

SUBSIDIARY LEGISLATION 371.16**BANKING ACT (SUPERVISORY REVIEW)
REGULATIONS**

10th April, 2015

LEGAL NOTICE 127 of 2015, as amended by Legal Notices 76 of 2019 and 493 of 2021.

1. (1) The title of these regulations is the Banking Act (Supervisory Review) Regulations.

Citation and
purpose.
Amended by:
L.N. 493 of 2021.

(2) The purpose of these regulations is to implement Articles 3 (in part), 75, 77(2), 78(2), 78(3), 78(4), 78(5), 86(3), 91(11), 97, 98, 99, 100, 101, 103, 104, 104a, 104b, 104c, 105, 107, 110, 143 and 144 of the CRD.

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

Interpretation.
Amended by:
*L.N. 76 of 2019.;
L.N. 493 of 2021;
L.N. 253 of 2024.*

"the Act" means the Banking Act;

Cap. 371.

"the CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on the access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that may be issued thereunder;

"the CRR" 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 amending Regulation (EU) No 648/2012, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"DORA Regulation" means Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector, and amending Regulation (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

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

"internal approach" means the internal ratings based approach referred to in Article 143(1), the internal models approach referred to in Article 221, the own estimates approach referred to in Article 225, the advanced measurement approaches referred to in Article 312(2), the internal models method referred to in Articles 283 and 363, and the internal assessment approach referred to in Article

259(3) of the CRR;

"Regulation (EU) 2017/2402" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;

Cap. 330.

"Resolution Committee" means the committee responsible for resolution, as established by the Malta Financial Services Authority Act;

"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.

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein, shall have the same meaning as 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", "parent institution" and "EU parent institution" 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 3(1), (3), (4) and (5), 4, 5, 6, 7(1), (2), (4) and (5), 8, 9, 10, 13(2), 14, and 15(1), (2) and (3) 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.

Supervisory review
and evaluation.
Amended by:
L.N. 493 of 2021;
L.N. 253 of 2024.

3. (1) The competent authority shall, taking into account the technical criteria set out in regulation 4, review the arrangements, strategies, processes and mechanisms implemented by credit institutions to comply with the Act and any regulations or Banking Rules issued thereunder, with any binding legal instruments issued under the CRD and with the CRR, and evaluate:

- (a) risks to which credit institutions are or might be exposed; and
- (b) *deleted by Legal Notice 493 of 2021;*
- (c) risks revealed by stress testing taking into account the nature, scale and complexity of a credit institution's activities; and
- (d) risk revealed by digital operational resilience testing in

accordance with Chapter IV of the DORA Regulation.

(2) The scope of the review and evaluation referred to in sub-regulation (1) shall cover all requirements of the Act and any regulations or Banking Rules issued thereunder, of any binding legal instruments issued under the CRD and of the CRR.

(3) On the basis of the review and evaluation referred to in sub-regulation (1), the competent authority shall determine whether the arrangements, strategies, processes and mechanisms implemented by credit institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

(4) The competent authority shall establish the frequency and intensity of the review and evaluation referred to in sub-regulation (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the credit institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for credit institutions covered by the supervisory examination programme referred to in regulation 5(2):

Provided that when conducting the review and evaluation referred to in sub-regulation (1), the competent authority shall apply the principle of proportionality in accordance with the criteria disclosed pursuant to regulation 17(1)(c).

(4A) The competent authority may tailor the methodologies for the application of the review and evaluation referred to in sub-regulation (1) to take into account credit institutions with a similar risk profile, such as similar business models or geographical location of exposures. Such tailored methodologies may include risk-oriented benchmarks and quantitative indicators, shall allow for due consideration of the specific risks that each credit institution may be exposed to, and shall not affect the institution-specific nature of measures imposed in accordance with regulation 9:

Provided that where the competent authority uses tailored methodologies pursuant to this sub-regulation, it shall notify the EBA.

(5) Where a review shows that a credit institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010, the competent authority shall inform the EBA without delay about the results of the review.

