 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.

(2) The competent authority shall do everything within its power to reach a joint decision on the designation of a branch as significant, with the European regulatory authority of the host Member State where the branch is established and, where Article

112(1) of the CRD applies, the European regulatory authority which is the consolidating supervisor.

(3) The competent authority shall communicate to the European regulatory authority of the host Member State, where a significant branch is established, the information referred to in regulation 9(3)(d) and (e) and carry out the tasks referred to in regulation 4(1)(c) in cooperation with the European regulatory authority of the host Member State.

(4) Where the competent authority becomes aware of an emergency situation as referred to in regulation 5(1), it shall alert as soon as practicable:

(a) the ESCB central banks, when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system, and it shall communicate all information that is essential for the pursuance of their tasks;

(b) the ESRB where such information is relevant for the exercise of its statutory tasks; and

(c) the departments of government administrations in other Member States responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

S.L. 371.16.

(5) The competent authority shall communicate to the European regulatory authority of the host Member State where the significant branch is established, the results of the risk assessment carried out in terms of the Banking Act (Supervisory Review) Regulations with respect to the credit institution licensed in Malta with such a branch and, where applicable, joint decisions on institution specific prudential requirements taken pursuant to Article 113(2) of the CRD. The competent authority shall also communicate decisions required by Articles 104 and 105 of the CRD in so far as those assessments and decisions are relevant to the branch.

(6) The competent authority shall consult the European regulatory authority of the host Member State where the significant branch is established about operational steps required by the Acts and any regulations made or Rules issued thereunder transposing the requirements of Article 86(11) of the CRD, where relevant for liquidity risks in the host Member State's currency.

16. The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authority under the Act, and any regulations or Rules made thereunder transposing the requirements of the CRD and any binding legal instruments issued under the CRD.

Establishment of significant branches (General).

17. (1) Where regulation 7 does not apply and the competent authority supervises a credit institution licensed in Malta with significant branches in other Member States, it shall establish and chair a college of supervisors to facilitate the cooperation in terms of regulation 15(3) to (6) and in terms of Article 50 of the CRD. The establishment and functioning of the college shall be based on written arrangements determined after consulting the European regulatory authorities concerned by the competent authority. The competent authority shall decide which European regulatory authorities participate in a meeting or in an activity of the college.

Colleges of supervisors in the context of branches.

(2) In its decision the competent authority shall take account of the relevance of the supervisory activity to be planned or coordinated for those European regulatory authorities, in particular, the potential impact on the stability of the financial system in the Member States concerned, and, in particular, in emergency situations based on the information available at the relevant time and the obligations referred to in regulation 15(3) to (5).

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

18. (1) The prudential supervision of a credit institution, including that of the activities it carries out in accordance with the European Passport Rights for Credit Institutions Regulations shall be the responsibility of the competent authority when such a credit institution is licensed in Malta, without prejudice to those provisions of the CRD which give responsibility to the European regulatory authorities of the host Member State.

Prudential supervision of an institution. S.L. 371.11

(2) The provisions of sub-regulation (1) shall not prevent supervision on a consolidated basis in terms of regulation 3.

(3) Where the branch of a credit institution authorised in a Member State other than Malta, is established in Malta, any measures taken by the competent authority with respect to such branch shall not allow discriminatory or restrictive treatment on the basis that the credit institution to which the branch belongs is authorised in another

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Member State.

PART III
Supervision of Mixed Activity Holding Companies and their subsidiaries and of Mixed Financial Holding Companies

Supervision of mixed activity holding companies and their subsidiaries.

19. (1) Where the parent undertaking of one or more credit institutions licensed in terms of the Act is a mixed activity holding company, the competent authority shall, by approaching the mixed activity holding company and its subsidiaries either directly or via subsidiaries that are credit institutions, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

(2) The competent authority may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed activity holding companies and their subsidiaries. If the mixed activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in regulation 11 may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than Malta but is the parent undertaking of a credit institution licensed in terms of the Act, on-the-spot verifications of information shall be carried out in accordance with the procedure set out in regulation 12.

(3) Without prejudice to Part Four of the CRR, where the parent undertaking of one or more credit institutions licensed in terms of the Act is a mixed-activity holding company, the competent authority shall exercise general supervision over transactions between the credit institutions and the mixed-activity holding company and its subsidiaries.

Supervision of mixed financial holding companies.

20. (1) Where a mixed financial holding company is subject to equivalent provisions under the Act and any regulations or Rules made thereunder transposing the requirements of the CRD, and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the competent authority may, as consolidating supervisor, after consulting the other European regulatory authorities responsible for the supervision of subsidiaries, apply only the latter Directive to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under the Act and any regulations or Rules made thereunder transposing the requirements of the CRD and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the competent authority may, where it is the consolidating supervisor, in agreement with the group supervisor in

the insurance sector, apply to that mixed financial holding company only the provisions of the Directive relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC.

(3) The competent authority, as consolidating supervisor, shall inform the EBA of the decisions taken under sub-regulations (1) and (2).

PART IV Revocation

21. The Supervisory Consolidation Regulations are hereby revoked, without prejudice to anything done or omitted to be done thereunder.

Revocation of
Supervisory
Consolidation
Regulations.
S.L. 371.15.

Verżjoni Elettronika