



STATUTORY INSTRUMENTS.

S.I. No. 355 of 2021



EUROPEAN UNION (INVESTMENT FIRMS) REGULATIONS 2021

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019¹, hereby make the following regulations:

Part 1

PRELIMINARY

Citation

1. These Regulations may be cited as the European Union (Investment Firms) Regulations 2021.

Interpretation

2. (1) In these Regulations—

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

“Act of 2013” means the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013);

“authorisation” means authorisation of an investment firm in accordance with the MiFID Regulations;

“Bank” means the Central Bank of Ireland;

“ESFS” means the European System of Financial Supervision;

“financial services legislation” has the same meaning as it has in the Act of 2013;

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016²;

“Investment Firms Directive” means Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019³;

“MiFID Regulations” means the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).

(2) A word or expression which is used in these Regulations and is also used in the Investment Firms Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Investment Firms Directive.

¹ OJ No. L. 314, 5.12.2019, p. 64.

² OJ No. L. 119, 4.5.2016, p.1.

³ OJ No. L. 314, 5.12.2019, p. 64.

Scope

3. (1) Subject to paragraph (2) and Regulation 4, these Regulations apply to investment firms authorised and supervised under the MiFID Regulations or the law of a Member State other than the State giving effect to Directive 2014/65/EU.

(2) Parts 4 and 5 shall not apply to an investment firm referred to in Article 1(2) of Regulation (EU) 2019/2033 or which has been allowed, in accordance with Article 1(5) of that Regulation, to apply the requirements of Regulation (EU) No 575/2013.

(3) An investment firm referred to in Article 1(2) of Regulation (EU) 2019/2033 or which has been allowed, in accordance with Article 1(5) of that Regulation, to apply the requirements of Regulation (EU) No 575/2013, shall be supervised for compliance with prudential requirements under Parts 6 and 7 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) in accordance with the second subparagraph of Article 1(2) and the third subparagraph of Article 1(5) of Regulation (EU) 2019/2033.

Bank discretion

4. (1) Subject to paragraph (2), the Bank may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to point (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, where—

- (a) the total value of the consolidated assets of the investment firm is equal to or exceeds €5,000,000,000, calculated as an average of the previous 12 months, and
- (b) one or more of the following criteria apply:
 - (i) the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;
 - (ii) the investment firm is a clearing member as defined in point (3) of Article 4(1) of Regulation (EU) 2019/2033;
 - (iii) the Bank considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:
 - (I) the importance of the investment firm for the economy of the European Union or of the State;
 - (II) the significance of the investment firm's cross-border activities;
 - (III) the interconnectedness of the investment firm with the financial system.

(2) Paragraph (1) shall not apply to an investment firm that is—

- (a) a commodity and emission allowance dealer,
- (b) a collective investment undertaking, or
- (c) an insurance undertaking.

(3) Where the Bank decides to apply the requirements of Regulation (EU) No 575/2013 to an investment firm in accordance with paragraph (1), that investment firm shall be supervised for compliance with prudential requirements under Parts 6 and 7 of the European Union (Capital Requirements) Regulations 2014.

(4) Where a decision under paragraph (1) is made or revoked by the Bank, it shall inform the investment firm concerned without delay.

(5) A decision made by the Bank under paragraph (1) in respect of an investment firm shall cease to apply where the investment firm no longer meets the threshold referred to in that paragraph, calculated over a period of 12 consecutive months.

(6) The Bank shall inform EBA without delay where it makes or revokes a decision under this Regulation.

Part 2

COMPETENT AUTHORITY

Designation of competent authority

5. (1) The Bank is designated as the competent authority in the State responsible for carrying out the functions of a competent authority referred to in the Investment Firms Directive and Regulation (EU) 2019/2033.

(2) The Bank shall supervise the activities of investment firms and, where applicable, of investment holding companies and mixed financial holding companies to assess compliance with the requirements of the Investment Firms Directive and Regulation (EU) 2019/2033.

(3) An investment firm shall provide the Bank with all the information necessary to assess compliance by the firm with these Regulations and Regulation (EU) 2019/2033.

(4) An investment firm shall put in place internal control mechanisms and administrative and accounting procedures to enable the Bank to check compliance by the firm with these Regulations and Regulation (EU) 2019/2033.

(5) An investment firm shall record all of its transactions and document the systems and processes of the firms which are subject to these Regulations and Regulation (EU) 2019/2033 in such a manner that the Bank is able to assess compliance with these Regulations and Regulation (EU) 2019/2033 at all times.

Cooperation within European System of Financial Supervision

6. (1) In the exercise of its duties under these Regulations, the Bank shall take into account the convergence of supervisory tools and supervisory practices

in the application of the legal provisions adopted pursuant to the Investment Firms Directive and Regulation (EU) 2019/2033.

- (2) The Bank shall—
- (a) as a party to the ESFS, cooperate with the competent authorities of other Member States with trust and full mutual respect, in particular when ensuring the exchange of appropriate, reliable and exhaustive information between them and other parties to the ESFS,
 - (b) participate in the activities of EBA and, as appropriate, in the colleges of supervisors referred to in Regulation 44 and in Regulation 104 of the European Union (Capital Requirements) Regulations 2014,
 - (c) make every effort to ensure compliance with the guidelines and recommendations issued by EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the European Systemic Risk Board pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council, and
 - (d) cooperate closely with the European Systemic Risk Board.

European Union dimension of supervision

7. The Bank shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in other Member States concerned as well as in the European Union as a whole and, in particular, in emergency situations, based on the information available at the relevant time.

Part 3

INITIAL CAPITAL

Initial capital

8. (1) An investment firm seeking authorisation, or authorised, to carry out an activity listed at paragraph 3 or 6 of Part 1 of Schedule 1 to the MiFID Regulations shall have initial capital of €750,000.

(2) An investment firm seeking authorisation, or authorised, to carry out an activity listed at paragraph 1, 2, 4, 5 or 7 of Part 1 of Schedule 1 to the MiFID Regulations and which is not permitted to hold client money or securities belonging to its clients shall have initial capital of €75,000.

(3) An investment firm authorised to carry out the activity listed at paragraph 9 of Part 1 of Schedule 1 to the MiFID Regulations and which engages in dealing on own account or is permitted to do so shall have initial capital of €750,000.

(4) An investment firm, other than one referred to in paragraph (1), (2) or (3), shall have initial capital of €150,000.

Composition of initial capital

9. The initial capital of an investment firm shall be constituted in accordance with Article 9 of Regulation (EU) 2019/2033.

Part 4

PRUDENTIAL SUPERVISION

Chapter 1

Principles of prudential supervision

Competence of Bank and host Member State competent authority

10. (1) Subject to paragraph (2), the prudential supervision of an investment firm having its head office in the State shall be the responsibility of the Bank.

(2) Paragraph (1) is without prejudice to a provision of these Regulations which confers responsibility of the competent authority of a host Member State of an investment firm.

Cooperation between competent authorities

11. (1) The Bank shall cooperate closely with competent authorities of other Member States for the purposes of its duties under these Regulations and Regulation (EU) 2019/2033, in particular by exchanging information about investment firms without delay, including the following:

- (a) information about the management and ownership structure of the investment firm;
- (b) information about compliance with own funds requirements by the investment firm;
- (c) information about compliance with the concentration risk requirements and liquidity requirements of the investment firm;
- (d) information about the administrative and accounting procedures and internal control mechanisms of the investment firm;
- (e) any other relevant factors that may influence the risk posed by the investment firm.

(2) Where the State is the home Member State of an investment firm, the Bank shall immediately provide the competent authority of the host Member State with any information and findings about any potential problems and risks posed by the investment firm to the protection of clients or the stability of the financial system in the host Member State which the Bank has identified when supervising the activities of the investment firm.

(3) Where the State is the home Member State of an investment firm, the Bank shall act upon information provided by the competent authority of the host

Member State by taking all measures necessary to avert or remedy potential problems and risks referred to in paragraph (2).

(4) Where the State is the home Member State of an investment firm, the Bank shall upon request, explain in detail to the competent authority of the host Member State how they have taken into account the information and findings provided by the competent authority of the host Member State.

(5) Where, following the communication of information and findings corresponding to those referred to in paragraph (2), the Bank, as competent authority of the host Member State of an investment firm, considers that the competent authority of the home Member State of the investment firm has not taken the necessary measures corresponding to those referred to in paragraph (3), the Bank may, after having informed the competent authority of the home Member State of the investment firm, EBA and ESMA, take appropriate measures to protect clients to whom services are provided or to protect the stability of the financial system.