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(6) Where a review, in particular the evaluation of governance arrangements, the business model, or the activities of a credit institution, gives the competent authority reasonable grounds to suspect that, in connection with that credit institution, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, the competent authority shall immediately notify the EBA and the Financial Intelligence Analysis Unit established in terms of the Prevention of Money Laundering Act. In the event of potential increased risk of money laundering or terrorist financing, the competent authority together with the Financial Intelligence Analysis Unit shall conduct a joint assessment. Such assessment shall be immediately notified to the EBA. The competent authority shall take, as appropriate and without prejudice to the power of other authorities to take any action or regulatory measures available to them under any other applicable law, measures in accordance with the Act and any regulations made and Banking Rules issued thereunder transposing the CRD and with any binding legal instruments issued under the CRD:

Provided that this sub-regulation shall be without prejudice to the obligations of the competent authority arising out of any other applicable legislation relating to the prevention of money laundering and the funding of terrorism.

Technical criteria
for the supervisory
review and
evaluation.
*Amended by:
L.N. 493 of 2021.*

4. (1) In addition to credit, market and operational risks, the review and evaluation performed by the competent authority in accordance with regulation 3 shall include at least:

- (a) the results of the stress test carried out in accordance with Article 177 of the CRR by credit institutions applying an internal ratings based approach;
- (b) the exposure to and management of concentration risk by credit institutions, including their compliance with the requirements set out in Part Four of the CRR and those on concentration risk in Article 81 of the CRD;
- (c) the robustness, suitability and manner of application of the policies and procedures implemented by credit 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 a credit institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;
- (e) the exposure to, measurement and management of liquidity risk by credit 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 credit institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of the CRR;
- (h) the geographical location of credit institutions' exposures;
- (i) the business model of the credit institution.

(2) For the purposes of sub-regulation (1)(e), the competent authority shall regularly carry out a comprehensive assessment of the overall liquidity risk management by credit institutions and promote the development of sound internal methodologies. While conducting these reviews, the competent authority shall have regard to the role played by credit institutions in the financial markets. The competent authority shall also duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned.

(3) The competent authority shall monitor whether a credit institution has provided implicit support to a securitisation. If a credit institution is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

(4) For the purposes of the determination to be made under regulation 3(3), the competent authority shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the CRR, enable the credit institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(5) The review and evaluation performed by the competent authority shall include the exposure of credit institutions to the interest rate risk arising from non-trading book activities:

Provided that the supervisory powers shall be exercised at least in the following cases:

- (a) where a credit institution's economic value of equity as referred to in Article 84(1) of the CRD declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates;
- (b) where a credit institution's net interest income as referred to in Article 84(1) of the CRD experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates:

Provided further that, notwithstanding the first proviso to this sub-regulation, the competent authority shall not be obliged to exercise supervisory powers where it considers, based on the review and evaluation referred to in this sub-regulation, that the

credit institution's management of interest rate risk arising from non-trading book activities is adequate and that the credit institution is not excessively exposed to interest rate risk arising from non-trading book activities.

(5A) For the purposes of sub-regulation (5), the term "supervisory powers" means the powers referred to in regulation 9(1) or the power to specify modelling and parametric assumptions, other than those identified by the EBA pursuant to point (b) of paragraph 5a of Article 98 of the CRD, to be reflected by credit institutions in their calculation of the economic value of equity under Article 84(1) of the CRD.

(6) The review and evaluation performed by the competent authority shall include the exposure of credit 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 CRR. In determining the adequacy of the leverage ratio of credit institutions and of the arrangements, strategies, processes and mechanisms implemented by credit institutions to manage the risk of excessive leverage, the competent authority shall take into account the business model of those credit institutions.

(7) The review and evaluation conducted by the competent authority shall include governance arrangements of credit institutions, their corporate culture and values, and the ability of directors to perform their duties. In conducting that review and evaluation, the competent authority shall, at least, have access to agendas and supporting documents for meetings of the board of directors and its committees, and the results of the internal or external evaluation of performance of the board of directors.

