



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

CENTRAL BANK OF MALTA

DIRECTIVE NO 11

in terms of the

CENTRAL BANK OF MALTA ACT
(CAP. 204)

MACRO-PRUDENTIAL POLICY

Ref: CBM/11

**DIRECTIVE NO
11
ON MACRO-PRUDENTIAL
POLICY**

Issued on 3 May 2013
Amended on 21 November 2013, 27 August 2014, 3 January 2018 and 28 December 2020

INTRODUCTION

1. In terms of article 17A of the Central Bank of Malta Act (Cap. 204) (hereinafter referred to as “the Act”), the Central Bank of Malta (hereinafter referred to as “the Bank”) is empowered to issue directives in order to implement macro-prudential policy and tools.
2. In terms of the Central Bank of Malta Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014 (L.N. 29 of 2014), the Bank has been appointed as a designate authority to implement a number of macro-prudential instruments, including the systemic risk buffer, the countercyclical capital buffer, a buffer for global systemically important institutions (G-SIIs), and other systemically important institutions (O-SIIs) jointly with the competent authority, and to identify changes in the intensity of macro-prudential or systemic risk in the financial system.
3. This Directive implements the following:
 - (a) the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3), (hereinafter referred to as “the ESRB Recommendation on macro-prudential mandate”),
 - (b) the Recommendation of the ESRB of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (ESRB/2013/1), (hereinafter referred to as “the ESRB Recommendation on intermediate objectives and instruments”),
 - (c) provisions of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, (hereinafter referred to as "the CRDIV"),
 - (d) provisions of Directive 2019/878/EU of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, (hereinafter referred to as “the CRDV”),
 - (e) provisions of Regulation 575/2013/EU of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit

institutions and investment firms and amending Regulation 648/2012/EU, (hereinafter referred to as "the CRR"), and
(f) provisions of Regulation 2019/876/EU of the European Parliament and of the Council of 20 May 2019 amending Regulation 575/2013/EU as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation 648/2012/EU, (hereinafter referred to as "the CRRII").

For the purposes of this Directive, unless otherwise provided or made clear from the context, terms used in this Directive shall have the same meaning as is assigned to them under the Act, the CRDIV, the CRDV, the CRR and the CRRII.

SCOPE AND APPLICATION

4. This Directive lays down the objective of macro-prudential policy and the way the Bank intends to implement macro-prudential policy.
5. In accordance with the powers conferred to the Bank by the Act (Appointment of Designate Authority to implement Macro-Prudential Instruments) Regulations, 2014 (L.N. 29 of 2014), this Directive shall apply to credit institutions and systemic investment firms as defined in the Investment Firm Directive and the Investment Firm Regulation.
6. This Directive shall not apply to the Malta Development Bank which was established by the Malta Development Bank Act (Cap. 574), and to investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

DEFINITIONS

7. In this Directive, unless the context otherwise requires –

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

“CRDV” means Directive 2019/878/EU of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures;

“CRR” means Regulation 575/2013/EU of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation 648/2012/EU;

“CRR II” means Regulation 2019/876/EU of the European Parliament and of the Council of 20 May 2019 amending Regulation 575/2013/EU as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation 648/2012/EU;

“credit institution” means credit institution as defined in point (1) of Article 4(1) of the CRR;

“combined buffer requirement” means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:

- (a) an institution-specific countercyclical capital buffer;
- (b) a G-SII buffer;
- (c) an O-SII buffer;
- (d) a systemic risk buffer;

“competent authority” means competent authority as defined in point (40) of Article 4(1) of the CRR;

“countercyclical buffer rate” means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Article 136 or Article 137 of the CRDIV, or by a relevant third-country authority, as the case may be;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as amended by the Protocol signed at Brussels on 17 March, 1993 and as amended by any subsequent acts;

“EU parent institution” means EU parent institution as defined in point (29) of Article 4(1) of the CRR;

