VERŻJONI ELETTRONIKA

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,406, 10 ta' April, 2015
Taqsima B

L.N. 129 of 2015

BANKING ACT
(CAP. 371)

European Passport Rights for Credit Institutions Regulations, 2015

IN exercise of the powers conferred by article 3 of the Banking Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the European Passport Rights for Credit Institutions Regulations, 2015.

(2) The purpose of these regulations is to implement Articles 3 (in part), 33 to 46, 49, 50, 52, 151 to 157 and 159 of the CRD.

(3) In the event that any of the provisions of these regulations conflict with the provisions of the CRD, the latter shall prevail.

Interpretation.

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

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

"branch" shall have the same meaning as that assigned to it in point (17) of Article 4(1) of the CRR;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or 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 investment firms and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"European credit institution" means a credit institution as defined in point (1) of Article 4(1) of the CRR, which is authorised by a European regulatory authority;

"European passport right" means the entitlement of a person to establish a branch, or provide services, in a Member State other than that in which it has its head office -

(a) in accordance with the Treaty as applied in the Member State; and

(b) subject to the requirements of the CRD and the CRR, and subject to any rules, regulations or Banking Rules made under the Act implementing such requirements;

"European regulatory authority" means a body 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;

"home Member State" shall have the meaning as that assigned to it in point (43) of Article 4(1) of the CRR;

"host Member State" shall have the same meaning as that assigned to it in point (44) of Article 4(1) of the CRR;

"Maltese credit institution" means a credit institution as defined in point (1) of Article 4(1) of the CRR, which is licensed in terms of the Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State other than Malta in exercise of a European passport right;

"mixed-activity holding company" means a mixed activity holding company as defined in point (22) of Article 4(1) of the CRR;

"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;

"Treaty" means the Treaty of Rome signed in 1957, establishing the European Economic Community, as subsequently amended;

"Tribunal" means the Financial Services Tribunal established under the Malta Financial Services Authority Act.

Cap. 330.

(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.

(3) Where there are any number of places of business set up in the same Member State by a credit institution having its headquarters in another Member State, they shall be regarded as a single branch.

Part I - Exercise of European passport rights by European credit institutions

Exercise of European passport rights by European credit institutions - establishment.

3. (1) A European credit institution which is seeking to establish a branch in Malta in exercise of a European passport right shall be exempt from the provisions of article 5(1) of the Act. The activities that may be carried out in Malta by such a European credit institution in exercise of a European passport right shall be limited to the activities it is authorised to undertake in the home Member State.

(2) A European credit institution may exercise a European passport right to establish a branch in Malta in accordance with sub-regulation (1) provided -

(a) the European credit institution has given the European regulatory authority of the home Member State a branch passport notification to establish a branch in Malta in accordance with Article 35(1) and (2) of the CRD;

(b) the competent authority has received a notice from the European regulatory authority of the home Member State, which shall -

(i) be given in accordance with the CRD;

(ii) certify that the European credit institution is authorised to act as a credit institution by the European regulatory authority;

(iii) identify which of the activities listed in Annex I to the CRD it intends to carry out;

(iv) contain the information stated in the branch passport notification referred to in paragraph (a);

(v) indicate the amount and composition of own funds and the sum of the own funds requirements under Article 92 of the CRR of the European credit institution; and

(vi) contain details of any deposit guarantee scheme which is intended to protect the branch's clients.

(3) The competent authority shall, within two months of

receiving the notice referred to in sub-regulation (2)(b), prepare for the supervision of the European credit institution and, if necessary, indicate the conditions under which, in the interests of the general good, those activities shall be carried out in Malta.

(4) A branch of a European credit institution shall not be established and commence its activities in Malta unless -

(a) the European credit institution has received a communication from the competent authority acknowledging its establishment in Malta and, if necessary, indicating any applicable conditions in the interests of the general good; or

(b) two months have elapsed from the date of receipt by the competent authority of the notice referred to in sub-regulation (2)(b), in the event that no communication has been received from the competent authority.

(5) In the event of a change in branch particulars notified to the European regulatory authority in accordance with sub-regulation (2)(a), the European credit institution shall give both the competent authority and the European regulatory authority a change of branch particulars notification in accordance with Article 36(3) of the CRD, at least one month before implementing any such change to enable the competent authority to take a decision setting out the conditions for the change in accordance with sub-regulation (3).