Supervisory
examination
programme.
Amended by:
L.N. 493 of 2021.

5. (1) The competent authority shall, at least annually, adopt a supervisory examination programme for the credit institutions it supervises. Such programme shall take into account the supervisory review and evaluation process referred to in regulation 3, and shall contain the following:

- (a) an indication of how the competent authority intends to carry out its tasks and allocate its resources;
- (b) an identification of which credit institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in sub-regulation 3; and
- (c) a plan for inspections at the premises used by a credit institution, including its branches and subsidiaries established in other Member States in accordance with regulation 12 of the European Passport Rights for Credit Institutions Regulations and regulation 10(2) and (3) and regulation 19(1) and (2) of the Supervisory Consolidation Regulations.

S.L. 371.11

S.L. 371.15

(2) Supervisory examination programmes shall include the following credit institutions:

- (a) credit institutions for which the results of the stress

tests referred to in regulation 4(1)(a) and (1)(g) and in regulation 6, or the outcome of the supervisory review and evaluation process under regulation 3, indicate significant risks to their ongoing financial soundness or indicate breaches of the Act and any regulations or Banking Rules issued thereunder transposing the requirements of the CRD, of any binding legal instruments issued under the CRD and of the CRR; and

(b) *deleted by Legal Notice 493 of 2021.*

(c) any other credit institution for which the competent authority deems it to be necessary.

(3) Where appropriate under regulation 3, the following measures shall, in particular, be taken if necessary:

(a) an increase in the number or frequency of on-site inspections of the credit institution;

(b) a permanent presence of the competent authority at the credit institution;

(c) additional or more frequent reporting by the credit institution;

(d) additional or more frequent review of the operational, strategic or business plans of the credit institution; and

(e) thematic examinations monitoring specific risks that are likely to materialise.

(4) Adoption of a supervisory examination programme by the European regulatory authority of a home Member State shall not prevent the competent authority from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches established in Malta of credit institutions authorised by such European regulatory authorities in accordance with regulation 8(2) and (3) of the European Passport Rights for Credit Institutions Regulations.

S.L. 371.11.

6. The competent authority shall carry out, as appropriate but at least annually, supervisory stress tests on credit institutions it supervises, to facilitate the review and evaluation process under regulation 3.

Supervisory stress testing.

7. (1) The competent authority shall review on a regular basis, and at least every three years, credit institutions' compliance with the requirements regarding approaches that require permission by the competent authority for the calculation of own funds requirements in accordance with Part Three of the CRR. The competent authority shall have particular regard to changes in a credit institution's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by a credit institution's internal approach, the competent authority shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

Ongoing review of the permission to use internal approaches.

(2) The competent authority shall in particular review and

assess whether the credit institution uses well developed and up-to-date techniques and practices for those approaches.

(3) If for an internal market risk model numerous overshootings as referred to in Article 366 of the CRR indicate that the model is not or is no longer sufficiently accurate, the competent authority shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

(4) If a credit institution has received permission to apply an approach that requires permission by the competent authority before using such an approach for the calculation of own funds requirements in accordance with Part Three of the CRR but no longer meets the requirements for applying that approach, the competent authority shall require the credit institution to either demonstrate to the satisfaction of the competent authority that the effect of non-compliance is immaterial, where applicable in accordance with the requirements of the CRR, or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authority shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the credit institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

(5) The competent authority shall take into account the analysis carried out by the EBA in terms of Article 101(5) of the CRD and the guidelines containing benchmarks on the basis of that analysis issued by the EBA, for the review of the permissions it grants to credit institutions to use internal approaches for the calculations of own funds requirements.

Application of supervisory measures to credit institutions with similar risk profiles.

Supervisory powers.
Amended by:
L.N. 493 of 2021.