“EU parent financial holding company” means EU parent financial holding company as defined in point (31) of Article 4(1) of the CRR;

“EU parent mixed financial holding company” means EU parent mixed financial holding company as defined in point (33) of Article 4(1) of the CRR;

“global systemically important institution” or “G-SII” means a G-SII as defined in point (133) of Article 4(1) of the CRR;

“G-SII buffer” means the own funds that are required to be maintained in accordance with Article 131(4) of the CRDIV;

"institution" means a credit institution or an investment firm;

“investment firm” means investment firm as defined in point (2) of Article 4(1) of the CRR excluding the investment firms referred to in the proviso to paragraph 6 of this Directive;

“Investment Firm Directive” means Directive 2019/2034/EU of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

“Investment Firm Regulation” means Regulation 2019/2033/EU of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations 1093/2010/EU, 575/2013/EU, 600/2014/EU and 806/2014/EU.

“Member State" means a Member State of the EU and includes an EEA State;

“O-SII buffer” means the own funds that may be required to be maintained in accordance with Article 131(5) of the CRDIV;

“parent institution in a Member State” means parent institution in a Member State as defined in point (28) of Article 4(1) of the CRR;

“systemic risk buffer” means the own funds that an institution is or may be required to maintain in accordance with Article 133 of the CRDIV;

“systemically important institution” means systemically important institution as defined in point (30) of Article 4(1) of the CRDIV;

"third country" means a country that is not a Member State or an EEA state;

The terms “institution”, “parent institution in a Member State”, “EU parent institution” and “parent undertaking” shall also include:

- (a) financial holding companies and mixed financial holding companies that have been granted approval in accordance with Article 21a of the CRDIV;
- (b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the relevant parent is not subject to approval in accordance with Article 21a(4) of the CRDIV; and

- (c) financial holding companies, mixed financial holding companies or institutions designated pursuant to point (d) of Article 21a(6) of the CRDIV.

OBJECTIVE

- 8.** In accordance with the ESRB Recommendation on macro-prudential mandate, the objective of macro-prudential policy shall be to contribute to the safeguard of the stability of the financial system as a whole, primarily by strengthening the resilience of the financial system and decreasing the build-up of systemic risk, thereby ensuring a sustainable contribution of the financial sector to economic growth. Systemic risk shall mean the risk of widespread disruptions to the provision of financial services that potentially may have serious negative consequences for the economy at large.
- 9.** Macro-prudential policy shall limit systemic and system-wide financial risk through the deployment of macro-prudential instruments. It shall thus minimise the incidence of disruptions in the provision of key financial services by reducing any accumulation of financial imbalances, introducing measures that limit the velocity and magnitude of subsequent adverse economic effects and identifying and addressing any exposures, risk concentrations, linkages, and interdependencies that may be a source of contagion, as well as any spill-over risks that may be detrimental to the functioning of the system as a whole. The scope of macro-prudential policy shall be the financial system as a whole, or particular sectors of the system as opposed to individual components within sectors of the financial system.
- 10.** In accordance with the ESRB Recommendation on intermediate objectives and instruments, the Bank shall define and pursue intermediate objectives of macro-prudential policy for the financial system as a whole. The Bank shall assess the need for further intermediate objectives on the basis of underlying market failures and the specific structural characteristics of the country and/or EU financial system that could give rise to systemic risk.
- 11.** Intermediate policy objectives shall as a minimum aim:
 - (a) to mitigate and prevent excessive credit growth and leverage;
 - (b) to mitigate and prevent excessive maturity mismatch and market illiquidity;
 - (c) to limit direct and indirect exposure concentrations;
 - (d) to limit the systemic impact of misaligned incentives with a view to reducing moral hazard; and
 - (e) to strengthen the resilience of financial infrastructures.
- 12.** In accordance with the ESRB Recommendation on intermediate objectives and instruments, the Bank shall periodically assess, whether the macro-prudential instruments under its direct control or recommendation powers are sufficient to effectively and efficiently pursue the ultimate objective of macro-prudential policy as established in the ESRB Recommendation on macro-prudential mandate, as well as the intermediate objectives as defined in paragraphs 10 and 11 of this Directive. If the assessment indicates that the available instruments are not sufficient, the Bank

shall include additional macro-prudential instruments. The Bank shall duly inform the ESRB in case of any change in the set of intermediate objectives and macro-prudential instruments.