(6) The Bank may refer to EBA cases in which a request for collaboration, in particular a request to exchange information, has been rejected or has not been acted upon within a reasonable time.

(7) Where the Bank, as competent authority of the home Member State of an investment firm, disagrees with the measures, corresponding to those referred to in paragraph (3), taken by the competent authority of the host Member State of an investment firm, it may refer the matter to EBA.

(8) For the purpose of assessing the condition in point (c) of the first subparagraph of Article 23(1) of Regulation (EU) 2019/2033, the Bank, as competent authority of the home Member State of an investment firm, may request the competent authority of a clearing member's home Member State to provide information relating to the margin model and parameters used for the calculation of the margin requirement of the investment firm.

On-the-spot checking and inspection of branches established in another Member State

12. (1) Where an investment firm authorised in another Member State carries out its activities through a branch in the State, the competent authority of the home Member State of the investment firm may, after having informed the Bank, carry out, itself or through intermediaries that it appoints for that purpose, on-the-spot checks of the information referred to in Regulation 11(1) and inspect the branch.

(2) Where the State is the host Member State of an investment firm, the Bank shall, for supervisory purposes and where it considers it to be relevant for reasons of stability of the financial system in the State, have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of the investment firm in the State and require information from a branch about its activities.

(3) Before carrying out the checks and inspections referred to in paragraph (2), the Bank shall, without delay, consult the competent authority of the home Member State of the investment firm.

(4) As soon as possible following the completion of the checks and inspections referred to in paragraph (2), the Bank shall communicate to the competent authority of the home Member State of the investment firm the information obtained and findings that are relevant for the risk assessment of the investment firm.

Professional secrecy and exchange of confidential information

13. (1) Subject to paragraph (8), the Bank and all persons who work or who have worked for the Bank, including the persons referred to in Article 76(1) of Directive 2014/65/EU, shall comply with the obligation of professional secrecy for the purposes of these Regulations and of Regulation (EU) 2019/2033.

(2) In a case in which the Bank or a person referred to in paragraph (1) receives confidential information in the course of the Bank's duties or the person's duties, as the case may be, that information may be disclosed only where—

- (a) the information is disclosed in summary or aggregate form, and
- (b) individual investment firms or persons cannot be identified from the information that is disclosed.

(3) Paragraph (2) is without prejudice to any restrictions on the disclosure of information under the law of the State applicable to criminal proceedings.

(4) Where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be disclosed in civil proceedings, where such disclosure is necessary for carrying out those proceedings.

(5) The Bank shall use the confidential information collected, exchanged or transmitted pursuant to these Regulations and to Regulation (EU) 2019/2033 only for the purpose of carrying out its duties, and in particular for the following purposes:

- (a) to monitor the prudential rules set out in these Regulations and in Regulation (EU) 2019/2033;
- (b) to impose sanctions;
- (c) in appeals against decisions of the Bank under Part VIIA of the Act of 1942.

(6) Where a natural or legal person or other body, other than the Bank, receives confidential information pursuant to these Regulations or Regulation (EU) 2019/2033, the person or body, as the case may be, shall use that information only for the purposes for which the Bank expressly provides or in accordance with law.

(7) The Bank may—

- (a) exchange confidential information for the purposes of paragraph (5),
- (b) expressly state how that information is to be treated, and
- (c) expressly restrict any further transmission of that information.

(8) The Bank may transmit confidential information to the Commission where that information is necessary for the exercise of the powers of the Commission.

(9) The Bank may provide EBA, ESMA, the ESRB, central banks of the Member States, the European System of Central Banks (ESCB) and the European Central Bank in their capacity as monetary authorities, and, where appropriate, public authorities responsible for overseeing payment and settlement systems, with confidential information where that information is necessary for the performance of their tasks.

Cooperation arrangements with third countries for the exchange of information

14. (1) The Bank may conclude a cooperation arrangement with any of the persons specified in paragraph (2) for the purpose of—

- (a) performing the Bank's supervisory tasks pursuant to these Regulations or Regulation (EU) 2019/2033, or
- (b) exchanging information,

where the information disclosed pursuant to that arrangement is subject to guarantees of professional secrecy that are at least equivalent to those provided for in Regulation 13.

(2) The persons referred to in paragraph (1) are—

- (a) third-country supervisory authorities, and
- (b) third-country authorities or bodies responsible for the following tasks:
 - (i) the supervision of financial institutions and financial markets, including the supervision of financial entities licensed to operate as central counterparties, where central counterparties have been recognised under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council;
 - (ii) the liquidation and bankruptcy of investment firms and similar procedures;
 - (iii) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and similar procedures;
 - (iv) the carrying out of statutory audits of financial institutions or institutions which administer compensation schemes;
 - (v) oversight of persons charged with carrying out statutory audits of the accounts of financial institutions;
 - (vi) oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;
 - (vii) oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

Duties of persons responsible for the control of annual and consolidated accounts

15. A person who is authorised in accordance with Directive 2006/43/EC of the European Parliament and of the Council and who performs in an investment firm the tasks described in Article 73 of Directive 2009/65/EC or in Article 34 of Directive 2013/34/EU, or any other statutory task, shall report promptly to the Bank any fact or decision concerning that investment firm, or concerning an undertaking that has close links with that investment firm, which—

- (a) constitutes a material breach of these Regulations,
- (b) may affect the continuous functioning of the investment firm, or
- (c) may lead to a refusal to certify the accounts or can lead to the expression of reservations.

Sanctions

16. (1) Where the provisions of the Act of 1942 are invoked in relation to a breach of these Regulations or Regulation (EU) 2019/2033, any of the sanctions referred to in paragraph (4) may be imposed by the Bank—

- (a) following an inquiry under section 33AO of the Act of 1942, or
- (b) in accordance with section 33AR or section 33AV of the Act of 1942.

(2) The power of the Bank to impose any of the sanctions referred to in paragraph (4) is in addition to and not in substitution for its power to impose any of the sanctions specified in section 33AQ of the Act of 1942.

(3) For the purposes of these Regulations, any reference in the Act of 1942 to the sanctions set out in section 33AQ of that Act is to be read as including a reference to the sanctions set out in this Regulation.

(4) The sanctions mentioned in paragraph (3) are—

- (a) a public statement which identifies the natural or legal person, investment firm, investment holding company or mixed financial holding company responsible and the nature of the breach,
- (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from repeating that conduct,
- (c) a temporary ban, for members of the investment firm's management body or any other natural persons who are held responsible, on exercising functions in investment firms,
- (d) subject to paragraph (5), in the case of a legal person, administrative pecuniary sanctions of up to 10 per cent of the total annual net turnover, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding business year,

- (e) in the case of a legal person, administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided due to the breach where those profits or losses can be determined, and
- (f) in the case of a natural person, administrative pecuniary sanctions of up to €5,000,000.

(5) Where an undertaking referred to in paragraph (4)(d) is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

(6) The Bank shall, when determining the type of sanction and, where applicable, the level of administrative pecuniary sanction, take into account all relevant circumstances, including, where appropriate—

- (a) the gravity and the duration of the breach,
- (b) the degree of responsibility of the natural or legal persons responsible for the breach,
- (c) the financial strength of the natural or legal persons responsible for the breach, including the total turnover of legal persons or the annual income of natural persons,
- (d) the importance of profits gained or losses avoided by the legal persons responsible for the breach,
- (e) any losses incurred by third parties as a result of the breach,
- (f) the level of cooperation with the Bank of the natural or legal persons responsible for the breach,
- (g) previous breaches by the natural or legal persons responsible for the breach, and
- (h) any potential systemic consequences of the breach.

Publication of sanctions

17. (1) The Bank shall publish on its official website information on any sanctions imposed by the Bank for breaches of these Regulations or Regulation (EU) 2019/2033.

(2) The information published under paragraph (1) shall—

(a) include the following information—

(i) the type and nature of the breach, and

(ii) the identity of the natural or legal person on whom the sanction is imposed,

and

(b) be published—

(i) without undue delay after that person is informed of those sanctions, and

(ii) to the extent that the publication is necessary and proportionate.

(3) Where the Bank publishes information under paragraph (1) in relation to sanctions against which there is an appeal, the Bank shall, without undue delay, also publish on its official website information on the appeal status and outcome thereof.

(4) The Bank shall publish information under paragraph (1) on an anonymous basis in the following circumstances:

(a) the sanction has been imposed on a natural person and publication of that person's personal data is found to be disproportionate;

(b) the publication would jeopardise an ongoing criminal investigation or the stability of financial markets;

(c) the publication would cause disproportionate damage to the investment firms or natural persons involved.