(6) Any measures taken by the competent authority with respect to a branch shall not allow discriminatory or restrictive treatment on the basis that the credit institution to which the branch belongs is authorised in another Member State.

Exercise of European passport rights by European credit institutions - services.

4. (1) A European credit institution which is seeking to provide services by carrying out its activities in Malta in exercise of a European passport right shall be exempt from the provisions of article 5(1) of the Act. The activities that may be carried out in Malta by such a European credit institution in exercise of a European passport right shall be limited to the activities it is authorised to undertake in the home Member State.

(2) A European credit institution may exercise a European passport right to provide services by carrying out its activities in Malta in accordance with sub-regulation (1) provided -

(a) the European credit institution has given the European regulatory authority of the home Member State a services passport notification to provide services in Malta in accordance with Article 39(1) of the CRD; and

VERŻJONI ELETTRONIKA

(b) the competent authority has received such notification from the European regulatory authority of the home Member State.

(3) When the competent authority receives the services passport notification referred to in sub-regulation (2)(b), the competent authority shall, where appropriate, notify the European credit institution of any applicable conditions.

(4) In the event of a change in any of the particulars communicated to the European regulatory authority in the services passport notification referred to in sub-regulation (2), the European credit institution shall give written notice of that change to the competent authority before implementing any such change.

(5) Any measures taken by the competent authority in relation to a European credit institution exercising the freedom to provide services, shall not allow discriminatory or restrictive treatment on the basis that such credit institution is authorised in another Member State.

Exercise of European passport rights by European credit institutions - tied agents.

5. A European credit institution which is seeking to appoint tied agents in Malta in exercise of a European passport right and in terms of Council Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, shall be subject to the requirements of the Investment Services Act (Tied Agents) Regulations. S.L. 370.14

Reporting to the competent authority.

6. (1) The competent authority may, for information or statistical purposes, for the determination of a significant branch in terms of Article 51(1) of the CRD, or for supervisory purposes in terms of Chapter 4 of the CRD, in accordance with the powers entrusted to the competent authority as host Member State, require a European credit institution which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta. Such reports shall be subject to professional secrecy requirements.

(2) The competent authority may require a European credit institution having a branch in Malta to provide information in order to allow the competent authority to assess whether the branch is a significant branch in terms of Article 51(1) of the CRD.

Advertising.

7. A European credit institution shall not be prohibited from advertising its services through any available means of

communication in Malta, subject to any rules governing the form and the content of such advertising adopted in the interests of the general good.

On-the-spot checking and inspection of branches established in Malta.

8. (1) Where a European credit institution carries out its activities in Malta through a branch in exercise of a European passport right, the European regulatory authority of the home Member State may, after notifying the competent authority, carry out, itself or through the intermediary of persons appointed for that purpose, on-the-spot checks of the information referred to in regulation 16 and inspections of such branches.

(2) Where it considers it relevant for reasons of stability of the financial system in Malta, the competent authority may also carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of European credit institutions authorised in other Member States, which are established in Malta, and require information from a branch about its activities and for supervisory purposes. Before carrying out such checks and inspections, the competent authority shall consult the European regulatory authority of the home Member State concerned.

(3) After such checks and inspections, the competent authority shall communicate to the European regulatory authority of the home Member State, the information obtained and findings that are relevant for the risk assessment of the European credit institution or the stability of the financial system in Malta.

(4) On-the-spot checks and inspections of branches carried out in Malta shall be conducted in accordance with Maltese law.

(5) Information received or obtained by means of an on-the-spot check or inspection referred to in this regulation, shall not be disclosed under article 25(9) and (10) of the Act, except with the express consent of the European regulatory authority which disclosed the information.

Annual supervision fee.

9. A European credit institution which has established a branch in Malta in terms of these regulations shall be subject to an annual supervision fee equivalent to zero point zero zero zero two (0.0002) of the branch's deposit liabilities as reported at the end of the year immediately before the year in which the fee is payable:

Provided that the annual amount payable by the branch of a European credit institution established in Malta by way of annual supervision fee shall in no case be less than twenty-five thousand euro (€25,000) and not more than one million two hundred thousand euro (€1,200,000):

Provided further that the first annual supervision fee payable by the branch of a European credit institution established in Malta after 1st January of any calendar year shall be due immediately once a branch is established in Malta, and shall be equal to a proportion of the minimum fee established in the first proviso. The fee payable shall be proportionate to the period remaining between the date of establishment of a branch and the end of that calendar year.