MACRO-PRUDENTIAL INSTRUMENTS

- 13.** To fulfil the ultimate objective of macro-prudential policy and increase the resilience of the financial system, the Bank shall develop, issue and apply macro-prudential instruments as appropriate. Generally, these shall include:
- (a) instruments aimed to prevent cyclicity in the financial system on both the asset and liability sides of financial institutions;
 - (b) instruments that increase the resilience of the financial system including those linked to leverage, liquidity, intra-financial system exposures; and maturity mismatches; and
 - (c) instruments that mitigate structural vulnerabilities in the system and limit systemic spillovers in times of stress.
- 14.** Without prejudice to other paragraphs in this Directive, in issuing macro-prudential instruments, the Bank shall as appropriate take into account the views of the competent authority, the Joint Financial Stability Board, the European Central Bank (hereinafter referred to as “the ECB”), the European Banking Authority (hereinafter referred to as “the EBA”), the European Systemic Risk Board (hereinafter referred to as “the ESRB”) and any other national or international authority or institution.

SYSTEMIC RISK BUFFER

- 15.** The Bank may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector on all, or a subset of exposures as referred to in paragraph 18 of this Directive, in order to prevent and mitigate macroprudential or systemic risks not covered by the CRR, and by Article 130 of the CRDV and paragraphs 33 to 49 of this Directive, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy.
- 16.** Institutions shall calculate the systemic risk buffer as follows:

$$B_{SR} = r_T \cdot E_T + \sum_i r_i \cdot E_i$$

where:

B_{SR} = the systemic risk buffer;

r_T = the buffer rate applicable to the total risk exposure amount of an institution;

E_T = the total risk exposure amount of an institution calculated in accordance with Article 92(3) of the CRR;

i = the index denoting the subset of exposures as referred to in paragraph 18 of this Directive;

r_i = the buffer rate applicable to the risk exposure amount of the subset of exposures i ; and

E_i = the risk exposure amount of an institution for the subset of exposures i calculated in accordance with Article 92(3) of the CRR.

- 17.** For the purpose of paragraph 15 of this Directive, the Bank may require institutions to maintain a systemic risk buffer of Common Equity Tier 1 capital calculated in accordance with paragraph 16 of this Directive, on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Title II of Part One of the CRR.
- 18.** A systemic risk buffer may apply to:
- (a) all exposures located in Malta;
 - (b) the following sectoral exposures located in Malta:
 - (i) all retail exposures to natural persons which are secured by residential property;
 - (ii) all exposures to legal persons which are secured by mortgages on commercial immovable property;
 - (iii) all exposures to legal persons excluding those specified in point (ii);
 - (iv) all exposures to natural persons excluding those specified in point (i);
 - (c) all exposures located in other Member States, subject to paragraphs 24 and 27 of this Directive;
 - (d) sectoral exposures, as identified in point (b) of this paragraph, located in other Member States only to enable recognition of a buffer rate set by another Member State in accordance with Article 134 of the CRDV;
 - (e) exposures located in third countries; and
 - (f) subsets of any of the exposure categories identified in point (b).
- 19.** A systemic risk buffer shall apply to all exposures, or a subset of exposures as referred to in paragraph 18 of this Directive, of all institutions, or one or more subsets of those institutions, for which the Bank is competent in accordance with the CRDV and shall be set in steps of adjustment of 0.5 percentage points or multiples thereof. Different requirements may be introduced for different subsets of institutions and of exposures. The systemic risk buffer shall not address risks that are covered by Article 130 of the CRDV and paragraphs 33 to 49 of this Directive.
- 20.** When requiring a systemic risk buffer to be maintained, the Bank shall comply with the following:
- a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the EU as a whole forming or creating an obstacle to the proper functioning of the internal market;
 - b) the systemic risk buffer must be reviewed by the Bank at least every two years;
 - c) the systemic risk buffer must not be used to address risks that are covered by Article 130 of the CRDV and paragraphs 33 to 49 of this Directive.

