Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Consultation Paper 174

Consultation on updates to the Implementation Notice for Competent Authority discretions in the Capital Requirements Regulation and Capital Requirements Directive

November 2026

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Feedback to this Consultation Paper

The Central Bank is proposing to update its May 2025 version of the Implementation Notice regarding Options and Discretions (O&Ds) in the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD), in view of revisions made to the ECB's O&D framework, notably:

- Recommendation ECB/2025/26 amending Recommendation ECB/2017/10 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions ("LSI Recommendation"); and
- Guideline (EU) 2025/25 amending Guideline (EU) 2017/697 of the European Central Bank on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions ("LSI Guideline").

The above revisions are linked, primarily, to recent legislative changes in the form of CRR III and CRD VI[1]. At a high level, the Central Bank is proposing to update the May 2025 version of the Implementation Notice as follows:

- Revisions to the non-binding LSI Recommendation as outlined in the first point above would be applied in full to Less Significant Institutions (LSIs)[2]; and
- The existing approach in the Implementation Notice of exercising O&Ds in a harmonised manner (unless otherwise specified) with respect to credit institutions and investment firms[3] would be maintained.
- The document has been streamlined including by removing annexes. Section 2 dealing with transitional arrangements has been removed and new sections have been added

[1] Directive 2013/36/EU (CRD VI) and Regulation (EU) No. 575/2013 (CRR).
[2] Noting that the LSI Guideline (and revisions therein) are legally binding on NCAs, and are applied as a matter of course.
[3] In this case "Class 1 minus" investment firms, as defined in paragraph 1.10 of the Notice.

relating to the exercise of certain existing or new O&Ds including those relevant to the issuance of covered bonds and the exercise of new CRDVI O&Ds applicable to third country branches.

- Following the repeal of the Central Bank's 2016 Central Bank Policy Statement on Authorisation of Third Country Branches[4], the Implementation Notice now contains the Central Bank's existing policy position on retail deposit taking by Third Country Branches.

The Central Bank is committed to clear, open and transparent engagement with stakeholders in fulfilling its financial regulatory and supervisory objectives, particularly when introducing new codes, regulations, standards or guidelines. The Central Bank is inviting stakeholders to provide comments on the proposed updates to the Implementation Notice. Comments should be sent in writing, and preferably by e-mail, no later than 1 February 2027 to: implementationnotice@centralbank.ie

Comments sent in hard copy can be sent to:

Banking and Investment Firms Policy Unit,
Banking, Insurance & Payments Policy Division,
Central Bank of Ireland,
New Wapping Street,
North Wall Quay,
Dublin 1.

The Central Bank will send an email acknowledgement to all responses received. If you do not receive this acknowledgement, please contact us on 01-2246000. It is the policy of the Central Bank to publish all responses to its consultations and such responses will be made available on our website. Stakeholders should thus not include commercially confidential information in consultation responses and the Central Bank accepts no liability whatsoever for the content of stakeholders' consultation responses that are subsequently published by the Central Bank. We shall not publish any information which we deem potentially defamatory.

[4] Policy Statement on the Authorisation of Branches of Non-EEA Credit Institutions under Section 9A of the Central Bank Act 1971 (2016).

1. Overview

1.1 Implementation Notice outlines Central Bank of Ireland ('Central Bank') requirements and guidance in relation to the implementation of certain competent authority options and discretions (O&Ds) arising under:

- the European Union (Capital Requirements) Regulations 2014 ('the CRD Regulations')[5], transposing Directive 2013/36/EU (CRD VI)[6];
- Regulation (EU) No. 575/2013 (CRR)[7]; and
- European Commission Delegated Regulation (EU) No. 2015/61 (the 'LCR Regulation')[8].

This Implementation Notice does not address 'Member State' discretions retained by the Minister for Finance in the CRD Regulations[9].

1.2 This Implementation Notice supersedes the Central Bank's May 2025 Implementation Notice and may be periodically updated from time-to-time.

1.3 For avoidance of doubt, the Central Bank distinguishes O&Ds broadly as follows:

> ***Option:*** refers to a situation in which competent authorities are given a choice on how to comply with a given provision, selecting from a range of alternatives set forth in EU legislation.

[5] S.I. 158 of 2014, and as specifically amended by SI 710/2020 and SI 326 of 2026.
[6] 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 and repealing Directives 2006/48/EC and 2006/49/EC [2013] OJ L 176/338, and as specifically amended by Directive 2019/878.
[7] Regulation (EU) 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 [2013] OJ L 176/1, and as specifically amended by Regulation 2019/876 and Regulation 2024/1623.
[8] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions [2015] OJ L 11/1, and as specifically amended by Commission Delegated Regulation (EU) 2018/1620.
[9] For example, Regulation 82(3)(b) of the CRD Regulations and Article 133 of CRDIV.

> ***Discretion***: refers to a situation in which competent authorities are given a choice whether to apply or not to apply a given provision in EU legislation.

1.4 References to Irish and EU legislation in this Implementation Notice should be read as a citation of, or reference to, the legislation as amended from time-to-time (including as amended by way of extension, application, adaptation or other modification of the legislation). References to Central Bank and European Banking Authority (EBA) codes and guidelines in this Implementation Notice should, if they have since been amended or replaced since the issuance of this Implementation Notice, be construed as references to the relevant amended or replaced codes or guidelines

1.5 This Implementation Notice is not an exhaustive account of the CRD Regulations or CRR and should not be interpreted as such. For further information, and avoidance of doubt, stakeholders should consult the applicable legal texts and/or relevant European Commission websites directly.