8. Deleted by Legal Notice 493 of 2021.

9. (1) For the purposes of regulations 3, 4(4) and (5), and 7(4), and article 17E of the Act and the application of the CRR, the competent authority shall have at least the following powers:

- (a) to require credit institutions to have additional own funds in excess of the requirements set out in the CRR, under the conditions set out in regulation 9A;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with articles 17B and 17C of the Act;
- (c) to require credit institutions to substitute a plan to restore compliance with supervisory requirements in accordance with the Act and any regulations made or Banking Rules issued thereunder, with any binding legal

instruments issued under the CRD and with the CRR and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

- (d) to require credit 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 credit institutions or to request the divestment of activities that pose excessive risks to the soundness of the credit institution;
- (f) to require the reduction of the risk inherent in the activities, products and systems of credit institutions, including outsourced activities;
- (g) to require credit 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 credit institutions to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions or interest payments by a credit institution to shareholders, members or holders of Additional Tier 1 instruments within the meaning of the CRR, where the prohibition does not constitute an event of default of the credit institution;
- (j) to impose additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage;
- (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; and
- (l) to require additional disclosures.

(2) For the purposes of sub-regulation (1)(j), the competent authority shall only impose additional or more frequent reporting requirements on credit institutions where the relevant requirement is appropriate and proportionate with regard to the purpose for which the information is required and the information requested is not duplicative:

Provided that, for the purposes of article 17E of the Act, and regulations 3 to 7, any additional information that may be required from credit institutions shall be deemed as duplicative where the same or substantially the same information has already been otherwise reported to the competent authority or may be produced by the competent authority:

Provided further that credit institutions shall not be required to report additional information where the competent authority has previously received it in a different format or level of granularity and that different format or granularity does not prevent the competent authority from producing information of the same quality and reliability as that produced on the basis of the

additional information that would be otherwise reported.

(3) *Deleted by Legal Notice 493 of 2021.*

Additional own
funds requirement.
Added by:
L.N. 493 of 2021.

9A. (1) The additional own funds requirement referred to in regulation 9(1)(a) shall be imposed by the competent authority where, on the basis of the reviews carried out in accordance with regulations 3 and 7, it determines any of the following situations for an individual credit institution:

- (a) the credit institution is exposed to risks or elements of risk that are not covered or not sufficiently covered, as specified in sub-regulation (2), by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402;
- (b) the credit institution does not meet the requirements set out in articles 17B and 17C of the Act or in Article 393 of the CRR and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate time-frame;
- (c) the adjustments referred to in regulation 4(4) are deemed to be insufficient to enable the credit institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;
- (d) the evaluation carried out in accordance with regulation 7(4) reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;
- (e) the credit institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance communicated in accordance with regulation 9B(3);
- (f) other institution-specific situations deemed by the competent authority to raise material supervisory concerns:

Provided that the competent authority shall only impose the additional own funds requirement referred to in regulation 9(1)(a) to cover the risks incurred by individual credit institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual credit institution.

(2) For the purposes of sub-regulation (1)(a), risks or elements of risk shall only be considered as not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402 where the amounts, types and distribution of capital considered adequate by the competent authority, taking into account the supervisory review of the assessment carried out by credit institutions in accordance with article 17C of the Act, are

higher than the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402.

(3) For the purposes of sub-regulation (2), the competent authority shall assess, taking into account the risk profile of each individual credit institution, the risks to which the credit institution is exposed, including:

- (a) institution-specific risks or elements of such risks that are explicitly excluded from or not explicitly addressed by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402;
- (b) institution-specific risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402:

Provided that, to the extent that risks or elements of risk are subject to transitional arrangements or grandfathering provisions laid down in the Act and any regulations made and Banking Rules issued thereunder transposing the CRD, in any binding legal instruments issued under the CRD or in the CRR, they shall not be considered risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402.