21. (1) The Bank shall notify the ESRB before the publication of the decision referred to in paragraph 25 of this Directive.

(2) Where the institution to which one or more systemic risk buffer rates apply is a subsidiary of the parent which is established in another Member State, the Bank shall also notify the authorities of that Member State.

(3) Where a systemic risk buffer rate applies to exposures located in third countries, the Bank shall also notify the ESRB. Such notifications shall describe in detail:

- (a) the macroprudential or systemic risks in Malta;
- (b) the reasons why the dimension of the macroprudential or systemic risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
- (c) the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- (d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on the available information;
- (e) the systemic risk buffer rate or rates that the Bank intends to impose and the exposures to which such rates shall apply and the institutions which shall be subject to such rates;
- (f) where the systemic risk buffer rate applies to all exposures, a justification of why the Bank considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided for in paragraphs 33 to 49 of this Directive.

(4) Where the decision to set the systemic risk buffer rate results in a decrease or no change from the previously set buffer rate, the Bank shall only comply with subparagraphs 1 to 3 of this paragraph.

22. (1) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 18 of this Directive subject to one or more systemic risk buffers does not result in a combined systemic risk buffer rate higher than 3 % for any of those exposures, the Bank shall notify the ESRB in accordance with paragraph 21 of this Directive one month before the publication of the decision referred to in paragraph 25 of this Directive.

(2) For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 of the CRDV shall not count towards the 3 % threshold.

23. (1) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 18 of this Directive subject to one more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3 % and up to 5 % for any of those exposures, the Bank shall, in the notification submitted in accordance with paragraph 21 of this Directive, request the European Commission's (hereinafter referred to as "the Commission") opinion.

- (2) Where the opinion of the Commission is negative, the Bank shall comply with that opinion or give reasons for not doing so.
- (3) Where an institution to which one or more systemic risk buffer rates apply is a subsidiary whose parent is established in another Member State, the Bank shall, in the notification submitted in accordance with paragraph 21 of this Directive, request a recommendation by the Commission and the ESRB.
- (4) Where the authorities of the subsidiary and of the parent institution disagree on the systemic risk buffer rate or rates applicable to that institution and in the case of a negative recommendation of both the Commission and the ESRB, the Bank may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation 1093/2010/EU, of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC. The decision to set the buffer for those exposures shall be suspended until the EBA has taken a decision.
24. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 18 of this Directive, subject to one or more systemic risk buffers, results in a combined systemic risk buffer rate higher than 5% for any of those exposures, the Bank shall seek the authorisation of the Commission before implementing a systemic risk buffer.
25. (1) The Bank shall announce the setting or resetting of one or more systemic risk buffer rates by publication on its website. Such publication shall include at least the following information:
- (a) the systemic risk buffer rate or rates;
 - (b) the institutions to which the systemic risk buffer applies;
 - (c) the exposures to which the systemic risk buffer rate or rates apply;
 - (d) a justification for setting or resetting the systemic risk buffer rate or rates;
 - (e) the date from which the institutions shall apply the setting or resetting of the systemic risk buffer; and
 - (f) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.
- (2) If the publication of the information referred to in point (d) could jeopardise the stability of the financial system, the information under point (d) shall not be included in the publication.
26. (1) Where an institution fails to fully meet the requirement set out in paragraph 15 of this Directive, it shall be subject to the restrictions on distributions set out in Article 141 (2) and (3) of the CRDV.
- (2) Where the application of the restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution

- in light of the relevant systemic risk, the Bank and the competent authority may take additional measures in accordance with Article 64 of the CRDV.
27. Where the Bank decides to set the systemic risk buffer on the basis of exposures located in other Member States, the buffer shall be set equally on all exposures located within the EU, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State in accordance with Article 134 of the CRDV.
 28. The Bank may recognise a systemic risk buffer rate as set by other Member States in accordance with Article 133 of the CRDV and may apply that rate to domestically authorised institutions for exposures located in the Member State that sets that buffer rate.
 29. Where the Bank recognises a systemic risk buffer rate set by other Member States for domestically authorised institutions in relation to the exposures located in the Member State that sets that buffer rate, it shall notify the ESRB.
 30. When deciding whether to recognise a systemic risk buffer rate set by another Member State, the Bank shall take into consideration the information presented by the Member State that sets that rate in accordance with Article 133(9) and (13) of the CRDV.
 31. Where the Bank recognises a systemic risk buffer rate for domestically authorised institutions, that systemic risk buffer may be cumulative with the systemic risk buffer applied in accordance with paragraphs 15 to 27 of this Directive, provided that the buffers address different risks. Where the buffers address the same risks, only the higher buffer shall apply.
 32. Should the Bank set a systemic risk buffer rate in accordance with paragraphs 15 to 27 of this Directive, the Bank may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation 1092/2010/EU to one or more Member States which may recognise the systemic risk buffer rate.

GLOBAL AND OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS

33. The Bank shall, acting jointly with the competent authority, identify, on a consolidated basis, G-SIIs, and, on individual, sub-consolidated or consolidated basis, as applicable, O-SIIs, which have been authorised in Malta.
34. G-SIIs shall be any of the following:
 - (a) a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or
 - (b) an institution that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.
35. O-SIIs may either be an institution or a group headed by an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding

company, a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State.

36. (1) The Bank shall, acting jointly with the competent authority, identify G-SIIs on the basis of the following criteria:

- (a) size of the group;
- (b) interconnectedness of the group with the financial system;
- (c) substitutability of the services or of the financial infrastructure provided by the group;
- (d) complexity of the group; and
- (e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

(2) Each category shall receive an equal weighting and shall consist of quantifiable indicators.

(3) This methodology shall produce an overall score for each entity assessed as referred to in paragraph 34 of this Directive, which allows G-SIIs to be identified and allocated into a sub-category as described in paragraph 45 of this Directive.

37. (1) An additional identification methodology for G-SIIs shall be based on the following categories:

- a) the categories referred to in points (a) to (d) of paragraph 36 of this Directive;
- b) cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of Regulation 806/2014/EU of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation 1093/2010/EU.

(2) Each category shall receive an equal weighting and shall consist of quantifiable indicators. For the categories referred to in point (a) of subparagraph (1), the indicators shall be the same as the corresponding indicators determined pursuant to paragraph 36 of this Directive.

(3) The additional identification methodology shall produce an additional overall score for each entity as referred to in paragraph 34 of this Directive assessed, on the basis of which the Bank, acting jointly with the competent authority, may take one of the measures referred to in point (c) of paragraph 46 of this Directive.

38. O-SIIs shall be identified in accordance with paragraph 35 of this Directive. Systemic importance shall be assessed on the basis of at least any of the following criteria:

- (a) size;
- (b) importance for the economy of the EU or of Malta;

- (c) significance of cross-border activities;
- (d) interconnectedness of the institution or group with the financial system.