Part II - Exercise of European passport rights by Maltese credit institutions

Exercise of European passport rights by Maltese credit institutions - establishment.

10. (1) A Maltese credit institution may exercise a European passport right to establish a branch in another Member State provided the requirements set out in this regulation are satisfied. The activities that may be carried out in the host Member State by such a Maltese credit institution in exercise of a European passport right shall be limited to the activities it is authorised to undertake in Malta.

(2) The Maltese credit institution wishing to exercise a European passport right to establish a branch in another Member State shall provide the competent authority with a branch passport notification to establish a branch in another Member State, which shall contain -

(a) the Member State within the territory of which the Maltese credit institution plans to establish a branch;

(b) a programme of operations identifying, *inter alia*, the activities which it seeks to carry out through the branch;

(c) the address of the proposed branch from where documents may be obtained; and

(d) the proposed organisational structure of the branch and the names of the proposed managers.

(3) Without prejudice to sub-regulations (5) and (6), the competent authority shall, within three months of receiving a branch passport notification referred to in sub-regulation (2), give a notice to the European regulatory authority of the host Member State, which shall -

(a) be given in accordance with the CRD;

(b) certify that the Maltese credit institution is authorised to act as a credit institution by the competent

authority;

(c) identify which of the activities listed in Annex I to the CRD it intends to carry out;

(d) contain the information stated in the branch passport notification referred to in sub-regulation (2);

(e) indicate the amount and composition of own funds and the sum of the own funds requirements under Article 92 of the CRR of the Maltese credit institution; and

(f) contain details of any deposit guarantee scheme which is intended to protect the branch's clients.

(4) The competent authority shall notify the European regulatory authority of any change in the details of a deposit guarantee scheme referred to in sub-regulation (3)(f).

(5) Where the requirements specified in sub-regulation (2) are satisfied, the notice referred to in sub-regulation (3) shall only be sent to the European regulatory authority if, taking into account the activities which the Maltese credit institution seeks to carry out through the branch, the competent authority has no reason to doubt the adequacy of the administrative structure or the financial situation of the Maltese credit institution:

Provided that in the event of any changes in any of the particulars referred to in this sub-regulation, the competent authority shall notify the European regulatory authority accordingly.

(6) Where the competent authority refuses to give the European regulatory authority of the host Member State the notice referred to in sub-regulation (3), it shall, within three months from the date of receipt of the branch passport notification referred to in sub-regulation (2), give the Maltese credit institution the reasons for its decision in writing. The Maltese credit institution may appeal to the Tribunal and the provisions of article 10 of the Act shall apply *mutatis mutandis*.

(7) A branch of a Maltese credit institution shall not be established and commence its activities in the host Member State unless -

(a) the Maltese credit institution has received a communication from the European regulatory authority acknowledging its establishment in the host Member State and, if necessary, indicating any applicable conditions in the interests

of the general good; or

(b) two months have elapsed from the date of receipt of the notice referred to in sub-regulation (3), and no communication has been received from the European regulatory authority.

(8) In the event of a change in any of the particulars communicated in the branch passport notification referred to in sub-regulation (2), the Maltese credit institution shall give the European regulatory authority and the competent authority a change of branch particulars notification in accordance with Article 36(3) of the CRD at least one month before implementing the change in order to enable the competent authority to take a decision following the notification under this regulation.

(9) The prudential supervision of a Maltese credit institution shall be the responsibility of the competent authority whether the credit institution establishes a branch in another Member State or not, without prejudice to those provisions of the CRD which give responsibility to the European regulatory authority of the host Member State.

(10) Sub-regulation (9) shall not prevent the supervision on a consolidated basis in terms of regulation 3 of the Supervisory Consolidation Regulations. L.N. 31 of 2014.

(11) The competent authority shall notify the European Commission and the EBA of the number and type of cases in which there have been refusals in terms of sub-regulations (6) and (8).

Exercise of European passport rights by Maltese credit institutions - services.