(5) Subject to paragraph (6), the Bank shall ensure that information published under paragraph (1) remains on its official website for at least five years.

(6) Personal data published under paragraph (1) may only be retained on the official website of the Bank in accordance with the General Data Protection Regulation, the Data Protection Act 2018 and any statutory instruments made under that Act.

Reporting sanctions to EBA

18. The Bank shall inform EBA of—

(a) sanctions imposed under Regulation 16,

(b) any appeal against such sanctions, and

(c) the outcome of any such appeal.

Reporting of breaches

19. (1) The Bank shall establish and maintain effective and reliable mechanisms to enable prompt reporting to it of potential or actual breaches of these Regulations and Regulation (EU) 2019/2033.

(2) The mechanisms referred to in paragraph (1) shall include the following:

- (a) specific procedures for the reception, treatment and following up of such reports, including the establishment of secure communication channels;
- (b) appropriate protection against retaliation, discrimination or other types of unfair treatment by the investment firm for employees of investment firms who report breaches committed within the investment firm;
- (c) protection of personal data concerning both the person who reports the breach and the natural person who is allegedly responsible for that breach, in accordance with the General Data Protection Regulation;
- (d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the investment firm, unless disclosure is required by the law of the State in the context of further investigations or subsequent administrative or judicial proceedings.

(3) The Bank shall require investment firms to have in place appropriate procedures for their employees to report breaches internally through a specific independent channel.

Right of appeal

20. A decision of the Bank under these Regulations or for the purposes of Regulation (EU) 2019/2033 is an appealable decision under Part VIIA of the Act of 1942.

Chapter 2

Review Process

Internal capital and liquid assets

21. (1) Where an investment firm does not meet the conditions, set out in Article 12(1) of Regulation (EU) 2019/2033, to qualify as a small and non-interconnected investment firm, it shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that the investment firm considers adequate to cover the nature and level of risks which the firm may pose to others and to which the firm itself is, or might be, exposed.

(2) The arrangements, strategies and processes referred to in paragraph (1) shall be—

- (a) appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned, and
- (b) subject to regular internal review.

(3) Where an investment firm meets the conditions, set out in Article 12(1) of Regulation (EU) 2019/2033, to qualify as a small and non-interconnected investment firm, the Bank may request the firm to apply the requirements provided for in this Regulation to the extent that the Bank deems it to be appropriate.

Scope of application of Regulations 23 to 31

22. (1) Regulations 23 to 31 shall not apply where, on the basis of Article 12(1) of Regulation (EU) 2019/2033, an investment firm determines that it meets all of the conditions to qualify as a small and non-interconnected investment firm.

(2) Where an investment firm which has not met all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 subsequently meets those conditions, Regulations 23 to 31 shall cease to apply after a period of six months from the date on which those conditions are met.

(3) Regulations 23 to 31 shall cease to apply to an investment firm after the period referred to in paragraph (2) only where—

- (a) the investment firm continued to meet the conditions set out in Article 12(1) of Regulations 23 to 31 without interruption during that period, and
- (b) the investment firm has notified the Bank accordingly.

(4) Where an investment firm determines that it no longer meets all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033, it shall notify the Bank and comply with Regulations 23 to 31 within 12 months of the date of that determination.

(5) An investment firms shall apply Regulation 29 to remuneration awarded for services provided or performance in the financial year following the financial year in which the determination referred to in paragraph (4) is made.

(6) Where Regulations 23 to 31 and Article 8 of Regulation (EU) 2019/2033 apply to an investment firm, Regulations 23 to 31 shall apply to the firm on an individual basis.

(7) Subject to paragraph (8), where Regulations 23 to 31 apply to an investment firm and prudential consolidation as referred to in Article 7 of Regulation (EU) 2019/2033 is applied to the firm, Regulations 23 to 31 shall apply to the firm on an individual and consolidated basis.

(8) Regulations 23 to 31 shall not apply to subsidiary undertakings included in a consolidated situation that are established in third countries, where the parent undertaking in the European Union can demonstrate to the Bank that the

application of Regulations 23 to 31 is unlawful under the laws of the third country where those subsidiary undertakings are established.

Internal governance

23. (1) An investment firm shall have robust governance arrangements, including all of the following:

- (a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- (b) effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others;
- (c) adequate internal control mechanisms, including sound administration and accounting procedures;
- (d) remuneration policies and practices that are consistent with and promote sound and effective risk management.

(2) The remuneration policies and practices referred to in paragraph (1)(d) shall be gender neutral.

(3) When establishing the arrangements referred to in paragraph (1), an investment firm shall take into account the requirements of Regulations 25 to 30.

(4) The arrangements referred to in paragraph (1) shall be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

Country-by-country reporting

24. (1) An investment firm authorised in the State that has a branch or subsidiary that is a financial institution, as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013, in a Member State other than the State or in a third country shall disclose the following information by Member State and third country on an annual basis:

- (a) the name, nature of activities and location of any subsidiaries and branches;
- (b) turnover;
- (c) the number of employees on a full time equivalent basis;
- (d) profit or loss before tax;
- (e) tax on profit or loss;
- (f) the public subsidies received.

(2) The information referred to in paragraph (1) shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of the investment firm concerned.

Role of management body in risk management

25. (1) The management body of an investment firm shall approve and periodically review the strategies and policies on—

- (a) the risk appetite of the investment firm, and
- (b) managing, monitoring and mitigating the risks the investment firm is or may be exposed to,

taking into account the macroeconomic environment and the business cycle of the investment firm.

(2) The management body of an investment firm shall devote sufficient time to ensure proper consideration of the matters referred to in paragraph (1) and that it allocates adequate resources to the management of all material risks to which the investment firm is exposed.

(3) An investment firm shall establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.

(4) Where the value of an investment firm's on and off-balance sheet assets is on average greater than €100,000,000 over the four-year period immediately preceding the given financial year, the investment firm shall establish a risk committee composed of members of the management body who do not perform any executive function in the investment firm concerned.

(5) Members of the risk committee referred to in paragraph (4) shall—

- (a) have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the investment firm, and
- (b) ensure that the risk committee advises the management body on the investment firm's overall current and future risk appetite and strategy and assists the management body in overseeing the implementation of that strategy by senior management.

(6) The management body shall retain overall responsibility for the investment firm's risk strategies and policies.

(7) An investment firm shall ensure that its management body in its supervisory function and the risk committee of that management body, where a risk committee has been established, have access to information on the risks to which the investment firm is or may be exposed.

Treatment of risks

26. (1) The management body of an investment firm shall ensure that the investment firm has robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of the following:

- (a) material sources and effects of risk to clients and any material impact on own funds;
- (b) material sources and effects of risk to market and any material impact on own funds;

- (c) material sources and effects of risk to the investment firm, in particular those which can deplete the level of own funds available;
 - (d) liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that the investment firm maintains adequate levels of liquid resources, including in respect of addressing material sources of risks under subparagraphs (a), (b) and (c).
- (2) The strategies, policies, processes and systems referred to in paragraph (1) shall—
- (a) be proportionate to—
 - (i) the complexity, risk profile and scope of operation of the investment firm, and
 - (ii) the risk tolerance set by the investment firm's management body, and
 - (b) reflect the investment firm's importance in each Member State in which it carries out business.
- (3) For the purposes of paragraphs (1)(a) and (2), the Bank shall assess, in particular, compliance by the investment firm concerned with the law of the State relating to segregation applicable to client money, including but not limited to, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017).
- (4) For the purposes of paragraph (1)(a), an investment firm shall consider holding professional indemnity insurance as an effective tool in its management of risks.
- (5) For the purposes of paragraph (1)(c), material sources of risk to an investment firm shall include, if relevant—
- (a) material changes in the book value of assets, including any claims on tied agents,
 - (b) the failure of clients or counterparties,
 - (c) positions in financial instruments, foreign currencies and commodities, and
 - (d) obligations to defined benefit pension schemes.
- (6) An investment firm shall give due consideration to any material impact on own funds where the risks referred to in paragraph (5) are not appropriately captured by the own funds requirements calculated under Article 11 of Regulation (EU) 2019/2033.
- (7) Where an investment firm needs to wind down or cease its activities, the Bank shall require that the investment firm, by taking into account the viability and sustainability of its business models and strategies, gives due consideration to requirements and necessary resources which are realistic, in terms of timescale and maintenance of own funds and liquid resources, throughout the process of exiting the market.

(8) Notwithstanding Regulation 22, paragraph (1)(a), (c) and (d) shall apply to an investment firm that meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033.