- 39.** Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.
- 40.** The Bank, acting jointly with the competent authority, may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 3% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, taking into account the criteria for the identification of the O-SII. This buffer shall consist of Common Equity Tier 1 capital.
- 41.** The Bank, acting jointly with the competent authority, may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer higher than 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, subject to authorisation by the Commission. That buffer shall consist of Common Equity Tier 1 capital.
- 42.** When requiring an O-SII buffer to be maintained, the Bank, acting jointly with the competent authority, shall ensure that:
- (a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the EU as a whole forming or creating an obstacle to the functioning of the internal market;
 - (b) the O-SII buffer is reviewed by the Bank, acting jointly with the competent authority, at least annually.
- 43.** Before setting or resetting an O-SII buffer, the Bank, acting jointly with the competent authority, shall notify the ESRB one month before the publication of the decision referred to in paragraph 40 of this Directive and shall notify the ESRB, three months before the publication of the decision of the Bank, acting jointly with the competent authority, as referred to in paragraph 41 of this Directive. Such notifications shall describe in detail:
- (a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;
 - (b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the Member State;
 - (c) the O-SII buffer rate to be set.
- 44.** Without prejudice to paragraphs 15 to 27 and paragraph 40 of this Directive, where an O-SII is a subsidiary of either a G-SII or an O-SII which is either an institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the lower of:

- (a) the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR; and
- (b) 3% of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, or the rate the Commission has authorised to be applied to the group on a consolidated basis in accordance with paragraph 41 of this Directive.

45. The Bank, acting jointly with the competent authority, shall establish a minimum of five sub-categories of G-SIIs. The lowest boundary and the boundaries between each sub-category shall be determined by the scores in accordance with the identification methodology referred to in paragraph 36 of this Directive. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of sub-category five and any added higher sub-category. For the purposes of this paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market. The lowest sub-category shall be assigned a G-SII buffer of 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and the buffer assigned to each sub-category shall increase in gradients of 0.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR.

46. Without prejudice to paragraphs 34, 35 and 45 of this Directive, and using the sub-categories and cut-off scores referred to in paragraph 45 of this Directive, the Bank, acting jointly with the competent authority, may, in the exercise of sound supervisory judgment:

- (a) re-allocate a G-SII from a lower sub-category to a higher sub-category;
- (b) allocate an entity as referred to in paragraph 34 that has an overall score as referred to in paragraph 36 of this Directive that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII; and
- (c) taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to in paragraph 37 of this Directive re-allocate a G-SII from a higher sub-category to a lower sub-category.

47. (1) The Bank, acting jointly with the competent authority, shall notify to the ESRB the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated. The notification shall contain full reasons why supervisory judgment has been exercised or not in accordance with points (a), (b) and (c) of paragraph 46 of this Directive. The Bank, acting jointly with the competent authority, shall publicly disclose the sub-category to which each G-SII is allocated by means of publication on its website.

- (2) The Bank, acting jointly with the competent authority, shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, and to the ESRB. The Bank, acting jointly with the competent authority, shall publicly disclose the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated by means of publication on its website.
48. Where a group, on a consolidated basis, is subject to a G-SII buffer and to an O-SII buffer, the higher buffer shall apply.
49. (1) Where an institution is subject to a systemic risk buffer, set in accordance with paragraphs 15 to 27 of this Directive, that buffer shall be cumulative with the O-SII buffer or the G-SII buffer that is applied in accordance with paragraphs 33 to 49 of this Directive.
- (2) Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraphs 22, 23 and 24 of this Directive and the O-SII buffer rate or the G-SII buffer rate to which the same institution is subject to would be higher than 5%, the procedure set out in paragraph 41 of this Directive shall apply.
50. The G-SII buffer shall be implemented as follows:
- a) 25% of the G-SII buffer, set in accordance with paragraph 39 of this Directive, in 2016;
 - b) 50% of the G-SII buffer, set in accordance with paragraph 39 of this Directive, in 2017;
 - c) 75% of the G-SII buffer, set in accordance with paragraph 39 of this Directive, in 2018;
 - d) 100% of the G-SII buffer, set in accordance with paragraph 39 of this Directive, in 2019.