11. (1) A Maltese credit institution may exercise a European passport right to provide services within the territory of another Member State provided the requirements set out in this regulation are satisfied. The activities that may be carried out in the host Member State by such a Maltese credit institution in exercise of a European passport right shall be limited to the activities it is authorised to undertake in Malta.

(2) The Maltese credit institution wishing to exercise a European passport right to provide services in another Member State shall provide the competent authority with a services passport notification in accordance with Article 39(1) of the CRD, to provide services in another Member State, which shall -

(a) identify which of the services listed in the Schedule it intends to provide; and

(b) indicate the Member State in which it intends to operate.

(3) The competent authority shall, within one month of receiving a services passport notification referred to in sub-regulation (2), give such notification to the European regulatory authority of the host Member State.

(4) A Maltese credit institution may exercise a European passport right in accordance with sub-regulation (1) provided -

(a) it has given the competent authority a notification in terms of sub-regulation (2); and

(b) the competent authority has notified the European regulatory authority of the host Member State in accordance with sub-regulation (3):

Provided that the competent authority shall give written notice to the Maltese credit institution that the notification in terms of sub-regulation (3) has taken place:

Provided further that, where appropriate, the European regulatory authority of the host Member State may, on receipt of the information from the competent authority, indicate to the Maltese credit institution any applicable conditions in the interests of the general good.

(5) In the event of a change in any of the particulars provided by the Maltese credit institution in the services passport notification referred to in sub-regulation (2), the Maltese credit institution shall give written notice of such change to the competent authority in order to enable it to take a decision in terms of this regulation, and to the European regulatory authority of the host Member State at least one month before implementing any such change.

(6) The prudential supervision of a Maltese credit institution shall be the responsibility of the competent authority, whether the credit institution provides services in another Member State or not, without prejudice to those provisions of the CRD which give responsibility to the European regulatory authority of the host Member State.

(7) Sub-regulation (6) shall not prevent supervision on a consolidated basis in terms of regulation 3 of the Supervisory Consolidation Regulations.

L.N. 31 of 2014.

On-the-spot checking and inspection of branches established in a Member State other than Malta.

12. (1) Where a Maltese credit institution exercises a European passport right to establish a branch, the competent authority may, after notifying the European regulatory authority of the host Member State, carry out, itself or through the intermediary of persons appointed for that purpose by the competent authority, on-the-spot checks of the information referred to in Article 50 of the CRD and inspections of such branches.

(2) The competent authority may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in regulation 12 of the Supervisory Consolidation Regulations. L.N. 31 of 2014.

(3) Where Malta is the home Member State, the competent authority shall duly take into account the information and findings obtained by the European regulatory authority of the host Member State that are relevant for the risk assessment of the credit institution or the stability of the financial system in the relevant host Member State in accordance with Article 52(3) of the CRD in determining the supervisory examination programme referred to in regulation 5 of the Banking Act (Supervisory Review) Regulations and shall also have regard to the stability of the financial system in the host Member State concerned.

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

(5) Information received under Article 52(3) of the CRD and information obtained by means of an on-the-spot check or inspection referred to in this regulation, shall not be disclosed under article 25(9) and (10) of the Act, except with the express consent of the European regulatory authority which disclosed the information or of the European regulatory authority of the Member State in which such an on-the-spot check or inspection was carried out.

Right of Maltese credit institutions.

13. A European passport right shall entitle a Maltese credit institution to provide one or more services.

Part III - Contraventions by European credit institutions and Maltese credit institutions

Contraventions by European credit institutions.

14. (1) Where Malta is the host Member State and the competent authority, on the basis of the information received from the European regulatory authority of the home Member State in accordance with Article 50 of the CRD, ascertains that a European credit institution which has a branch or provides services in Malta in exercise of a European passport right fulfils one of the following conditions in relation to the activities carried out in Malta, it shall

notify the European regulatory authority -

(a) the credit institution does not comply with the provisions of the Act or any regulations made or Banking Rules issued thereunder which transpose the requirements of the CRD, or with the CRR;

(b) there is a material risk that the credit institution will not comply with the provisions of the Act or any regulations made or Banking Rules issued thereunder transposing the requirements of the CRD, or with the CRR.