Legal Basis for the Proposed Revised Notice

1.6 Under Regulations 4, 120, 121, 124 and 125 of the CRD Regulations the Central Bank is designated as the national competent authority (NCA) that carries out the functions and duties of the competent authority in CRD VI and CRR and the national designated authority (NDA) in charge of certain capital buffer requirements. Under Regulation 3 of the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. 159 of 2014) the Central Bank is designated as the NDA in charge of the application of Article 458 of CRR. The Central Bank's powers and requirements in this area generally are exercised pursuant to the provisions of the CRD Regulations, CRR, S.I. 159 of 2014 and, inter alia, the Central Bank Acts, including the Central Bank (Supervision and Enforcement) Act 2013[10].

[10] No. 26 of 2013.

Scope of this Implementation Notice

1.7 This Implementation Notice addresses the manner in which the Central Bank intends to exercise the competent authority O&Ds that are provided for in the CRD Regulations and CRR, without prejudice to the European Central Bank's (ECB's) competences within the Single Supervisory Mechanism (SSM). The Implementation Notice is therefore applicable to firms within scope of the CRD Regulations and CRR, as described in the paragraphs below, as well as firms within sectors where their regulation cross-references particular provisions of the CRD Regulations or CRR, including the definition of capital, or aspects thereof, covered in Section 2 of the Implementation Notice.

1.8 In accordance with the SSM Regulation (SSMR)[11] and SSM Framework Regulation (SSMFR)[12] , the ECB (in cooperation with the Central Bank) is responsible for directly prudentially supervising SSM 'significant credit institutions' (SIs), and the Central Bank (in cooperation with the ECB) is responsible for directly prudentially supervising SSM 'less significant credit institutions' (LSIs)[13]. The Central Bank is responsible for supervising firms authorised under the Markets in Financial Instruments Directive II (MiFID II)[14], as transposed (hereinafter referred to as 'MiFID firms', see paragraph 1.10 for further details).

1.9 Except for the types of O&Ds specified in paragraph 1.11, this Implementation Notice is only relevant to the following (together referred to as 'relevant entities' for the purposes of this Implementation Notice):

[11] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions [2013] OJ L 287/63.
[12] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities [2014] OJ L 141/1.
[13] See, e.g., Article 6(6) and (7) of SSMR.
[14] 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.

- Domestically-authorised LSIs within the meaning of the SSMR, except in cases where the ECB assumes direct supervisory responsibilities under Article 6(5)(b) of SSMR;
- Where applicable, Irish branches of LSIs authorised in other SSM-participating Member States, except in cases where the ECB assumes direct supervisory responsibilities under Article 6(5)(b) of SSMR;
- Where applicable, Irish branches of credit institutions authorised in European Economic Area (EEA) Member States not participating in the SSM (and where such branches are not designated as SIs in their own right for SSM purposes under Article 6(4) of SSMR or Article 6(5)(b) SSMR); and
- MiFID investment firms which are in-scope of the CRD Regulations and CRR (see paragraph 1.10).
- Irish branches of non-EEA credit institutions ('third country branches') authorised pursuant to section 9A(2) of the Central Bank Act 1971 or, from 11 January 2027 Regulation 9K of the CRD Regulations.

Applicability of this Implementation Notice to MiFID firms

1.10 The adoption of the Investment Firm Directive (IFD)[15] and the Investment Firm Regulation (IFR)[16] has altered the scope of the CRR[17] and CRD with respect to investment firms. As such, this Notice is primarily relevant for "Class 1 minus" MiFID investment firms, in line with the following definitions in IFR:

- MiFID investment firms referred to in Article 1(2)(a) and (b) of the IFR that are subject to the prudential regime under the CRR;

[15] Directive (2019/2034).
[16] Regulation (2019/2033).
[17] Article 2 (5) CRR states that competent authorities shall treat "Class 1 minus" MIFID investment firms as if they were 'institutions' under CRR. Therefore, references to 'institution' within the description of CRR O&Ds in this Notice can be read as referring to "Class 1 minus" MIFID investment firms and credit institutions.

- MiFID investment firms referred to under Article 1(2)(c) of the IFR following the exercise of the competent authority discretion in Regulation 4 of the IFD Regulations[18];
- MiFID investment firms referred to in Article 1(5) of the IFR.

This Notice also applies to MiFID investment firms which meet the threshold set out in Section 31R(1) of the 1971 Act and have been waived from the requirement to obtain an authorisation as a credit institution in accordance with Section 31R(7a) of the 1971 Act.

For the avoidance of doubt, this Notice also applies to "Class 1" credit institutions[19] in the same way that it applies to credit institutions more generally.

Finally, certain discretions in CRR related to own funds continue to apply to smaller investment firms that are within the scope of the IFR/IFD prudential framework. The application of these discretions to those investment firms is set out in Appendix II of the Central Bank's IFR/IFD Implementation Notice[20].