COUNTERCYCLICAL CAPITAL BUFFER

51. The Bank shall calculate for every quarter a buffer guide as a reference to exercise its judgment in setting the countercyclical buffer rate in accordance with paragraph 52 of this Directive. The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth and shall duly take into account specificities of the Maltese economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, *inter alia*:
- (a) an indicator of growth of levels of credit and, in particular, an indicator reflective of the changes in the ratio of credit granted to GDP;
 - (b) any current guidance maintained by the ESRB in accordance with Article 135(1)(b) of the CRDIV.

- 52.** The Bank shall assess the intensity of cyclical systemic risk and the appropriateness of the countercyclical buffer rate on a quarterly basis and set or adjust the countercyclical buffer rate, if necessary. In so doing, the Bank shall take into account:
- (a) the buffer guide calculated in accordance with paragraph 51 of this Directive;
 - (b) any current guidance maintained by the ESRB in accordance with Article 135(1)(a), (c) and (d) of the CRDIV and any recommendations issued by the ESRB on the setting of a buffer rate;
 - (c) other variables that the Bank considers relevant for addressing cyclical systemic risk.
- 53.** The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR of institutions that have credit exposures in Malta, shall be between 0 % and 2.5 %, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points. Where justified on the basis of the considerations set out in paragraph 52 of this Directive, the Bank may set a countercyclical buffer rate in excess of 2.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR for the purpose set out in Article 140(2) of the CRDIV.
- 54.** Where the Bank sets the countercyclical buffer rate above zero for the first time, or where, thereafter, the Bank increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 56 of this Directive. If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.
- 55.** If the Bank reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide on an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the Bank.
- 56. (1)** The Bank shall publish quarterly at least the following information on its website:
- (a) the applicable countercyclical buffer rate;
 - (b) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;
 - (c) the buffer guide calculated in accordance with paragraph 51 of this Directive;
 - (d) a justification for that buffer rate;
 - (e) where the buffer rate is increased, the date from which institutions shall apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

(f) where the date referred to in point (e) is less than 12 months after the date of the publication under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;

(g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

(2) The Bank shall take all reasonable steps to coordinate the timing of that publication.

(3) The Bank shall notify each change of the countercyclical buffer rate and the required information specified in points (a) to (g) of subparagraph (1) to the ESRB.

57. Where in accordance with Article 136(4) of the CRDIV a designated authority in another Member State or a relevant third country authority has set a countercyclical buffer rate in excess of 2.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, the Bank may recognise that buffer rate for the purposes of the calculation by institutions of their institution-specific countercyclical capital buffers.

58. Where the Bank in accordance with paragraph 57 of this Directive recognises a buffer rate in excess of 2.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

- (a) the applicable countercyclical buffer rate;
- (b) the Member State or third countries to which it applies;
- (c) where the buffer rate is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer; and
- (d) where the date referred to in point (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

59. Where the Bank considers that a countercyclical buffer rate which has been set and published by the relevant third-country authority for a third country is not sufficient to protect EU institutions appropriately from the risks of excessive credit growth in that country, it may notify the ESRB that it considers that buffer rate to be insufficient for that purpose, and the ESRB may, in accordance with Article 138 of the CRDIV, issue a recommendation to designated authorities on the appropriate countercyclical buffer rate for exposures to that third country.

60. If a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country to which one or more EU institutions have credit exposures, the Bank may set the countercyclical buffer rate that institutions must apply for the purposes of the calculation of their institution-specific countercyclical capital buffer for exposures to that third country.