(2) Where the competent authority considers that the European regulatory authority of the home Member State, after having been notified in terms of sub-regulation (1), has not fulfilled its obligations or will not fulfil its obligations to take appropriate measures to ensure that the credit institution concerned remedies its non-compliance or takes measures to avert the risk of non-compliance, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(3) Before following the procedures set out in sub-regulations (1) and (2), where Malta is the host Member State, the competent authority may, in emergency situations, pending measures by the European regulatory authority of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in Malta.

(4) Any precautionary measures under sub-regulation (3) shall be proportionate to their purpose to protect against financial instability that would seriously threaten collective interests of depositors, investors and clients in Malta as the host Member State. Such precautionary measures may include a suspension of payment. They shall not result in a preference for the creditors of the European credit institution in Malta over creditors in other Member States.

(5) Any precautionary measure under sub-regulation (3) shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 3 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions.

(6) Where Malta is the host Member State, the competent authority shall terminate precautionary measures taken in accordance

with sub-regulations (3) to (5) where it considers those measures to have become obsolete under sub-regulations (1) and (2), unless they cease to have effect in accordance with sub-regulation (5).

(7) The competent authority shall, without undue delay, notify the European Commission, the EBA and the European regulatory authorities concerned of precautionary measures taken under sub-regulation (3).

(8) Where Malta is the host Member State, the competent authority may, notwithstanding regulation 6 and sub-regulations (1) and (2) of this regulation, exercise the powers conferred upon it under the CRD to take appropriate measures to prevent or to punish breaches committed in Malta of the provisions of the Act or any regulations made or Banking Rules issued thereunder transposing the requirements of the CRD or in the interests of the general good. This shall include the possibility of preventing credit institutions who have so acted in breach, from initiating further transactions in Malta.

(9) Any measures taken in accordance with sub-regulations (3) to (7) or sub-regulation (8) involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

(10) Where Malta is the host Member State and a European credit institution carrying out its activities in Malta in exercise of a European passport right has had its authorisation withdrawn by the European regulatory authority of the home Member State, the competent authority shall take appropriate measures to prevent the European credit institution concerned from initiating further transactions in Malta and to safeguard the interests of depositors.

(11) Where Malta, neither being the home Member State nor the host Member State, is affected by the precautionary measures taken by the European regulatory authority of any host Member State in terms of Article 43 of the CRD, the competent authority may:

(a) object to such precautionary measures;

(b) refer the matter to the EBA; and

(c) request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

Contraventions by Maltese credit institutions.

15. (1) Where Malta is the home Member State and the competent authority is notified by a European regulatory authority that a Maltese credit institution carrying out its activities in the

relevant host Member State through a branch or by providing services, fulfils any one of the following conditions, it shall, without delay, take all appropriate measures to ensure that the Maltese credit institution concerned remedies its non-compliance or takes measures to avert the risk of non-compliance:

(a) if the credit institution does not comply with the national provisions of the host Member State transposing the CRD, or with the CRR;

(b) if there is a material risk that the credit institution will not comply with the national provisions of the host Member State transposing the CRD, or with the CRR.

(2) The competent authority shall communicate such measures taken in accordance with sub-regulation (1) to the European regulatory authority of the host Member State without delay.

(3) Where Malta is the home Member State and the European regulatory authority of the host Member State takes precautionary measures in terms of Article 43 of the CRD, the competent authority may:

(a) object to such precautionary measures;

(b) refer the matter to the EBA; and

(c) request the EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(4) Any measures taken in accordance with sub-regulation (1) or sub-regulation (3) involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

(5) In the event of withdrawal of a licence by the competent authority of a Maltese credit institution, the competent authority shall notify the European regulatory authorities of the host Member State without delay.

Part IV - Collaboration between Regulatory Authorities

Collaboration between regulatory authorities.

16. (1) The competent authority shall collaborate closely with relevant European regulatory authorities in order to supervise the activities of credit institutions operating, in particular, through a branch, in one or more Member States other than that in which their head offices are situated. The competent authority shall supply the

European regulatory authority in the Member States concerned with all information concerning the management and ownership of credit institutions, that is likely to facilitate their supervision and the examination of the conditions for their licensing, and all information likely to facilitate the monitoring of credit institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the credit institution, administrative and accounting procedures and internal control mechanisms.