Applicability of this Implementation Notice to SIs

1.11 The macroprudential powers in the CRD Regulations and CRR are shared between the Central Bank, as the NDA[21] , and the ECB for both SIs and LSIs[22]. Therefore, the Central Bank's approaches to the macroprudential related O&Ds are relevant for both SIs and LSIs. Furthermore, the Central Bank's Corporate Governance Requirements for Credit Institutions[23] applies to both SIs and LSIs. In addition, the Central Bank's current approaches specified for CRR Articles 124(9) and 164(5) in Section 3, and Articles 129(1a)(c) and 129(3) in Section 6 of this Implementation Notice remain applicable to both SIs and LSIs.

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[18] Regulation 4 of the European Union (Investment Firms) Regulation (S.I. No. 355 of 2021).
[19] As defined by Article 4(1)(b) CRR.
[20] Central Bank's IFR/IFD Implementation Notice.
[21] Per Part 6, Chapter 4 of the CRD Regulations and the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. 159 of 2014).
[22] See, e.g., Article 5 of the SSMR.
[23] Central Bank, *Corporate Governance Requirements for Credit Institutions* (2015).

1.12 Aside from the O&Ds referred to in paragraph 1.11, decision-making with respect to competent authority O&Ds for SIs under the CRD Regulations and CRR is solely a matter for the ECB, in accordance with the relevant ECB Regulation[24] and Guide[25] governing O&Ds for SIs. If SIs have specific queries in this respect, they should contact their Joint Supervisory Teams.

Common Procedures

1.13 There are also certain areas, particularly the granting/withdrawal of credit institution licences (authorisations) and approval of acquisitions/disposals of qualifying holdings, where the ECB has exclusive competence with respect to both SIs and LSIs, in accordance with the SSM Regulations. Nonetheless, the ECB's exclusive competences in such areas may be informed by proposals/input submitted by the NCAs in the context of such common procedures, for example in relation to appropriate initial capital levels.

Third Country Branches

1.14 Section 8 of this Implementation Notice applies directly to third country branches. The Central Bank may apply other specific approaches in this Implementation Notice mutatis mutandis to third country branches where deemed necessary[26].

EU Legal and Regulatory Framework

1.15 Many of the O&Ds in the CRD Regulations and CRR are supplemented by additional provisions or standards. These include delegated regulations adopted by the European Commission[27], most of which are based on technical standards

[24] Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) OJ L 78, 24.3.2016, pp. 60–73, as amended by Regulation (EU) 2022/504 and Regulation (ECB) 2025/24.
[25] ECB Guide on options and discretions available in Union law, consolidated version, July 2025.
[26] Third country branches are expected to comply with all sectoral regulatory requirements relevant the services and activities they carry out in the State.
[27] Delegated or implementing regulations under 290/291 TFEU and the relevant provision of CRD4 or CRR (e.g. Article 456 CRR).

(ITS/RTS)[28] developed by the European Supervisory Authorities (ESAs)[29], primarily the European Banking Authority (EBA). These measures are directly legally binding on all relevant entities

1.16 The EBA also issues guidelines and recommendations, some of which relate to O&Ds, and maintains a Single Rulebook Q&A tool to facilitate the consistent application of CRD and CRR across the EU. All relevant entities should comply with such guidelines, recommendations and Q&As or other as applicable, unless the Central Bank formally advises otherwise.

The Central Bank's General Approach

1.17 While the Central Bank is competent to exercise O&Ds for LSIs, third country branches and MiFID investment firms, the Central Bank's approaches will nonetheless be influenced by ECB harmonisation measures applicable across the participating SSM Member States. In this regard, the ECB has issued a legally binding ECB Guideline ('ECB LSI Guideline')[30] which outlines how the NCAs, including the Central Bank, must exercise certain O&Ds of 'general application' for LSIs. The ECB has also issued an ECB Recommendation[31] which provides guidance to the NCAs, including the Central Bank, in terms of how certain 'case-by-case' O&Ds should be exercised for LSIs.

1.18 The Central Bank will exercise the O&Ds encompassed by the ECB LSI Guideline consistently with that Guideline. Except for the O&Ds referred to in point (a) of paragraph 1.19, the Central Bank intends to exercise the O&Ds encompassed by the ECB LSI

[28] Under Article 10/Article 15 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC [2010] OJ L 331.
[29] European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA).
[30] Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/9), as amended by Guideline (EU) 2022/508 and Guideline (ECB) 2025/25.
[31] Recommendation of the European Central Bank of 4 April 2017 on common specifications for the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant institutions (ECB/2017/10), as amended by Recommendation ECB/2022/13 and Recommendation ECB/2025/26.

Recommendation consistently with the specifications/conditionality in that Recommendation.

1.19 Guided by its overarching statutory objectives of Safeguarding Stability, Protecting Consumers, the Central Bank is addressing certain O&Ds in the subsequent sections of this Implementation Notice on the basis that:

a) The Central Bank is maintaining a different policy approach than the ECB on the basis of applicable national requirements and/or national policy considerations (i.e. for Regulation 64(11) of the CRD Regulations);

b) The ECB has not addressed an O&D because the relevant power is shared between the ECB and the NCAs;

c) The ECB has not addressed an O&D because the relevant power is not within the remit of the ECB (e.g. in relation to Covered Bonds discretions at Section 6);

d) While the Central Bank is exercising an O&D consistently with the ECB, the Central Bank deems it appropriate to specify a procedural matter;

In relation to any O&Ds or supervisory permissions not addressed in the ECB LSI Guideline, the ECB LSI Recommendation nor this Implementation Notice, e.g. macroprudential O&Ds[32], the Central Bank intends to exercise these on a case-by-case basis, subject to any relevant conditionality associated with them in the relevant legislation or guidance.