- 61. (1)** Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, the Bank may set a different buffer rate for that third country for the purposes of the calculation by institutions of their institution-specific countercyclical capital buffer if they reasonably consider that the buffer rate set by the relevant third country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.
- (2)** When exercising the power under the first subparagraph, the Bank shall not set a countercyclical buffer rate below the level set by the relevant third country authority unless that buffer rate exceeds 2.5 %, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR of institutions that have credit exposures in that third country.
- (3)** In order to achieve coherence for the buffer settings for third countries the Bank shall take into account any recommendations of the ESRB for such settings.
- 62.** Where the Bank sets a countercyclical buffer rate for a third country pursuant to paragraph 60 or 61 of this Directive which increases the existing applicable countercyclical buffer rate, the Bank shall decide the date from which domestically authorised institutions must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months from the date when the buffer rate is announced in accordance with paragraph 63 of this Directive. If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified based on exceptional circumstances.
- 63.** The Bank shall publish any setting of a countercyclical buffer rate for a third country pursuant to paragraph 60 or 61 of this Directive on its website, and shall include the following information:
- (a) the countercyclical buffer rate and the third country to which it applies;
 - (b) a justification for that buffer rate;
 - (c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer; and
 - (d) where the date referred to in point (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.
- 64.** Paragraphs 60 to 63 of this Directive apply irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in Article 138 of the CRDIV.
- 65. (1)** The countercyclical capital buffer shall apply from 1 January 2016 subject to the transitional periods prescribed in Article 160 (1), (2), (3) and (4) of the CRDIV.

(2) In accordance with Article 160(6) of the CRDIV, the Bank, in consultation with the competent authority, may implement the countercyclical capital buffer prior to 1 January 2016:

(3) Provided that where the Bank, in consultation with the competent authority, imposes a shorter transitional period for the countercyclical capital buffer, such shorter period shall only apply for the purposes of the calculation of the institution-specific countercyclical capital buffer by credit institutions licensed in terms of the Banking Act (Cap. 371).

(4) In line with Article 160(6) of the CRDIV, where the Bank, in consultation with the competent authority, imposes such a shorter transitional period, it shall inform the relevant parties, including the European Commission, the ESRB, the EBA and the relevant supervisory colleges, accordingly.

GENERAL

66. (1) Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in paragraph 7 of this Directive, to meet any of the requirements set out in points (a), (b) and (c) of Article 92(1) of the CRR, the additional own funds requirements imposed pursuant to Article 104a of the CRDV to address risks other than the risk of excessive leverage, and the guidance communicated in accordance with Article 104b(3) of the CRDV to address risks other than the risk of excessive leverage.

(2) Institutions shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of its combined buffer requirement to meet the other applicable elements of its combined buffer requirement.

(3) Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in paragraph 7 of this Directive to meet the risk-based components of the requirements set out in Articles 92a and 92b of the CRR and in Articles 45c and 45d of Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations 1093/2010/EU and 648/2012/EU, of the European Parliament and of the Council.

67. Notwithstanding the rules outlined in this Directive, in accordance with Article 5(2) of Regulation 1024/2013/EU of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (hereinafter referred to as “the SSM Regulation”), the ECB may, if deemed necessary, instead of the competent authority or the Bank, apply higher requirements for capital buffers than applied by the competent authority or the Bank to be held by credit institutions at the relevant level in accordance with relevant EU law in addition to own funds

requirements referred to in point (d) of Article 4(1) of the SSM Regulation, including countercyclical buffer rates, subject to the conditions set out in paragraphs 4 and 5 of Article 5 of the SSM Regulation, and apply more stringent measures aimed at addressing systemic or macro-prudential risks at the level of credit institutions subject to the procedures set out in the Regulation CRR, CRRII, the CRDIV and the CRDV in the cases specifically set out in relevant EU law. The Bank shall publish such higher requirements applied by the ECB on its website.

- 68.** Any institution shall have the duty to transmit any document and any other information which is requested by the Bank from time to time and shall comply with any request made by the Bank under article 23 of the Act, without invoking any professional or other secrecy restrictions.
- 69.** Any macro-prudential decision, its motivation, and any statements on systemic risk shall be published on the Bank's website in a timely manner, unless there are risks to financial stability in doing so. Furthermore, the Bank shall set out and publish any relevant macro-prudential strategies. The Bank shall make private statements by communicating directly with any institution on any macro-prudential decision, any statement on systemic risk or any matter affecting financial stability which is related to that institution, where necessary.