(2) Where Malta is the home Member State, the competent authority shall:

(a) immediately provide the European regulatory authorities of the host Member States with any information and findings pertaining to liquidity supervision in accordance with Part Six of the CRR and with the Supervisory Consolidation Regulations, of the activities performed by a credit institution through its branches, to the extent that such information and findings are relevant to the protection of depositors or investors in the host Member State; L.N. 31 of 2014.

(b) immediately notify the European regulatory authorities of all host Member States where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervisory measures taken in that context;

(c) communicate and explain upon request to the European regulatory authorities of the host Member State how information and findings provided by the latter have been taken into account:

Provided that where the competent authority disagrees with the measures to be taken by the European regulatory authority of the host Member State, to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system in accordance with Article 50(4) of the CRD, the competent authority may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(3) Where Malta is the host Member State, the competent authority may request from the European regulatory authority of the home Member State an explanation on the manner in which information and findings provided by the competent authority have

been taken into account. Where upon the provision of such information the competent authority maintains that no appropriate measures have been taken by the said European regulatory authority, the competent authority may, after notifying the European regulatory authorities concerned and EBA, take appropriate measures to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

(4) The competent authority may refer to EBA situations where a request for collaboration to a European regulatory authority, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Part V - Companies other than credit institutions

Companies other than credit institutions.

17. (1) A company, other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2, 3 and 5 to 12 of Annex I to the CRD (hereinafter referred to in this regulation as "company"), may exercise a European passport right in accordance with Articles 35, with the exclusion of the second paragraph of sub-article (3) thereof, 36(1), (2) and (3), 39(1) and (2) and 40 to 46 of the CRD provided the following conditions are fulfilled:

(a) the company is a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions;

(b) the memorandum and articles of association of the company permit the carrying on of those activities;

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

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

(e) the parent undertaking or undertakings of the company hold 90 per cent or more of the voting rights attaching to shares in the capital of the company;

(f) the parent undertaking or undertakings of the company satisfy the European regulatory authority of the host Member State or, where Malta is the host Member State, the competent authority, regarding the prudent management of the company and have declared, with the consent of the relevant European regulatory authority of the home Member State, or,

where Malta is the home Member State, with the consent of the competent authority, that they jointly and severally guarantee the commitments entered into by the company;

(g) the company is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title VII, Chapter 3 of the CRD and Part One, Title II, Chapter 2 of the CRR, in particular for the purposes of the own funds requirements set out in Article 92 of the CRR, for the control of large exposures provided for in Part Four of the CRR and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of the said CRR.

(2) Where Malta is the home Member State, the competent authority shall check compliance with the conditions referred to in sub-regulation (1), and shall supply the company with a certificate of compliance which shall form part of the notification referred to in Articles 35 and 39 of the CRD.

(3) This regulation shall apply accordingly to subsidiaries of a company referred to in sub-regulation (1).

(4) By way of derogation from the second sub-paragraph of Article 35(3) of the CRD, for the purpose of this regulation, where Malta is the home Member State, the competent authority shall communicate to the European regulatory authority of the host Member State the amount and composition of own funds of the company and the total risk exposure amounts calculated in accordance with Article 92(3) and (4) of the CRR of the credit institution which is its parent undertaking.

(5) Where Malta is the home Member State, the competent authority shall notify the European regulatory authority of the host Member State where a company referred to in this regulation ceases to fulfil any of the conditions imposed and the activities carried out by such company in the host Member State shall become subject to the law of the host Member State.

(6) Where Malta is the host Member State, and the competent authority is notified by the European regulatory authority of the home Member State that the company referred to in this regulation ceases to fulfil any of the conditions imposed, the activities carried out by that company in Malta shall become subject to Maltese law.

(7) The entities referred to in point (1) and in points (3) to (23) of Article 2(5) of the CRD, shall be treated as companies for the

purpose of this regulation.

(8) This regulation shall also apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head offices in the European Union.

Part VI - Applicability provisions

Applicability provisions.

18. (1) A legal person who, on the date of the coming into force of these regulations, was in possession of a licence issued by the competent authority which covers the provision of point 1 of Annex I to the CRD, incorporated in the Schedule to these regulations, and any other additional activities included in such Annex, shall be deemed to be a Maltese credit institution for the purposes of these regulations:

Provided that such legal person conforms with all applicable Banking Rules issued by the said competent authority.