Applications for Case-by-Case O&Ds

1.20 Where an option or discretion will be exercised on a case-by-case basis, the onus is on relevant entities to apply for it. Each relevant entity should also reapply for the continued application of options or discretions on a case-by-case basis where the associated conditions attached to the exercise of them have changed. Relevant entities must apply separately for each of these, which can be achieved by way of itemising each option or discretion sought on the same application to the Central Bank.

[32] See the Central Bank's Framework for Macroprudential Capital for further details.

2. Own Funds

2.1 This section sets out the Central Bank's policy with respect to the exercise of certain competent authority discretions in the area of own funds.

Pre-approval of Capital Instruments

2.2 The Central Bank is required to evaluate whether issuances of CET1 instruments by LSIs and "Class 1 minus" MiFID investment firms meet the criteria set out in Article 28 of CRR.

Under CRR Article 26(3), institutions shall classify capital instruments as CET1 instruments only after permission is granted by their relevant competent authority. CRR2 introduces a derogation from this first subparagraph of Article 26(3) of the CRR, allowing institutions to classify as CET1 instruments subsequent issuances of a form of CET1 instruments for which they have already received competent authorities' permission (under the CRR), provided that:

a) the provisions governing those subsequent issuances are substantially the same as the provisions governing those issuances for which the institutions have already received permission; and
b) institutions have notified those subsequent issuances to the competent authorities sufficiently in advance of their classification as CET1 instruments.

LSIs and "Class 1 minus" MiFID investment firms that would like to make use of this notification procedure should submit to the Central Bank the necessary documentation laid down in Section II, Chapter 2 paragraph 3 of the ECB Guide within the specified timeframe[33]. Following notification, the Central Bank may require the standard permission process to apply where compliance with CRR Article 26(3) and/or CRR Article 28 is uncertain. The

[33] To note, where changes in substance relate to updates of a Constitution/other to incorporate EBA best practice (e.g. as recommended in the EBA report on the Monitoring of CET1 Instruments issued by EU Institutions – Update), this will not disqualify institutions from using the notification procedure.

standard permission process should be expected to be lengthy, particularly where EBA consultation is required[34].

2.3 The Central Bank expects that any changes made to an LSI and "Class 1 minus" MiFID investment firm's constitution (or associated arrangements) that could affect the eligibility of own funds instruments should be notified to the Central Bank 30 calendar days in advance of its proposed submission to shareholders (or its proposed taking of effect).

2.4 Recital 75 of CRR clarifies that competent authorities may also maintain pre-approval processes regarding contracts governing Additional Tier 1 (AT1) and Tier 2 capital instruments, with such capital instruments only recognisable by the institution as Additional Tier 1 capital or Tier 2 capital once they have successfully completed these approval processes.

2.5 The Central Bank requires all new AT1 and Tier 2 instruments, including any associated arrangements, to have received its prior permission before they may be included in own funds. In such cases or where the effective terms and conditions of existing AT1 and Tier 2 instruments are being amended, the Central Bank will require 30 calendar days' notice, starting from the point at which all necessary information has been provided to the Central Bank. Where consultation with the EBA is required, for example due to the introduction of an unusual contractual feature, the timeframe for response by the Central Bank may be considerably longer than 30 days.

2.6 All submissions to the Central Bank for permissions to recognise new forms of CET1 instruments or new AT1 or Tier 2 issuances, should be supported by necessary information. 'Necessary information' shall comprise a full description of the proposed issuance. For new forms of CET1 instruments and new AT1 instruments, the necessary information shall also be accompanied by a legal opinion addressed to the Central Bank from an external advisor of sufficient standing and experience in the area of

[34] EBA consultation is required on all new forms of CET1 instruments not yet on the CET1 List in respect of a particular jurisdiction and on unusual features proposed for issuances under existing forms.

financial services law. In the cases of new Tier 2 instruments, legal opinion from the issuing LSI or "Class 1 minus" investment firm's internal legal advisors shall generally suffice. Those legal opinions must unequivocally state that the institution is entitled to recognise the proposed issue within the relevant tier of capital because it and its associated arrangements meet the applicable eligibility criteria under CRR. The legal opinion shall take relevant technical standards into account and, in particular, should treat pertinent EBA outputs (e.g. Monitoring Reports, opinions and Q&As) as if they were binding.

2.7 The issuing LSI or "Class 1 minus" MiFID investment firm shall generally be required by the Central Bank to supply an external accounting opinion and Office of the Revenue Commissioners' confirmation of the applicable tax treatment of the instrument in the case of AT1 submissions. Such opinion and confirmation may also be sought from the issuing LSI or "Class 1 minus" MiFID investment firm in cases of other own funds instrument issuances.

Capital Contributions

2.8 In line with EBA Q&A 2024_7256[35], the use of direct contributions to reserves should be approached prudently as it is not meant to be the primary method to raise capital. Capital contributions without the taking of shares require the Central Bank's permission before they may be recognised as CET1. In specie capital contributions may be permitted provided they are fully paid-up within the meaning of EBA Q&A 2017_3636[36].

Where a firm has multiple shareholders, it is generally expected that where a capital contribution is being made that they all make contributions in proportion to their share in the capital of the institution. Proposed exceptions should be duly justified and will be closely scrutinised by the Central Bank. There should not be any agreements according to which a disproportionate contribution leads to a preferential treatment in case the reserve is dissolved.