Remuneration policies

27. (1) An investment firm shall comply with the principles specified in paragraph (2) when establishing and applying its remuneration policies for categories of staff, including—

- (a) senior management,
- (b) risk takers,
- (c) staff engaged in control functions, and
- (d) any employees—
 - (i) receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, and
 - (ii) whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages.

(2) The principles referred to in paragraph (1) are as follows:

- (a) the remuneration policy is clearly documented and proportionate to the size, internal organisation and nature, as well as to the scope and complexity of the activities, of the investment firm;
- (b) the remuneration policy is a gender-neutral remuneration policy;
- (c) the remuneration policy is consistent with and promotes sound and effective risk management;
- (d) the remuneration policy is in line with the business strategy and objectives of the investment firm, and also takes into account long term effects of the investment decisions taken;
- (e) the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;
- (f) the investment firm's management body in its supervisory function adopts and periodically reviews the remuneration policy and has overall responsibility for overseeing its implementation;
- (g) the implementation of the remuneration policy is subject to a central and independent internal review by control functions at least annually;
- (h) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives

linked to their functions, regardless of the performance of the business areas they control;

- (i) the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Regulation 30 or, where such a committee has not been established, by the management body in its supervisory function;
- (j) the remuneration policy, taking into account the national rules on wage setting, makes a clear distinction between the criteria applied to determine the following:
 - (i) basic fixed remuneration, which primarily reflects relevant professional experience and organisational responsibility as set out in an employee's job description as part of his or her terms of employment;
 - (ii) variable remuneration, which reflects a sustainable and risk adjusted performance of the employee, as well as performance in excess of the employee's job description;
- (k) the fixed component represents a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component.

(3) For the purposes of paragraph (2)(k), an investment firm shall set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the investment firm and associated risks, as well as the impact that different categories of staff referred to in paragraph (1) have on the risk profile of the investment firm.

(4) An investment firm shall establish and apply the principles specified in paragraph (2) in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

(5) In this Regulation, "national rules on wage setting" includes the following:

- (a) the National Minimum Wage Acts 2000 and 2015;
- (b) orders made under section 10D of the National Minimum Wage Act 2000 (No. 5 of 2000);
- (c) registered employment agreements, within the meaning of Chapter 2 of Part 3 of the Industrial Relations (Amendment) Act 2015 (No. 27 of 2015);
- (d) sectoral employment orders, within the meaning of Chapter 3 of Part 3 of the Industrial Relations (Amendment) Act 2015;
- (e) employment regulation orders, within the meaning of Part IV of the Industrial Relations Act 1946 (No. 26 of 1946).

Investment firms that benefit from extraordinary public financial support

28. An investment firm that benefits from extraordinary public financial support, as defined in point (28) of Article 2(1) of Directive 2014/59/EU—

- (a) shall not pay any variable remuneration to members of the management body, and
- (b) shall limit variable remuneration to a portion of net revenue where payment to staff, other than members of the management body, would be inconsistent with—
 - (i) the maintenance of a sound capital base of an investment firm, and
 - (ii) the timely exit of the investment firm from extraordinary public financial support.

Variable remuneration

29. (1) Variable remuneration awarded and paid by an investment firm to categories of staff referred to in Regulation 27(1) shall comply with all of the following requirements in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities:

- (a) where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;
- (b) when assessing the performance of the individual, both financial and non-financial criteria are taken into account;
- (c) the assessment of the performance referred to in subparagraph (a) is based on a multi-year period, taking into account the business cycle of the investment firm and its business risks;
- (d) the variable remuneration does not affect the investment firm's ability to ensure a sound capital base;
- (e) there is no guaranteed variable remuneration (other than in respect of the first year of employment of new staff employed by an investment firm with a strong capital base);
- (f) payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct;
- (g) remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the investment firm;
- (h) the measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) 2019/2033;

- (i) the allocation of the variable remuneration components within the investment firm takes into account all types of current and future risks;
- (j) at least 50 per cent of the variable remuneration consists of any of the following instruments:
 - (i) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned;
 - (ii) share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the investment firm concerned;
 - (iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;
 - (iv) non-cash instruments which reflect the instruments of the portfolios managed;
- (k) by way of derogation from subparagraph (j), where an investment firm does not issue any of the instruments referred to in that point, the Bank may approve the use of alternative arrangements fulfilling the same objectives;
- (l) at least 40 per cent of the variable remuneration is deferred over a three- to five-year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60 per cent;
- (m) up to 100 per cent of the variable remuneration is contracted where the financial performance of the investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question—
 - (i) participated in or was responsible for conduct which resulted in significant losses for the investment firm, and
 - (ii) is no longer considered fit and proper;
- (n) discretionary pension benefits are in line with the business strategy, objectives, values and long-term interests of the investment firm.

(2) An individual referred to in Regulation 27(1) shall not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles referred to in paragraph (1).

(3) Variable remuneration shall not be paid through financial vehicles or methods that facilitate non-compliance with these Regulations or with Regulation (EU) 2019/2033.

(4) For the purposes of paragraph (1)(j), the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients.

(5) For the purposes of paragraph (1)(l), the deferral of the variable remuneration shall vest no faster than on a pro-rata basis.

(6) For the purposes of paragraph (1)(n), where an employee leaves the investment firm concerned before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in paragraph (1)(j).

(7) Where an employee reaches retirement age and retires, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in paragraph (1)(j), subject to a five-year retention period.

(8) Paragraph (1)(j) and (1) and paragraphs (6) and (7) shall not apply to—

- (a) an investment firm, where the value of its on and off-balance sheet assets is on average equal to or less than the threshold for the institution, as specified in paragraph (9) or, where applicable, under paragraph (10), over the four-year period immediately preceding the given financial year, or
- (b) an individual whose annual variable remuneration does not exceed €50,000 and does not represent more than one quarter of that individual's total annual remuneration.

(9) Subject to paragraph (10), the threshold for an investment firm, for the purposes of paragraph (8)(a), shall be €100,000,000.

(10) The Bank may specify, for the purposes of paragraph (8)(a), a threshold for an investment firm that is greater than €100,000,000 and less than or equal to €300,000,000 where—

- (a) the Bank is satisfied that it is appropriate to apply a threshold of the specified amount to the investment firm, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs, and
- (b) the investment firm satisfies the following criteria:
 - (i) the investment firm is not one of the three largest investment firms established in the State in terms of total value of assets;
 - (ii) the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;

- (iii) the size of the investment firm's on and off-balance sheet trading-book business is equal to or less than €150,000,000;
- (iv) the size of the investment firm's on and off-balance sheet derivative business is equal to or less than €100,000,000.

Remuneration committee

30. (1) An investment firm which does not satisfy the criterion specified in Regulation 29(8)(a) shall establish a remuneration committee.

(2) A remuneration committee referred to in paragraph (1)—

- (a) shall be gender balanced,
- (b) shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity, and
- (c) may be established at group level.

(3) A remuneration committee referred to in paragraph (1) shall be responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the investment firm concerned and which are to be taken by the management body.

(4) The Chair and the members of a remuneration committee referred to in paragraph (1) shall be members of the management body who do not perform any executive function in the investment firm concerned.

(5) When preparing the decisions referred to in paragraph (3), the remuneration committee referred to in paragraph (1) shall take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the investment firm.

Oversight of remuneration policies

31. (1) The Bank shall—

- (a) collect—
 - (i) the information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033, and
 - (ii) the information provided by investment firms on the gender pay gap under paragraph (4), and
- (b) use that information to benchmark remuneration trends and practices.

(2) An investment firm shall provide the Bank with information on the number of natural persons per investment firm that are remunerated €1,000,000 or more per financial year, in pay brackets of €1,000,000, including—

- (a) their job responsibilities,
- (b) the business area involved, and

- (c) the main elements of salary, bonus, long-term award and pension contribution.

(3) An investment firm shall provide the Bank, upon demand, with the total remuneration figures for each member of the management body or senior management of the firm.

(4) An investment firm shall provide the Bank, upon demand, with information on the gender pay gap in the investment firm.

(5) The Bank shall provide the information referred to in paragraphs (1), (2), (3) and (4) to the EBA.