(2) Every licence issued after the coming into force of these regulations shall indicate whether the licence holder is a credit institution in terms of these regulations.

Part VII - Interpretation

Interpretation.

19. These regulations shall apply *mutatis mutandis* to companies other than credit institutions, fulfilling the conditions laid down in regulation 17, being companies authorised either by the European regulatory authority or by the competent authority; and accordingly the words "European credit institution" shall be read as if they were a reference to a company or other body corporate authorised by the European regulatory authority, and the words "Maltese credit institution" shall be read as if they were a reference to companies authorised by the competent authority.

Authorisations, licences, etc., granted under the European Passport Rights for Credit Institutions Regulations, 2011.

20. Every authorisation, licence, approval or order taken, granted or commenced under the European Passport Rights for Credit Institutions Regulations, 2004* and under the European Passport Rights for Credit Institutions Regulations 2011**, shall continue to be valid and in force, as if such authorisation, licence, approval or order were taken, granted or commenced under these regulations.

Language.

21. In terms of article 29B of the Act, these regulations are being published in the English language only.

* Revoked by European Passport Rights for Credit Institutions Regulations, 2011.

** Revoked by these Regulations.

Part VIII - Transitional Provisions

Transitional provisions.

22. The provisions of regulations 3(6), 4(5), 6, 8, 12, 14, 15 and 16 shall not apply until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted by the European Commission in accordance with Article 460 of the CRR in terms of Article 151 of the CRD:

Provided that, until the date referred to in this regulation:

(a) regulation 6 of these regulations shall be replaced by the following:

"Reporting to the competent authority.

6. (1) The competent authority may, for statistical purposes, require a European credit institution which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta to the competent authority.

(2) In discharging its responsibilities within the meaning of regulation 23, the competent authority may require such branches of European credit institutions to provide the same particulars as Maltese credit institutions for that purpose.";

(b) regulation 8 of these regulations shall be replaced by the following:

"On-the-spot checks of branches established in Malta.

8. (1) Where a European credit institution carries out its activities in Malta through a branch in exercise of a European passport right, the European regulatory authority of the home Member State may, after notifying the competent authority, carry out, itself or through an intermediary, on-the-spot checks of the information referred to in regulation 16 of these regulations.

(2) This regulation and the right of European regulatory authorities of the home Member State to have recourse to one of the other procedures set out in Article 118 of the CRD for the purposes of such on-the-spot checking of branches, shall not affect the right of the competent authority, in discharging its responsibilities under the CRD, to carry out on-the-spot checks of branches established in Malta.";

(c) regulation 12 of these regulations shall be replaced by the following:

"On-the-spot checks of branches established in a Member State other than Malta.

12. (1) Where a Maltese credit institution carries out its activities in another Member State through a branch in exercise of a European passport right, the competent authority may, after notifying the European regulatory authority of the host Member State, carry out, itself or through an intermediary, on-the-spot checks of the information referred to in regulation 16 and may also, for the purposes of such on-the-spot checking of branches, have recourse to one of the other procedures set out in regulation 12 of the Supervisory Consolidation Regulations.

L.N. 31 of 2014.

(2) This regulation shall not affect the right of the European regulatory authority of the host Member State, in discharging its responsibilities under the CRD, to carry out on-the-spot checks of branches established in the host Member State.";

(d) regulation 14 of these regulations shall be replaced by the following:

VERŻJONI ELETTRONIKA

"Contraventions by European credit institutions.

14. (1) Where Malta is the host Member State and the competent authority ascertains that a European credit institution which has a branch or provides services in Malta in exercise of a European passport right is not complying with the provisions of the Act or any regulations made or Banking Rules issued thereunder transposing the requirements of the CRD relating to the powers of the competent authority, the competent authority shall require the European credit institution to remedy its non-compliance.

(2) If the European credit institution concerned fails to take the necessary steps to remedy and rectify its position, the competent authority shall notify the European regulatory authority of such failure accordingly.

(3) Where Malta is the host Member State, if, despite the measures taken by the European regulatory authority of the home Member State to ensure that the European credit institution concerned remedies its non-compliance, or because such measures prove inadequate or are not provided for in the Member State in question, the European credit institution persists in violating the legal rules referred to in sub-regulation (1), the competent authority may, after notifying the European regulatory authority, take appropriate measures to prevent or to punish further breaches and, in so far as necessary, to prevent the European credit institution from initiating further transactions in Malta.