[35] EBA Q&A 2024_7256
[36] EBA Q&A 2017_3636

Submissions by LSIs or “Class 1 minus” MiFID investment firms, or other firms relying on the CRR definition of capital, or aspects thereof, should demonstrate that the contribution is available to the firm for unrestricted and immediate use to cover risks or losses as soon as these occur. A template agreement for this submission may be found in Annex 1. The Central Bank may request a legal opinion on the enforceability of the agreement.

3. Credit Risk

3.1 CRR Articles 124(9) and 164(6) require the Central Bank to periodically assess the risk treatment of exposures secured by immovable property under the Standardised Approach to Credit Risk and the IRB approach, respectively. Where deemed necessary, based on that assessment, the Central Bank may amend the risk treatment. The Central Bank considers the use of these powers in its role of MacroPrudential authority. Please see the MacroPrudential webpage on the Central Bank website[37] for further details on the Central Bank's approach to these discretions.

3.2 Article 133(5) of the CRR permits competent authorities to allow institutions to assign a risk weight of 100% to equity exposures incurred under legislative programmes. The Central Bank intends to exercise this discretion, where appropriate, on a case-by-case basis. When exercising this discretion the Central Bank will consider the EU Commission Guidance[38] concerning the treatment of equity exposures incurred under legislative programmes according to Article 133(5) of Regulation (EU) No 575/2013.

3.3 CRR Article 4(2) provides the Central Bank with the discretion to allow shares in certain types of residential housing companies to be treated as a direct holding of real estate provided that such an indirect holding is specifically regulated in the national law of the Member State concerned and that, when pledged as collateral, it provides equivalent protection to creditors. The Central Bank does not intend to exercise this discretion.

3.4 CRR Article 115(2) provides that exposures to regional governments or local authorities shall be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of

[37] Macroprudential policies for bank capital.
[38] EU Commission Guidance.

which is to reduce their risk of default. With regard to this provision institutions should note the following:

a) No Irish local authorities currently meet the criteria in this provision and should not be treated as such by institutions.

b) For exposures other than a) above, institutions should continually monitor the relevant EBA database and if they intend to apply the preferential treatment to any EEA regional government or local authority not presently listed in that database, a prior detailed application to this effect must be submitted to the Central Bank.

3.5 CRR Article 116(4) provides that in exceptional circumstances, exposures to public sector entities may be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established where in the opinion of the competent authorities of this jurisdiction there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government, regional government or local authority.

Relevant entities should continually monitor the relevant EBA list of eligible PSEs in Ireland and the broader EEA.

In accordance with the Central Bank's pre-existing approach under Directive 2006/48/EU, relevant entities seeking to avail of this provision to treat exposures to EEA PSEs as exposures to the central government, where there is no difference in risk between such exposures, require prior written approval from the Central Bank before doing so if such PSEs are not already included in the EBA list.

The Central Bank will also have regard to any list of eligible PSEs which may be issued by the ECB in due course.

4. Liquidity

4.1 This section specifies the Central Bank's approaches in relation to certain liquidity discretions.

Outflow Rate Assessments

4.2 Article 23 of the LCR Regulation contains a competent authority discretion to set the outflow rate on liquidity outflows not captured in Articles 422, 423 and 424 of CRR/Articles 27 to 31a of the LCR Regulation.

4.3 The Central Bank intends to set these rates on a case-by-case basis. Relevant entities shall assess the liquidity outflows in accordance with Article 23 of the LCR Regulation as well as any applicable guidance[39] and report to the Central Bank not less than annually, by 30 September each year[40], those products and services for which the likelihood and potential volume of the liquidity outflows referred to in Article 23 of the LCR Regulation are material.

[39] EBA Guidance.
[40] Or an earlier date as may be advised by the Central Bank from time-to-time.

5. Corporate Governance

5.1 This section specifies the Central Bank's exercise of discretions arising within the sphere of corporate governance in the CRD Regulations; as well as the interplay between these discretions and the Central Bank's Corporate Governance Requirements for Credit Institutions 2015 (the 'Requirements for Credit Institutions') and the Corporate Governance Requirements for Investment Firms and Market Operators 2018 (the 'Requirements for Investment Firms').

Requirements for institutions deemed CRD Significant

5.2 The CRD Regulations contain a number of corporate governance requirements for institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities, hereafter referred to as 'CRD significant institutions'. These requirements[41] relating to the composition of the risk, nomination and remuneration committees of CRD significant institutions and to the number of directorships permitted to be held by directors of such institutions are similar, though not identical, to those outlined in the Requirements for Credit Institutions.

5.3 The Central Bank's position is that the Requirements for Credit Institutions in these cases (as they apply to CRD significant institutions) shall be substituted by the relevant provisions of the CRD Regulations as set out above. For clarity, the Requirements for Credit Institutions contains an appendix[42] which clearly identifies which requirements CRD significant institutions shall comply with in these instances. The Central Bank or the ECB, as applicable, will notify institutions from time-to-time of their status as CRD significant institutions. Institutions notified of their CRD significant status prior to the issuance of this Notice will continue to be deemed CRD significant unless advised otherwise by the Central Bank or the ECB, as applicable.