(4) For the purposes of sub-regulation (2), the capital considered adequate shall cover all risks or elements of risks identified as material pursuant to the assessment laid down in sub-regulation (3) that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402:

Provided that interest rate risk arising from non-trading book positions may be considered material at least in the cases referred to in regulation 4(5), unless the competent authority, in performing the review and evaluation, comes to the conclusion that the credit institution's management of interest rate risk arising from non-trading book activities is adequate and that the credit institution is not excessively exposed to interest rate risk arising from non-trading book activities.

(5) Where additional own funds are required to address risks other than the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, the competent authority shall determine the level of the additional own funds required under sub-regulation (1)(a) as the difference between the capital considered adequate pursuant to sub-regulations (2) to (4) and the relevant own funds requirements set out in Parts Three and Four of the CRR and in Chapter 2 of Regulation (EU) 2017/2402:

Provided that where additional own funds are required to

address the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR, the competent authority shall determine the level of the additional own funds required under sub-regulation (1)(a) as the difference between the capital considered adequate pursuant to sub-regulations (2) to (4) and the relevant own funds requirements set out in Parts Three and Seven of the CRR.

(6) The credit institution shall meet the additional own funds requirement imposed by the competent authority under regulation 9(1)(a) to address risks other than the risk of excessive leverage with own funds that satisfy the following conditions:

- (a) at least three quarters of the additional own funds requirement shall be met with Tier 1 capital;
- (b) at least three quarters of the Tier 1 capital referred to in paragraph (a) shall be composed of Common Equity Tier 1 capital.

(7) The credit institution shall meet the additional own funds requirement imposed by the competent authority under regulation 9(1)(a) to address the risk of excessive leverage with Tier 1 capital.

(8) By way of derogation from sub-regulations (6) and (7), the competent authority may require the credit institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital, where necessary, and having regard to the specific circumstances of the credit institution.

(9) Own funds that are used to meet the additional own funds requirement referred to in regulation 9(1)(a) imposed by the competent authority to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

- (a) own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR;
- (b) the combined buffer requirement;
- (c) the guidance on additional own funds referred to in regulation 9B(3) where that guidance addresses risks other than the risk of excessive leverage.

(10) Own funds that are used to meet the additional own funds requirement referred to in regulation 9(1)(a) imposed by the competent authority to address the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of the CRR shall not be used to meet any of the following:

- (a) the own funds requirement set out in point (d) of Article 92(1) of the CRR;
- (b) the leverage ratio buffer requirement referred to in Article 92(1a) of the CRR;
- (c) the guidance on additional own funds referred to in regulation 9B(3), where that guidance addresses risks of excessive leverage.

(11) The competent authority shall duly justify in writing to the credit institution the decision to impose an additional own funds requirement under regulation 9(1)(a), at least by giving a clear

account of the full assessment of the elements referred to in sub-regulations (1) to (10). That justification shall include, in the case set out in sub-regulation (1)(e), a specific statement of the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

9B. (1) Pursuant to the strategies and processes referred to in article 17C of the Act, credit institutions shall set their internal capital at an adequate level of own funds that is sufficient to cover all the risks that a credit institution is exposed to and to ensure that the credit institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in regulation 6.

Guidance on
additional own
funds.
Added by:
L.N. 493 of 2021.

(2) The competent authority shall regularly review the level of the internal capital set by the credit institution in accordance with sub-regulation (1) as part of the reviews and evaluations performed in accordance with regulations 3 and 7, including the results of the stress tests referred to in regulation 6. Pursuant to that review, the competent authority shall determine for the credit institution the overall level of own funds it considers appropriate.

(3) The competent authority shall communicate its guidance on additional own funds to the credit institution. The guidance on additional own funds shall be the own funds exceeding the relevant amount of own funds required pursuant to Parts Three, Four and Seven of the CRR, Chapter 2 of Regulation (EU) 2017/2402, regulation 9(1)(a) and Article 128(6) of the CRD or pursuant to Article 92(1a) of the CRR, as relevant, which are needed to reach the overall level of own funds considered appropriate by the competent authority pursuant to sub-regulation (2).