Supervisory review and evaluation

32. (1) The Bank shall review, to the extent relevant and necessary, taking into account the investment firm's size, risk profile and business model, the arrangements, strategies, processes and mechanisms implemented by an investment firm to comply with these Regulations and with Regulation (EU) 2019/2033 and evaluate the following, as appropriate and relevant, so as to ensure a sound management and coverage of the investment firm's risks:

- (a) the risks referred to in Regulation 26;
- (b) the geographical location of an investment firm's exposures;
- (c) the business model of the investment firm;
- (d) the assessment of systemic risk, taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 or recommendations of the ESRB;
- (e) the risks posed to the security of the investment firm's network and information systems to ensure confidentiality, integrity and availability of its processes, data and assets;
- (f) the exposure of the investment firm to the interest rate risk arising from non-trading book activities;
- (g) governance arrangements of the investment firm and the ability of members of the management body to perform their duties.

(2) For the purposes of a review and evaluation, the Bank shall duly take into account whether the investment firm concerned holds professional indemnity insurance.

(3) The Bank shall establish the frequency and intensity of the review and evaluation—

- (a) having regard to the size, nature, scale and complexity of the activities of the investment firms concerned, and, where relevant, their systemic importance, and
- (b) taking into account the principle of proportionality.

(4) The Bank shall decide on a case-by-case basis whether and in which form a review and evaluation is to be carried out with regard to an investment firm

that meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, only where the Bank deems it to be necessary due to the size, nature, scale and complexity of the activities of the investment firm.

(5) For the purposes of paragraph (3), the Bank shall assess compliance by the investment firm concerned with the law of the State relating to segregation applicable to client money, including but not limited to, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017.

(6) An investment firm shall provide access to the Bank, for the purpose of the review and evaluation of the matter referred to in paragraph (1)(g), to—

- (a) agendas, minutes and supporting documents for meetings of the management body and its committees, and
- (b) the results of internal or external evaluations of the performance of the management body.

(7) In this Regulation, “review and evaluation” means a review and evaluation by the Bank under paragraph (1).

Ongoing review of the permission to use internal models

33. (1) The Bank shall review on a regular basis, and at least every three years, an investment firm’s compliance with the requirements for the permission to use internal models as referred to in Article 22 of Regulation (EU) 2019/2033.

(2) The Bank shall, in particular—

- (a) have regard to changes in an investment firm’s business,
- (b) have regard to the implementation of the internal models referred to in paragraph (1) to new products, and
- (c) review and assess whether the investment firm uses well-developed and up-to-date techniques and practices for the internal models referred to in paragraph (1).

(3) The Bank shall ensure that material deficiencies identified in the coverage of risk by an investment firm’s internal models are rectified, or take steps to mitigate their consequences, including by imposing capital add-ons or higher multiplication factors.

(4) Where, for internal risk-to-market models, numerous overshootings as referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the internal models of an investment firm are not or are no longer accurate, the Bank shall revoke the permission to use the internal models or impose appropriate measures to ensure that the internal models are improved promptly within a set timeframe.

(5) Where an investment firm that has been granted permission to use internal models no longer meets the requirements for applying those internal models, the Bank shall require the investment firm either—

- (a) to demonstrate that the effect of non-compliance is immaterial, or

- (b) to present a plan and a deadline to comply with those requirements.

(6) The Bank shall require improvements to a plan presented under paragraph (5)(b) where that plan is unlikely to result in full compliance or where the deadline is inappropriate.

(7) Where it is unlikely that an investment firm will comply by the prescribed deadline or has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the Bank shall revoke the permission to use internal models or limit it to compliant areas or to those areas where compliance can be achieved by an appropriate deadline.

(8) The Bank shall take into account analysis and guidelines prepared by the EBA under Article 37(4) of the Investment Firms Directive for the review referred to in paragraph (1).

Supervisory measures

34. The Bank shall require investment firms to take, at an early stage, the measures necessary to address the following problems:

- (a) an investment firm does not meet the requirements of these Regulations or of Regulation (EU) 2019/2033;
- (b) the Bank has evidence that an investment firm is likely to breach these Regulations or Regulation (EU) 2019/2033 within the next 12 months.

Supervisory powers

35. (1) For the purposes of Regulations 32, 33(5) to (7) and 34, and of the application of Regulation (EU) 2019/2033, the Bank shall have the following powers:

- (a) to require an investment firm to have own funds in excess of the requirements set out in Article 11 of Regulation (EU) 2019/2033, under the conditions laid down in Regulation 36, or to adjust the own funds and liquid assets required in case of material changes in the business of the investment firm;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Regulations 21 and 23;
- (c) to require an investment firm to present, within one year, a plan to restore compliance with supervisory requirements pursuant to these Regulations and to Regulation (EU) 2019/2033, to set a deadline for the implementation of that plan and require improvements to that plan regarding scope and deadline;
- (d) to require an investment firm to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

- (e) to restrict or limit the business, operations or network of an investment firm or to request the divestment of activities that pose excessive risks to the financial soundness of an investment firm;
- (f) to require the reduction of the risk inherent in the activities, products and systems of an investment firm, including outsourced activities;
- (g) to require an investment firm to limit variable remuneration as a percentage of net revenues where that remuneration is inconsistent with the maintenance of a sound capital base;
- (h) to require an investment firm to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions or interest payments by an investment firm to shareholders, members or holders of Additional Tier 1 instruments where that restriction or prohibition does not constitute an event of default of the investment firm;
- (j) to impose additional or more frequent reporting requirements to those set out in these Regulations and in Regulation (EU) 2019/2033, including reporting on capital and liquidity positions;
- (k) to impose specific liquidity requirements in accordance with Regulation 38;
- (l) to require additional disclosures;
- (m) to require an investment firm to reduce the risks posed to the security of the investment firm's network and information systems to ensure confidentiality, integrity and availability of its processes, data and assets.

(2) For the purposes of paragraph (1)(j), the Bank may only impose additional or more frequent reporting requirements on an investment firm where the information to be reported is not duplicative and one of the following conditions is met:

- (a) one of the cases referred to in Regulation 34(a) or (b) applies;
- (b) the competent authority considers it to be necessary to gather the evidence referred to in Regulation 34(b);
- (c) the additional information is required for the purpose of the supervisory review and evaluation process referred to in Regulation 32.

(3) Information shall be deemed to be duplicative where—

- (a) the Bank already has the same or substantially the same information, or
- (b) that information is capable of being produced by the Bank or of being obtained by the Bank through other means than a requirement on the investment firm to report it.

(4) The Bank shall not require additional information where the information is available to the Bank in a different format or level of granularity than the

additional information to be reported and that different format or granularity does not prevent it from producing substantially similar information.

Additional own funds requirement

36. (1) The Bank shall only impose the additional own funds requirement referred to in Regulation 35(2)(a) where, on the basis of the reviews carried out in accordance with Regulations 32 and 33, it ascertains that any of the following apply to an investment firm:

- (a) the investment firm is exposed to risks or elements of risks, or poses risks to others that are material and are not covered or not sufficiently covered by the own funds requirement, and especially K-factor requirements, set out in Part Three or Four of Regulation (EU) 2019/2033;
- (b) the investment firm does not meet the requirements set out in Regulations 21 and 23 and other supervisory measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;
- (c) the adjustments in relation to the prudent valuation of the trading book are insufficient to enable the investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;
- (d) the review carried out in accordance with Regulation 33 shows that non-compliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital;
- (e) the investment firm repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Regulation 37.

(2) For the purposes of paragraph (1)(a), risks or elements of risks shall be considered not to be covered or to be insufficiently covered by the own funds requirements set out in Parts Three and Four of Regulation (EU) 2019/2033 only where the amounts, types and distribution of capital considered adequate by the Bank following the supervisory review of the assessment carried out by an investment firm in accordance with Regulation 21(1) are higher than the investment firm's own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

(3) For the purposes of paragraph (2), the capital considered to be adequate may include risks or elements of risks that are explicitly excluded from the own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

(4) The Bank shall determine the level of the additional own funds required pursuant to Regulation 35(1)(a) as the difference between the capital considered adequate pursuant to paragraph (2) and the own funds requirement set out in Part Three or Four of Regulation (EU) 2019/2033.

(5) The Bank shall require an investment firm to meet the additional own funds requirement referred to in Regulation 35(1)(a) with own funds subject to the following conditions:

- (a) at least three quarters of the additional own funds requirement is met with Tier 1 capital;
- (b) at least three quarters of the Tier 1 capital is composed of Common Equity Tier 1 capital;
- (c) those own funds are not used to meet any of the own funds requirements set out in points (a), (b) and (c) of Article 11(1) of Regulation (EU) 2019/2033.

(6) The Bank shall set out in writing its decision to impose an additional own funds requirement as referred to in Regulation 35(1)(a) by giving a clear account of the full assessment of the elements referred to in paragraphs (1) to (5), including, in relation to paragraph (1)(d), a specific statement of why the level of capital established in accordance with Regulation 37(1) is no longer considered sufficient.