[41] Set out in Regulations 64(6), 76(3), 79(7) and 83(1) of the CRD Regulations.
[42] Appendix 2: Additional obligations on credit institutions which are deemed significant for the purposes of CRD.

Discretions available to the Competent Authority

5.4 This Section outlines the discretions available to the competent authority in relation to the corporate governance requirements in the CRD Regulations and how the Central Bank intends to exercise these discretions.

Discretions available to the Competent Authority

5.5 Regulation 64(6) of the CRD Regulations requires that CRD significant institutions establish a risk committee. Regulation 64(11) of the CRD Regulations contains a discretion to the effect that the Central Bank may require an institution which is not considered CRD significant to establish a risk committee but may also permit such an institution to combine that risk committee with the audit committee. The Central Bank affirms the importance it attaches to the establishment of separate audit and risk committees and therefore does not intend to exercise the discretion to permit combined risk-audit committees for both credit institutions and "Class 1 minus" MiFID investment firms. This approach is reflected in section 19.1[43] of the Requirements for Credit Institutions and in section 6.1[44] of the Requirements for Investment Firms.

5.6 Regulation 64(4D) of the CRD Regulations requires the Central Bank to ensure a proportionate application of requirements under paragraph Regulation 64 (4A), (4B) and (4C) relating to plans for monitoring and addressing ESG risks to SNCIs, including indicating in what areas a waiver or a simplified procedure may be applied.

5.7 As required by the mandate under Article 87a, EBA Guidelines on the Management of ESG Risks outline detailed expectations for the content of the plan for monitoring and addressing ESG risks. Several aspects of the requirements for the plans outlined in Section 6 of the Guidelines are applied to SNCIs in a proportionate manner, including granularity (paragraph 110),

[43] Section 19.1 states '<…> Subject to paragraph 19.2 below, the board shall establish, at a minimum, both an audit committee and a risk committee. Where the board comprises only 5 members, the full board, including the Chairman and the CEO, may act as the audit committee and/or the risk committee.<…>'
[44] Section 6.1 states 'Firms shall ensure, subject to Section 6.4 below that the board establishes, at a minimum, both an audit and a risk committee'.

update frequency (paragraph 114), scenarios (paragraph 97) and metrics (paragraph 106). The Central Bank has indicated that it will comply with the requirements of the Guidelines and therefore, considers that in doing so it has fulfilled its obligations with respect to Regulation 64(4D) of the CRD Regulations.

6. Covered Bonds

6.1 This section specifies the Central Bank's approaches in relation to certain covered bond discretions.

Exposures to credit institutions that qualify for credit quality step 3 in the form of derivative contracts

6.2 Article 129(1a)(c) of the CRR contains a competent authority discretion, after consulting the EBA, to allow exposures to credit institutions that qualify for credit quality step 3 in the form of derivative contracts, provided that significant potential concentration problems in the Member States concerned due to the application of credit quality step 1 and 2 requirements referred to in that paragraph can be documented.

6.3 The Central Bank has not availed of this option to date. The operationalisation of this option requires the Central Bank to consult with the EBA prior to its granting. Should a credit institution consider that the circumstances outlined in Article 129(1a)(c) are met, they may make a submission to the Central Bank on the matter. The Central Bank will assess any such submission, and determine whether there is merit in consulting the EBA.

Valuing immovable property

6.4 Article 129(3) of the CRR contains a competent authority discretion to allow immovable property to be valued at or at less than the market value, or in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, at the mortgage lending value of that property, without applying the limits set out in Article 229(1), point (e) CRR.

6.5 The Asset Covered Securities Acts (2001, 2007) apply a prudent market value (PMV) methodology to the valuation of immovable property, which has been further detailed by Central Bank regulatory notices[45]. As such, the above discretion to allow immovable property to be valued at, or at less than, the market

[45] See for instance ASSET COVERED SECURITIES ACT 2001 REGULATORY NOTICE (Sections 41(1) and 41A(7)) 2011.

value has been exercised in Ireland. For the avoidance of doubt, Ireland does has not set out rigorous criteria for the assessment of mortgage lending value in statutory or regulatory provisions, and as such, this component of the discretion is not available in an Irish context.

7. Large Exposures

7.1 The Department of Finance has not exercised the transitional Member State discretion in Article 493(3) of CRR relating to certain large exposure exemptions. The Central Bank exercises the competent authority discretions in Article 400(2)(a)-(b) and (d)-(l) of CRR; subject to fulfilment of the criteria stipulated in Article 400(3) of CRR, as further specified in the ECB LSI Guideline[46].

7.2 With respect to the intra-group large exposure waiver in Article 400(2)(c) of CRR specifically, the Central Bank exercises that discretion on a prior approval case- by-case basis for both LSIs and "Class 1 minus" MiFID investment firms, where appropriate, in the case of exemptions where the entity is located within the EU. The Central Bank has regard to relevant ECB criteria in this area as specified in the ECB LSI Guideline.

7.3 Where LSIs and/or "Class 1 minus" MiFID investment firms are seeking to encompass exposures to one or more non-EEA counterparties within an intra-group large exposure waiver, the Central Bank has particular regard to at least the following in determining whether the criteria in Article 400(3) of CRR are satisfactorily met:

- Relevant ECB criteria[47];
- Regulatory and supervisory equivalence of the jurisdictions where the relevant group counterparty/counterparties are established;
- The regulatory status of all of the group counterparties which the applicant is seeking to encompass within the waiver;

[46] Guideline (EU) 2017/697 of the European Central Bank of 4 April 2017 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions, as amended by Guideline (EU) 2022/508 and Guideline (EU) 2025/25.