(4) The competent authority's guidance on additional own funds pursuant to sub-regulation (3) shall be institution-specific. The guidance may cover risks addressed by the additional own funds requirement imposed pursuant to regulation 9(1)(a) only to the extent that it covers aspects of those risks that are not already covered under that requirement.

(5) Own funds that are used to meet the guidance on additional own funds communicated in accordance with sub-regulation (3) to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

- (a) the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR;
- (b) the requirement laid down in regulation 9A imposed by the competent authority to address risks other than the risk of excessive leverage and the combined buffer requirement:

Provided that own funds that are used to meet the guidance on additional own funds communicated in accordance with sub-regulation (3) to address the risk of excessive leverage shall not be used to meet the own funds requirement set out in point (d) of Article 92(1) of the CRR, the requirement laid down in regulation 9A imposed by the competent authority to address the risk of excessive leverage and the leverage ratio buffer requirement

referred to in Article 92(1a) of the CRR.

(6) The failure to meet the guidance referred to in sub-regulation (3) where a credit institution meets the relevant own funds requirements set out in Parts Three, Four and Seven of the CRR and in Chapter 2 of Regulation (EU) 2017/2402, the relevant additional own funds requirement referred to in regulation 9(1)(a) and, as relevant, the combined buffer requirement or the leverage ratio buffer requirement referred to in Article 92(1a) of the CRR shall not trigger the restrictions referred to in Article 141 or 141b of the CRD.

Cooperation with
Resolution
Committee.
Added by:
L.N. 493 of 2021

9C. The competent authority shall notify the Resolution Committee of the additional own funds requirement imposed on credit institutions pursuant to regulation 9(1)(a) and of any guidance on additional own funds communicated to credit institutions in accordance with regulation 9B(3).

Specific liquidity
requirements.
Amended by:
L.N. 493 of 2021.

10. (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 these regulations, the competent authority shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which a credit institution is or might be exposed, taking into account the following:

- (a) the particular business model of the credit institution;
- (b) the credit institution's arrangements, processes and mechanisms referred to in Section II of Chapter 2 of Title VII of the CRD and in particular in Article 86 of the CRD in relation to liquidity risk;
- (c) the outcome of the review and evaluation carried out in accordance with regulation 3.
- (d) *Deleted by Legal Notice 493 of 2021.*

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(2) In particular, without prejudice to regulation 7 of the Administrative Penalties, Measures and Investigatory Powers Regulations, the competent authority shall consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of a credit institution and any liquidity and stable funding requirements established at national or at European Union level.

(3) The competent authority shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.

(4) The competent authority shall take effective action where developments referred to in sub-regulation (3) may lead to the instability of an individual credit institution or systemic instability.

(5) The competent authority shall inform EBA about any actions carried out pursuant to sub-regulation (4).

- 11.** The competent authority shall inform EBA of:
- (a) the functioning of its review and evaluation process referred to in regulation 3;
 - (b) the methodology used to base decisions on the technical criteria for supervisory review referred to in regulation 4, the supervisory stress testing in regulation 6, the review of internal approaches in regulation 7, the supervisory measures in article 17E of the Act, the supervisory powers in regulation 9 and the specific liquidity requirements in regulation 10, on the process referred to in paragraph (a).
- 12.** The competent authority shall apply the review and evaluation process referred to in these regulations in accordance with the level of application of the requirements of Part One, Title II of the CRR.
- 13.** (1) The competent authority shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h), (i) and (k) of Article 450(1) of the CRR as well as the information provided by credit institutions on the gender pay gap and shall use that information to benchmark remuneration trends and practices. The competent authority shall provide the EBA with such information.
- (2) The competent authority shall collect information on the number of natural persons per credit institution that are remunerated EUR 1 million or more per financial year, in pay brackets of €1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contributions. The competent authority shall forward such information to EBA.
- 14.** The competent authority shall, taking into account the nature, scale and complexity of the credit institutions' activities, monitor that credit institutions do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.
- 15.** (1) Where the competent authority chooses to develop specific portfolios of internal approaches permitted to be used by credit institutions, it shall do so in consultation with the EBA and shall ensure that credit institutions report the results of the calculations for these specific portfolios separately from the results of the calculations for the benchmark portfolios required under Article 78 of the CRD.
- (2) The competent authority shall, on the basis of the information submitted by credit institutions, 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 credit institutions. The competent authority shall make an assessment, at least annually, of the quality of those approaches paying particular attention to:
- (a) those approaches that exhibit significant differences in
- Notification to EBA by the competent authority.
- Review and evaluation and application of supervisory measures.
- Oversight of remuneration policies.
*Amended by:
L.N. 493 of 2021.*
- Sole or mechanistic reliance on external credit ratings.
- Supervisory benchmarking of internal approaches for calculating own funds requirements.