(7) The Bank may impose an additional own funds requirement in accordance with this Regulation and the regulatory technical standards, if any, adopted under Article 40(6) of the Investment Firms Directive on an investment firm that meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033 on the basis of a case-by-case assessment and where the Bank deems it to be justified.

Guidance on additional own funds

37. (1) The Bank may, taking into account the principle of proportionality and commensurate with the size, systemic importance, nature, scale and complexity of activities of an investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, require the investment firm to have levels of own funds which, based on Regulation 21, are sufficiently above the requirements set out in Part Three of Regulation (EU) 2019/2033 and in these Regulations, including the additional own funds requirements referred to in Regulation 35(1)(a), to ensure that cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the investment firm to wind down and cease activities in an orderly manner.

(2) The Bank shall, where appropriate, review the level of own funds that has been set by each investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, in accordance with paragraph (1) and, where relevant, shall communicate the conclusions of that review to the investment firm concerned, including any requirements for adjustments to the level of own funds established in accordance with paragraph (1).

(3) A communication of the conclusions of a review under paragraph (2) shall include the date by which the Bank requires the adjustment to be completed.

Specific liquidity requirements

38. (1) The Bank shall impose the specific liquidity requirements referred to in Regulation 35(1)(k) only where, on the basis of the reviews carried out in accordance with Regulations 32 and 33, the Bank concludes that an investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033 or that meets the conditions set out in Article 12 (1) of Regulation (EU) 2019/2033 but has not been exempted from liquidity requirement in accordance with Article 43(1) of Regulation (EU) 2019/2033 is in one of the following situations:

- (a) the investment firm is exposed to liquidity risk or elements of liquidity risk that are material and are not covered or not sufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033;
- (b) the investment firm does not meet the requirements set out in Regulations 21 and 23 and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe.

(2) For the purposes of paragraph (1)(a), liquidity risk or elements of liquidity risk shall be considered not to be covered or to be insufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033 only where the amounts and types of liquidity considered adequate by the competent authority following the supervisory review of the assessment carried out by investment firms in accordance with Regulation 21(1) are higher than the investment firm's liquidity requirement set out in Part Five of Regulation (EU) 2019/2033.

(3) The Bank shall determine the level of the specific liquidity required pursuant to Regulation 35(1)(k) as the difference between the liquidity considered adequate pursuant to paragraph (2) and the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033.

(4) The Bank shall require an investment firm to meet the specific liquidity requirements referred to in Regulation 35(1)(k) with liquid assets as set out in Article 43 of Regulation (EU) 2019/2033.

(5) The Bank shall set out in writing its decision to impose a specific liquidity requirement as referred to in Regulation 35(1)(k) by giving a clear account of the full assessment of the elements referred to in paragraphs (1) to (3).

Cooperation with resolution authorities

39. The Bank shall notify the relevant resolution authorities of—

- (a) any additional own funds requirement imposed pursuant to Regulation 35(1)(a) for an investment firm that falls under the scope of Directive 2014/59/EU, and
- (b) any expectation for adjustments as referred to in Regulation 37(2) in respect to such an investment firm.

Publication requirements

40. The Bank may—

(a) require—

- (i) an investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, and
- (ii) an investment firm referred to in Article 46(2) of that Regulation,

to publish the information referred to in Article 46 of that Regulation more than once a year and to set deadlines for that publication,

(b) require—

- (i) an investment firm that does not meet the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, and
- (ii) an investment firm referred to in Article 46(2) of Regulation (EU) 2019/2033,

to use specific media and locations, in particular the investment firm's website, for publications other than the financial statements, or

- (c) require a parent undertaking to publish annually, either in full or by way of references to equivalent information, a description of its legal structure and the governance and organisational structure of the investment firm group in accordance with Regulation 23(1) and with Article 10 of Directive 2014/65/EU.

Obligation to inform EBA

41. The Bank shall inform EBA of—

- (a) their review and evaluation process referred to in Regulation 32,
- (b) the methodology used for decisions referred to in Regulations 35, 36 and 37, and
- (c) the level of administrative sanctions laid down by the State, referred to in Regulation 16 and section 33AQ of the Act of 1942.

Chapter 3

*Supervision of investment firm groups**Determination of the group supervisor*

42. (1) Where an investment firm group is headed by a Union parent investment firm in respect of which the Bank is the competent authority, the Bank shall exercise supervision on a consolidated basis or supervision of compliance with the group capital test.

(2) Where—

- (a) the Bank is the competent authority in respect of an investment firm, and
- (b) the parent undertaking of the investment firm is a Union parent investment holding company or a Union parent mixed financial holding company,

the Bank shall exercise supervision on a consolidated basis or supervision of compliance with the group capital test.

(3) Where—

- (a) two or more investment firms authorised in two or more Member States, one of which is the State, have as their parent—
 - (i) the same Union parent investment holding company, or
 - (ii) the same Union parent mixed financial holding company, and
- (b) the Bank is the competent authority in respect of the investment firm authorised in the Member State in which the investment holding company or mixed financial holding company is established,

the Bank shall exercise supervision on a consolidated basis or supervision of compliance with the group capital test.

(4) Where—

- (a) the parent undertakings of two or more investment firms authorised in two or more Member States, one of which is the State, comprise more than one investment holding company or mixed financial holding company with head offices in different Member States,
- (b) there is an investment firm in each of those Member States, and
- (c) the Bank is the competent authority in respect of the investment firm with the largest balance sheet total,

the Bank shall exercise supervision on a consolidated basis or supervision of compliance with the group capital test.

(5) Where—

- (a) two or more investment firms authorised in the European Union, at least one of which is authorised in the State, have as their parent the same Union investment holding company or Union mixed financial holding company,
- (b) none of those investment firms has been authorised in the Member State in which the investment holding company or mixed financial holding company was set up, and
- (c) the Bank is the competent authority in respect of the investment firm with the largest balance sheet total,

the Bank shall exercise supervision on a consolidated basis or supervision of compliance with the group capital test.

(6) The Bank may, with the competent authorities of other Member States—

- (a) decide to disapply paragraphs (3), (4) and (5), where their application would not be appropriate for the effective supervision on a consolidated basis or supervision of compliance with the group capital test, taking into account the investment firms concerned and the importance of their activities in the relevant Member States, and
- (b) designate a competent authority to exercise supervision on a consolidated basis or supervision of compliance with the group capital test.

(7) The Bank, together with the other competent authorities concerned, shall, before making a decision under paragraph (6), give—

- (a) the Union parent investment holding company,
- (b) the Union parent mixed financial holding company, or
- (c) the investment firm with the largest balance sheet total,

as the case may be, an opportunity to state its opinion on that intended decision.

(8) The Bank, together with the other competent authorities concerned, shall, notify the Commission and EBA of any decision made under paragraph (6).

Information requirements in emergency situations

43. (1) Where—

- (a) an emergency situation arises which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of an investment firm group have been authorised, and
- (b) the Bank is the group supervisor in accordance with Regulation 42, the Bank shall, subject to Regulations 13, 14 and 15, alert, as soon as practicable, EBA, ESRB and any relevant competent authorities and shall communicate all information essential for the performance of their tasks.

- (2) In this Regulation, “emergency situation” includes—
- (a) a situation as described in Article 18 of Regulation (EU) No 1093/2010, and
 - (b) a situation of adverse developments in markets.

Colleges of supervisors

44. (1) Where the Bank is the group supervisor in accordance with Regulation 42, it may, if appropriate, establish a college of supervisors to facilitate the exercise of the tasks referred to in this Regulation and to ensure coordination and cooperation with relevant third-country supervisory authorities, in particular where this is needed for the purpose of applying point (c) of the first subparagraph of Article 23(1) and Article 23(2) of Regulation (EU) 2019/2033 to exchange and update relevant information on the margin model with the supervisory authorities of the qualifying central counterparties.

(2) Where the Bank establishes a college of supervisors, the college of supervisors shall establish a framework for the Bank (in its role as group supervisor), EBA and the other competent authorities concerned for the purposes of carrying out the following tasks:

- (a) the tasks referred to in Regulation 43;
- (b) the coordination of information requests where this is necessary for facilitating supervision on a consolidated basis, in accordance with Article 7 of Regulation (EU) 2019/2033;
- (c) the coordination of information requests, in cases where several competent authorities of investment firms that are part of the same group need to request, either from the competent authority of a clearing member’s home Member State or from the competent authority of the qualifying central counterparty, information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firms;
- (d) the exchange of information between all competent authorities and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010 and with ESMA in accordance with Article 21 of Regulation (EU) No 1095/2010;
- (e) reaching an agreement on the voluntary delegation between competent authorities of tasks and responsibilities, where appropriate;
- (f) increasing the efficiency of supervision by seeking to avoid the unnecessary duplication of supervisory requirements.