[47] In line with the requirements of Recommendation ECB/2017/10 (as amended by Recommendation ECB/2022/13 and Recommendation ECB/2025/26) on common specifications for the exercise of some options and discretions available in Union Law by NCAs in relation to LSIs, Section II, Chapter 5, paragraph 4 of the ECB Guide shall apply. See Regulation (EU) 2016/445 (ECB/2016/4).

- The existence and legal enforceability of any intra-group guarantees in favour of the applicant with respect to the proposed waiver;
- Any material prudential and/or conduct related issues within the last 3 years which have affected the applicant and/or the specific group counterparties proposed to be encompassed by the waiver; and
- Demonstration of how the proposed waiver would be consistent with the resolvability of the applicant.

7.4 For LSIs and "Class 1 minus" MiFID investment firms already in receipt of a waiver under Article 400(2)(c) CRR encompassing non-EEA counterparties, the Central Bank will have regard to the factors in paragraph 7.3 when reviewing pre-existing waivers.

8. Third Country Branches

8.1 CRD VI (as transposed by SI 326 of 2026) has introduced a number of competent authority discretions applicable to third country branches.

- Article 21c(2) 3rd sub paragraph (transposed by Regulation 9L): Discretion to require credit institutions and branches established in their territory to report information on services provided by group entities established in third countries to clients in a member state via reverse solicitation.
- Article 48b(4) (transposed by Regulation 9S(6)): Discretion to waive the liquidity requirements laid down in Article 48f for qualifying third country branches.
- Article 48c(6) (transposed by Regulation 9P(9)): Discretion to grandfather TCBs authorisation granted before 10 January.
- Article 48g(2) (transposed by Regulation 9T(4): Discretion to require TCBs to establish a local management committee.
- Article 48g(3) (Transposed by Regulation 9T(6)): Discretion to require Class 2 TCBs to appoint heads of internal control functions as provided for in CRD Article 76(6).
- Article 48i(1) (Transposed by Regulation 9V(2)): Discretion to require a TCB to subsidiarise where the CA can justify, on grounds other than those listed in the Article, that other supervisory measures would be insufficient to address the material supervisory concerns.
- Article 48l(3) (Transposed by Regulation 9Y(2)): Discretion to waive all or part of the requirements to report information on the head undertaking laid down in Article 48k(2) for qualifying third-country branches.

8.2 The Central Bank will implement these discretions on a case by case basis with the exception of the discretion in CRD Article 21c(2)(3rd sub paragraph) as transposed by Regulation 9L of the

CRD Regulations and the discretion in CRD Article 48b(4) as transposed by Regulation 9S(6) of the CRD Regulations.

8.3 Article 21c(2)(3rd sub paragraph) as transposed by Regulation 9L of the CRD Regulations provides that the Central Bank may require credit institutions and branches established in their territory to report information on services provided by group entities established in third countries to clients in a member state via reverse solicitation. The Central Bank is not minded to exercise this discretion at the present time.

8.4 Article 48b(4), as transposed at Regulation 9S(6) of the CRD regulations provides that the Central Bank may waive the liquidity requirements set out under Article 48f, transposed at Regulation 9S of the CRD Regulations, for those branches that meet the conditions to be regarded as a 'qualifying third branch' as defined under Article 48b(1) transposed at Regulation 9S(1).

8.5 The Central Bank affirms the importance for all branches to retain sufficiently robust and immediately available liquid assets to meet associated outflows and therefore does not intend to exercise the discretion for waiving liquidity requirements for qualifying third country branches set out in Section 8.4.

Risk Tolerance for high impact activities

8.6 A third country branch is not a separate legal entity in its own right from its head undertaking. It is an extension of its head undertaking operating in the State. Whilst a subsidiary is subject to the full CRR and CRD regulatory framework in its own right, a third country branch though subject to some prudential requirements under the CRD Regulations, is more dependent on and affected by the prudential position of its head undertaking.

8.7 The Central Bank is neither the responsible prudential supervisory authority nor responsible resolution authority for the head undertaking of a third country branch – these obligations rest with the relevant competent authorities of the jurisdiction where that undertaking is authorised.

8.8 In promoting its overarching statutory objectives of Safeguarding Stability and Protecting Consumers, a key focus of the Central Bank is the degree of damage a firm could cause to the financial system, economy and citizens were it to fail, i.e. the impact of a firm's failure.

8.9 The Central Bank previously set out its risk tolerance for high impact activities in its Policy Statement on Third Country Branches[48]. This Statement has been rescinded following the introduction of harmonised EU standards for third country branches under CRD VI. However, the Central Banks remains of the view that accepting retail deposits by a third country branch is a high impact activity, the disruption of which could have negative impacts for consumers or may undermine confidence in the Irish financial sector.

8.10 Therefore, the Central Bank generally expects that prospective branches should not accept retail deposits[49].

[48] Policy Statement on the Authorisation of Branches of Non-EEA Credit Institutions under Section 9A of the Central Bank Act 1971 (2016).
[49] The Central Bank will assess what constitutes retail deposit taking activity on a case-by-case basis, with reference in particular to the concept of eligible deposits in Deposit Guarantee Scheme Directive (Directive 2014/49/EU).