(4) Before following the procedure set out in sub-regulations (1) to (3), where Malta is the host Member State, the competent authority may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The competent authority shall notify the European Commission and the European regulatory authorities concerned of such measures at the earliest opportunity.

(5) Where Malta is the host Member State, the competent authority may, notwithstanding regulation 6 and sub-regulations (1) to (3) of this regulation, exercise the powers conferred upon it under the CRD to take appropriate measures to prevent or to punish breaches committed in Malta of the provisions of the Act or any regulations made or Banking Rules issued thereunder transposing the requirements of the CRD or in the interests of the general good. This shall include the possibility of preventing credit institutions who have so acted in breach, from initiating further transactions in Malta.

(6) Any measures taken in accordance with sub-regulation (1) or sub-regulations (4) or (5) involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

(7) Where Malta is the host Member State and a European credit institution carrying out its activities in Malta in exercise of a European passport right has had its authorisation withdrawn by the European regulatory authority of the home Member State, the competent authority shall take appropriate measures to prevent the European credit institution concerned from initiating further transactions in Malta and to safeguard the interests of depositors.";

(e) regulation 15 of these regulations shall be replaced by the following:

VERŻJONI ELETTRONIKA

"Contraventions by Maltese credit institutions.

15. (1) Where Malta is the home Member State, if the European regulatory authority of the host Member State, after ascertaining that a Maltese credit institution having a branch or providing services within its territory in exercise of a European passport right is not complying with the legal provisions adopted in that Member State pursuant to the CRD relating to the powers of the European regulatory authority of the host Member State, requires the Maltese credit institution concerned to remedy its non-compliance and the Maltese credit institution concerned fails to take the necessary steps to remedy such non-compliance, the competent authority shall, at the earliest opportunity, take all appropriate measures to ensure that the Maltese credit institution concerned remedies its non-compliance. The nature of those measures shall be communicated to the European regulatory authorities concerned.

(2) Any measures taken in accordance with sub-regulation (1) involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

(3) In the event of withdrawal of a licence by the competent authority of a Maltese credit institution, the competent authority shall notify the European regulatory authorities of the host Member State without delay.";

(f) regulation 16 shall be replaced by the following:

"Collaboration between regulatory authorities.

16. The competent authority shall collaborate closely with relevant European regulatory authorities in order to supervise the activities of credit institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. The competent authority shall supply all information concerning the management and ownership of credit institutions to the relevant European regulatory authorities in the Member States concerned, that is likely to facilitate their supervision and the examination of the conditions for their licensing, and all information likely to facilitate the monitoring of credit institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.".

Liquidity supervision.

23. Until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted by the European Commission pursuant to Article 460 of the CRR in terms of Article 151 of the CRD, where Malta is the host Member State, the competent authority shall, pending further coordination, retain responsibility in cooperation with the European regulatory authorities of the home Member State for the supervision of the liquidity of branches of credit institutions authorised in other Member States, which are established in Malta.

Part IX - Revocation

Revocation of the European Passport Rights for Credit Institutions Regulations, 2011. Legal Notice 459 of 2011.

24. The European Passport Rights for Credit Institutions Regulations, 2011, are hereby revoked.

VERŻJONI ELETTRONIKA

SCHEDULE

Annex I to the CRD

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds;

2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting);

3. Financial Leasing;

4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC;

5. Issuing and administering other means of payment (e.g. travellers cheques and bankers' drafts) in so far as this activity is not covered by activity 4 above;

6. Guarantees and commitments;

7. Trading for own account or for account of customers in:

(a) money market instruments (cheques, bills, certificates of deposit, etc.);

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest-rate instruments;

(e) transferable securities;

8. Participation in securities issues and the provision of services related to such issues;

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;

10. Money broking;

11. Portfolio management and advice;

VERŻJONI ELETTRONIKA

12. Safekeeping and administration of securities;

13. Credit reference services;

14. Safe custody services;

15. Issuing of electronic money.

The services and activities provided for in Section A and Section B of Schedule I to the European Passport Rights for Investment Firms Regulations when referring to the instruments provided for in Section C of the said Schedule are subject to mutual recognition.

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€1.17