(3) The Bank shall be a member of a college of supervisors where it is a competent authority responsible for the supervision of a subsidiary of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company.

(4) Where the Bank is the group supervisor in accordance with Regulation 42, it shall—

- (a) chair the meetings of the college of supervisors,
- (b) adopt decisions,
- (c) keep all members of the college of supervisors fully informed in advance of the organisation of those meetings, of the main issues to be discussed and of the activities to be considered,
- (d) keep all the members of the college of supervisors fully informed, in a timely manner, of the decisions adopted in those meetings or the measures carried out, and
- (e) take account of the relevance of the supervisory activity to be planned or coordinated by the authorities referred to in Article 48(5) of the Investment Firms Directive when adopting decisions.

(5) The establishment and functioning of a college of supervisors shall be formalised by means of written arrangements.

(6) Where the Bank participates in a college of supervisors, but is not the group supervisor, and it disagrees with a decision adopted by the group supervisor on the functioning of colleges of supervisors, the Bank may refer the matter to EBA and request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

Cooperation requirements

45. (1) The Bank shall, where it is a group supervisor or a member of a college of supervisors in accordance with Regulation 44(3), provide the other members of the college of supervisors with all relevant information as required, including the following:

- (a) identification of the investment firm group's legal and governance structure, including its organisational structure, covering all regulated and non-regulated entities, non-regulated subsidiaries and the parent undertakings, and of the competent authorities of the regulated entities in the investment firm group;
- (b) procedures for the collection of information from the investment firms in an investment firm group, and the procedures for the verification of that information;
- (c) any adverse developments in investment firms or in other entities of an investment firm group, which could seriously affect those investment firms;
- (d) any significant sanctions and exceptional measures taken by the Bank in accordance with these Regulations;
- (e) the imposition of a specific own funds requirement under Regulation 35.

(2) The Bank may refer to the EBA, in accordance with Article 19(1) of Regulation (EU) No 1093/2010, where—

- (a) relevant information has not been communicated in accordance with Article 49(1) of the Investment Firms Directive without undue delay, or
- (b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable period of time.

(3) Subject to paragraph (5), the Bank shall, before adopting a decision that may be important for other competent authorities' supervisory tasks, consult those other competent authorities on the following:

- (a) changes in the shareholder, organisational or management structure of investment firms in an investment firm group, which require the approval or authorisation of competent authorities;
- (b) significant sanctions imposed on investment firms by competent authorities or any other exceptional measures taken by those authorities;
- (c) specific own funds requirements imposed in accordance with Regulation 35.

(4) The Bank shall consult the group supervisor where significant sanctions are to be imposed or any other exceptional measures are to be taken by the Bank, as referred to in paragraph (3)(b).

(5) The Bank shall not be required to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision.

(6) Where paragraph (5) applies, the Bank shall inform the other competent authorities concerned of the decision not to consult without delay.

Verification of information concerning entities located in other Member States

46. (1) Where—

- (a) a competent authority in a Member State other than the State needs to verify information about—
 - (i) an investment firm,
 - (ii) an investment holding company,
 - (iii) a mixed financial holding company,
 - (iv) a financial institution,
 - (v) an ancillary services undertaking,
 - (vi) a mixed-activity holding company, or
 - (vii) a subsidiary that is located in the State, including a subsidiary which is an insurance company, and
- (b) makes a request to that effect,

the Bank shall carry out that verification in accordance with paragraph (2).

(2) Where the Bank has received a request referred to in paragraph (1), it shall do one or more of the following:

- (a) carry out the verification itself within the framework of its competence;
- (b) allow the competent authority who made that request to carry out the verification;
- (c) request an auditor or expert to carry out the verification impartially and to report the results promptly.

(3) A competent authority of another Member State that has made a request referred to in paragraph (1) shall be allowed to participate in a verification where the Bank proceeds in accordance with paragraph (2)(a) or (c).

Inclusion of holding companies in supervision of compliance with group capital test

47. Investment holding companies and mixed financial holding companies shall be included in the supervision of compliance with the group capital test.

Qualifications of directors

48. Where an investment holding company or a mixed financial holding company appoints a person as a member of a management body, it shall satisfy itself, at the time of appointment and for so long as that person stands appointed, that the person is of sufficiently good repute and possesses sufficient knowledge, skills and experience to effectively perform his or her duties, taking into account the specific role of an investment holding company or mixed financial holding company, as the case may be.

Mixed-activity holding companies

49. (1) The Bank may, where it is responsible for the supervision of an investment firm whose parent undertaking is a mixed-activity holding company—

- (a) require that the mixed-activity holding company supply the Bank with any information that may be relevant for the supervision of that investment firm, and
- (b) supervise transactions between the investment firm and the mixed-activity holding company and the subsidiaries of the latter, and require the investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

(2) The Bank may carry out, or have carried out by external inspectors, on-the-spot inspections to verify the information received from mixed-activity holding companies and their subsidiaries.

Assessment of third-country supervision and other supervisory techniques

50. (1) Where two or more investment firms that are subsidiaries of the same parent undertaking, the head office of which is in a third country, are not subject to effective supervision at group level, the Bank shall assess whether the investment firms are subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in these Regulations and in Part One of Regulation (EU) 2019/2033.

(2) Where the assessment referred to in paragraph (1) concludes that no such equivalent supervision applies, the Bank shall take appropriate measures to achieve the objectives of supervision in accordance with Article 7 or 8 of Regulation (EU) 2019/2033.

(3) Where the Bank would have been the group supervisor had the parent undertaking been established in the European Union, the measures referred to in paragraph (2) shall be decided by the Bank, after consulting the other competent authorities involved.

(4) Where the Bank takes any measures under paragraph (2), it shall notify—

- (a) the other competent authorities involved,
- (b) the EBA, and
- (c) the European Commission.

(5) The Bank may, where it would have been the group supervisor had the parent undertaking been established in the European Union, in particular, require the establishment of an investment holding company or mixed financial holding company in the European Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company, as the case may be.

Part 5

PUBLICATION

Publication requirements

51. (1) The Bank shall publish all of the following information on its website:

- (a) the texts of laws, regulations, administrative rules and general guidance adopted in the State pursuant to the Investment Firms Directive;
- (b) the manner of exercise of the options and discretions available pursuant to the Investment Firms Directive and to Regulation (EU) 2019/2033;
- (c) the general criteria and methodologies the Bank applies in the supervisory review and evaluation referred to in Regulation 32;

- (d) aggregate statistical data on key aspects of the implementation of these Regulations and of Regulation (EU) 2019/2033 in the State, including the number and nature of—
 - (i) supervisory measures taken in accordance with Regulation 35(1)(a), and
 - (ii) administrative sanctions imposed in accordance with Regulation 16 and Part IIIC of the Act of 1942.

(2) The information published in accordance with paragraph (1) shall be sufficiently comprehensive and accurate to enable a meaningful comparison of the application of paragraph (1)(b), (c) and (d) by the Bank with the application by competent authorities in other Member States of the laws of those Member States giving effect to points (b), (c) and (d) of Article 57 of the Investment Firms Directive.

(3) The Bank shall, when publishing information under paragraph (1), follow a common format, as determined in the implementing standards adopted by the European Commission under Article 57(4) of the Investment Firms Directive.

(4) The Bank shall regularly update the information published under paragraph (1).

Part 6

AMENDMENTS OF OTHER ENACTMENTS

Amendment of Act of 1942

52. The Act of 1942 is amended—

- (a) in section 33AK(10), in the definition of “supervisory EU legal acts”—
 - (i) by renumbering the second paragraph (ai) as paragraph (aj), and
 - (ii) by the insertion of the following paragraph after paragraph (aj) (as renumbered by subparagraph (i)):

“(ak) Regulation (EU) 2019/2033 of the European Parliament and Council of 27 November 2019⁴,”
- (b) in section 33BC, by the insertion of the following subsection after subsection (15):

“(16) This section shall not apply where Regulation 17 of the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021) applies.”,

⁴ OJ No. L. 314, 5.12.2019, p. 1.