9. EEA LSI Branches

9.1 CRD Article 40, as transposed at Regulation 39 of the CRD Regulations provides that the Central Bank may require that credit institutions established in another Member State, having branches within the State, report to the Central Bank periodically on their activities in the State. The Central Bank intends to exercise this discretion.

Annex 1

Template Capital Contribution Agreement for Recognition under CRR Article 26(1)

DATED DD/MM/20XX

[INSERT PARTIES NAME HERE (FIRM)]

AND

[INSERT PARTIES NAME HERE (CONTRIBUTOR)]

_____

Capital Contribution Agreement for Recognition under CRR Article 26(1)

_____

THIS AGREEMENT is dated [ ] and made between:

(1) [INSERT PARTIES NAME AND REGISTERED ADDRESS HERE] (the Firm); and

(2) [INSERT PARTIES NAME AND REGISTERED ADDRESS HERE (the Contributor)

RECITALS:

(A) The Firm is a [Bank/MiFID Investment firm/Payment Institution/E-Money Institution/as appropriate] authorised by the Central Bank of Ireland (the Central Bank) under [INSERT RELEVANT LEGISLATION HERE].

(B) The Contributor is [INSERT RELATIONSHIP TO THE FIRM HERE].

(C) The Firm and the Contributor have agreed to enter into this capital contribution agreement (the AGREEMENT) subject to the terms and conditions set out herein.

NOW IT IS AGREED AS FOLLOWS

1. CAPITAL CONTRIBUTION

1.1 The Contributor hereby irrevocably confirms the payment on [DATE] of € [INSERT AMOUNT HERE] by way of an unconditional capital contribution (the Contribution) to be credited to the Firm.

1.2 The Firm and Contributor acknowledge that the Contribution is being made to enable the Firm to comply with its own funds obligations under [INSERT RELEVANT LEGISLATION HERE] and that the Contribution is available to the Firm for unrestricted and immediate use to cover risks or losses as soon as these occur, in accordance with the last sentence of CRR Article 26(1).

1.3 The Contribution is classified as equity for the purposes of determining balance sheet insolvency under national insolvency law.

1.4 The Contribution is not being made in consideration of the grant of any rights or entitlements whatsoever, including any voting rights, profit participation rights or rights to participate in the distribution of the surplus assets of the Undertaking on a winding up.

1.5 The Firm has not directly or indirectly funded the capital contribution by the Contributor.

1.6 The Contribution does not constitute a loan from the Contributor to the Firm; the Firm shall have no obligation to repay the Contribution, including on a winding up of the Firm, nor shall the Contributor offer any incentive for repayment.

1.7 The Contribution is free from any claims or charges and is not connected with any other transaction. The Firm has no obligation to bear any servicing cost or transfer any economic benefit of any kind to the Contributor or any other person in relation to or in return for the Contribution.

1.8 The current financial position of the Contributor is not such as would or might cause the Contributor to seek a distribution by the Firm under 1.10.

1.9 If the Contributor has borrowed to provide the Contribution, the terms under which such loan was granted are not such as would or might cause the Contributor to seek a distribution by the Firm under 1.10 in order to meet its loan obligations.

1.10 The Firm shall not reclassify or distribute the Contribution by way of dividend, on a winding up or in any other way or cause the amount of the Contribution to be reduced without the prior written approval of the Central Bank.

1.11 The Firm and the Contributor have put the terms of this Agreement before their respective boards of directors, which have approved its terms, and such approval has been duly recorded in the official board minutes.

1.12 The Firm shall record and disclose the capital contribution in accordance with the applicable accounting framework for as long as it is intended to receive regulatory recognition.

2. If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

3. This Agreement constitutes the entire agreement as to the making of the capital contribution and replaces and suspends all other agreements or proposals (if any) in relation to it. Any other terms existing at the date hereof and not comprised in this Agreement shall be of no further force and effect.

4. Any amendments to this Agreement made or purported to be made without the consent of the Central Bank shall be void.

5. The making, and the receipt, of the Contribution are within the respective (corporate) powers and objects of the Contributor and the Firm.

6. This Agreement shall be governed by, and construed in accordance with, the law of Ireland.

7. COMPLETION

7.1 On execution of this Agreement the Firm shall:

(a) provide the Contributor with an original of the Agreement duly executed by both Parties;

(b) provide the Central Bank with a copy of the original of the Agreement duly executed;

(c) provide the Central Bank with appropriate documentary evidence showing that the Contribution amount under Condition 1.1 has been received by the Firm and that Conditions 1.11 and 5 have been met.

This Agreement has been entered into and delivered as a deed on the date stated at the beginning of this Agreement.

PRESENT when the common seal of

[FIRM]

was affixed to this deed and this deed was delivered

_____(Director)_____(Director/Secretary)

PRESENT when the common seal of

[THE CONTRIBUTOR}

Was affixed to this deed and this deed was delivered

_____(Director)_____(Director/Secretary)

The Central Bank may process personal data provided by you in order to fulfil its statutory functions or to facilitate its business operations. Any personal data will be processed in accordance with the requirements of data protection legislation. Any queries concerning the processing of personal data by the Central Bank may be directed to dataprotection@centralbank.ie. A copy of the Central Bank's Data Protection Notice is available at www.centralbank.ie/fns/privacy-statement.

T: +353 (0)1 224 5800
E: publications@centralbank.ie
www.centralbank.ie



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