own fund requirements for the same exposure;

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

(3) Where particular credit institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the competent authority shall investigate the reasons therefor and, if it can be clearly identified that a credit 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, the competent authority, shall take corrective action.

(4) The competent authority shall ensure that its decision on the appropriateness of corrective actions as referred to in sub-regulation (3) comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

- (a) lead to standardisation or preferred methods;
- (b) create wrong incentives; or
- (c) cause herd behaviour.

Benchmarking of diversity practices by the competent authority.

16. The competent authority shall collect the information disclosed in accordance with Article 435(2)(c) of the CRR and shall use it to benchmark diversity practices. The competent authority shall provide that information to the EBA.

General disclosures by the competent authority.
Amended by:
L.N. 493 of 2021.

17. (1) The competent authority shall, in accordance with Commission Implementing Regulation (EU) No 650/2014 of 4 June 2014 laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council, as amended from time to time, publish the following information:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in Malta 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 used in the review and evaluation referred to in regulation 3 including the criteria for applying the principle of proportionality as referred to in regulation 3(4);

- (d) without prejudice to the provisions set out in Title VII, Chapter 1, Section II of the CRD, aggregate statistical data on key aspects of the implementation of the prudential framework in Malta, including the number and nature of supervisory measures taken in accordance with article 17E(1)(a) of the Act, and of administrative penalties imposed in accordance with regulation 4(1), (2) and (3) and regulation 5 of the Administrative Penalties, Measures and Investigatory Powers Regulations. S.L. 371.05

(2) In terms of Article 143 of the CRD, the information published in accordance with sub-regulation (1) shall be sufficient to enable a meaningful comparison of the approaches adopted by the European regulatory authorities. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location.

18. (1) For the purpose of Part Five of the CRR, relating to exposures to transfer credit risk, the competent authority shall publish the following information:

Specific disclosures by the competent authority.
Amended by:
L.N. 76 of 2019.

- (a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the CRR;
- (b) without prejudice to the provisions laid down in Title VII, Chapter 1, Section II of the CRD, 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 the CRR, identified on an annual basis.

(2) If the competent authority exercises the discretion laid down in Article 7(3) of the CRR, it 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 in Malta and EU parent institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR and the number of those which incorporate subsidiaries in a third country;
- (c) on an aggregate basis for Malta:
- (i) the total amount of own funds on the consolidated basis of the parent institution in Malta, which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, which are held in subsidiaries in a third country;
- (ii) the percentage of total own funds on the consolidated basis of parent institutions in Malta which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR,

represented by own funds which are held in subsidiaries in a third country;

- (iii) the percentage of total own funds required under Article 92 of the CRR on the consolidated basis of parent institutions in Malta, which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country.

(3) If the competent authority exercises the discretion laid down in Article 9(1) of the CRR, it 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 in Malta and EU parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR and the number of such parent institutions which incorporate subsidiaries in a third country;
 - (c) on an aggregate basis for Malta:
 - (i) the total amount of own funds of parent institutions in Malta and EU parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR which are held in subsidiaries in a third country;
 - (ii) the percentage of total own funds of parent institutions in Malta and EU parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country;
 - (iii) the percentage of total own funds required under Article 92 of the CRR of parent institutions in Malta and EU parent institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country.
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