(c) by the insertion of the following section after section 33ANF:

“Application of Part under Investment Firms Directive

33ANG.(1) This Part applies in relation to—

(a) the commission or suspected commission by an investment holding company, a mixed financial holding company or a mixed activity holding company of a contravention of—

(i) a relevant provision,

(ii) any direction given to an investment holding company, a mixed financial holding company or a mixed activity holding company under a relevant provision,

(iii) any direction given under financial services legislation to the investment holding company, mixed financial holding company or mixed activity holding company pursuant to a relevant provision,

(iv) any requirement imposed on an investment holding company, a mixed financial holding company or a mixed activity holding company under—

(I) a relevant provision,

(II) any direction given to an investment holding company, a mixed financial holding company or a mixed activity holding company under a relevant provision, or

(III) any direction given under financial services legislation to the investment holding company, mixed financial holding company or mixed activity holding company pursuant to a relevant provision,

or

- (v) any obligation imposed on an investment holding company, a mixed financial holding company or a mixed activity holding company by this Part or imposed by the Bank pursuant to a power exercised under this Part,

and

- (b) participation, by a person concerned in the management of an investment holding company, a mixed financial holding company or a mixed activity holding company, in the commission of such a contravention.

(2) For the purpose of subsection (1)—

- (a) a reference in this Part to a regulated financial service provider or a financial service provider includes a reference to an investment holding company, a mixed financial holding company or a mixed activity holding company,
- (b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by an investment holding company, a mixed financial holding company or a mixed activity holding company, of a provision, direction, requirement or obligation referred to in subsection (1), and
- (c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of an investment holding company, a mixed financial holding company or a mixed activity holding company.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) In this section—

‘investment holding company’ has the same meaning as it has in the Regulations of 2021;

‘mixed financial holding company’ has the same meaning as it has in the Regulations of 2021;

‘mixed activity holding company’ has the same meaning as it has in the Regulations of 2021;

‘Regulations of 2021’ means the European Union (Investment Firms) Regulations 2021;

‘relevant provisions’ means a provision of Regulations 42 to 50 of the Regulations of 2021.”,
and

- (d) in Part 2 of Schedule 2, by the insertion of the following item:

“

78	S.I. No. 355 of 2021	European Union (Investment Firms) Regulations 2021	The whole instrument
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Amendment of Central Bank Act 1971

53. The Central Bank Act 1971 (No. 24 of 1971) is amended—

- (a) in section 2, in subsection (1), by the substitution of the following definition for the definition of “Capital Requirements Directive”:

“ ‘Capital Requirements Directive’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁵ 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 as amended by—

- (a) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014⁶ on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010,
- (b) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014⁷ 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 (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council,

⁵ OJ No. L. 176, 27.6.2013, p. 338.

⁶ OJ No. L. 60, 28.2.2014, p. 34.

⁷ OJ No. L. 173, 12.6.2014, p. 190.

- (c) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015⁸ on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC,
 - (d) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018⁹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU,
 - (e) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019¹⁰ 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, and
 - (f) Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019¹¹ 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;”, and
- (b) in section 11(1)(a)—
- (i) in subparagraph (x), by the substitution of “by its depositors,” for “by its depositors, or”,
 - (ii) in subparagraph (xi), by the substitution of “(S.I. No. 158 of 2014), or” for “(S.I. No. 158 of 2014).”, and
 - (iii) by the insertion of the following subparagraph after subparagraph (xi):
 - “(xii) uses its licence exclusively to engage in the activities referred to in point (1)(b) of Article 4(1) of the Capital Requirements Regulation and has, for a period of five consecutive years, average total assets below the thresholds set out in that Article.”.

⁸ OJ No. L. 337, 23.12.2015, p. 35.

⁹ OJ No. L. 156, 19.6.2018, p. 43.

¹⁰ OJ No. L. 150, 7.6.2019, p. 253.

¹¹ OJ No. L. 314, 5.12.2019, p. 64.

Amendment of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

54. Section 24 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 is amended, in subsection (1), by the substitution of the following definition for the definition of “Directive of 2009”:

“ ‘Directive of 2009’ means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009¹², as amended by—

- (a) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010¹³,
- (b) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011¹⁴,
- (c) Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013¹⁵,
- (d) Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014¹⁶,
- (e) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017¹⁷,
- (f) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019¹⁸,
- (g) Directive (EU) 2019/2034 of the European Parliament and of the Council of 20 June 2019¹⁹, and
- (h) Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019²⁰.”

Amendment of European Communities (Financial Conglomerates) Regulations 2004

55. The European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004) are amended, in Regulation 3(1)—

- (a) by the substitution of the following definition for the definition of “sectoral rules”:

“ ‘sectoral rules’ means legislation made by the European Union relating to the prudential supervision of regulated entities, in particular—

¹² OJ No. L. 302, 17.11.2009, p. 32.

¹³ OJ No. L. 331, 15.12.2010, p. 120.

¹⁴ OJ No. L. 174, 1.7.2011, p. 1.

¹⁵ OJ No. L. 145, 31.5.2013, p. 1.

¹⁶ OJ No. L. 257, 28.8.2014, p. 186.

¹⁷ OJ No. L. 347, 28.12.2017, p. 35.

¹⁸ OJ No. L. 188, 12.7.2019, p. 106.

¹⁹ OJ No. L. 324, 5.12.2019, p. 64.

²⁰ OJ No. L. 328, 18.12.2019, p. 29.

- (a) Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013²¹,
 - (b) Regulation (EU) No. 2019/2033 of the European Parliament and of the Council of 27 November 2019²²,
 - (c) the Insurance and Reinsurance Directive,
 - (d) the Capital Requirements Directive,
 - (e) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014²³, and
 - (f) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019²⁴; ”,
- (b) by the substitution of the following definition for the definition of “Capital Requirements Directive”:
- “ ‘Capital Requirements Directive’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013²⁵ 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 as amended by—
- (a) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014²⁶ on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010,
 - (b) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014²⁷ 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 (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council,
 - (c) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015²⁸ on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC,

²¹ OJ No. L. 176, 27.6.2013, p. 1.

²² OJ No. L. 314, 5.12.2019, p. 1.

²³ OJ No. L. 173, 12.6.2014, p. 349.

²⁴ OJ No. L. 314, 5.12.2019, p. 64.

²⁵ OJ No. L. 176, 27.6.2013, p. 338.

²⁶ OJ No. L. 60, 28.2.2014, p. 34.

²⁷ OJ No. L. 173, 12.6.2014, p. 190.

²⁸ OJ No. L. 337, 23.12.2015, p. 35.

- (d) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018²⁹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU,
 - (e) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019³⁰ 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, and
 - (f) Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019³¹ 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;”, and
- (c) by the substitution of the following definition for “Financial Conglomerates Directive”:
- “ ‘Financial Conglomerates Directive’ means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002³², as amended by;
- (a) Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005³³,
 - (b) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006³⁴,
 - (c) Directive 2008/25/EC of the European Parliament and of the Council of 11 March 2008³⁵,
 - (d) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009³⁶,
 - (e) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010³⁷,
 - (f) Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011³⁸,

²⁹ OJ No. L. 156, 19.6.2018, p. 43.

³⁰ OJ No. L. 150, 7.6.2019, p. 253.

³¹ OJ No. L. 314, 5.12.2019, p. 64.

³² OJ No. L. 35, 11.2.2003, p. 1.

³³ OJ No. L. 79, 24.3.2005, p. 9.

³⁴ OJ No. L. 177, 30.6.2006, p. 1.

³⁵ OJ No. L. 81, 20.3.2008, p. 40.

³⁶ OJ No. L. 335, 17.12.2009, p. 1.

³⁷ OJ No. L. 331, 15.12.2010, p. 120.

³⁸ OJ No. L. 326, 8.12.2011, p. 113.

- (g) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013³⁹,
- (h) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019⁴⁰,”.

Amendment of European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007

56. The European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007 (S.I. No. 366 of 2007) are amended, in Regulation 3(1), by the substitution of the following definition for “Financial Conglomerates Directive”:

“ ‘Financial Conglomerates Directive’ means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002⁴¹, as amended by;

- (a) Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005⁴²,
- (b) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006⁴³,
- (c) Directive 2008/25/EC of the European Parliament and of the Council of 11 March 2008⁴⁴,
- (d) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009⁴⁵,
- (e) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁴⁶,
- (f) Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011⁴⁷,
- (g) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁴⁸,
- (h) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019⁴⁹,”.

³⁹ OJ No. L. 176, 27.6.2013, p. 338.

⁴⁰ OJ No. L. 314, 5.12.2019, p. 64.

⁴¹ OJ No. L. 35, 11.2.2003, p. 1.

⁴² OJ No. L. 79, 24.3.2005, p. 9.

⁴³ OJ No. L. 177, 30.6.2006, p. 1.

⁴⁴ OJ No. L. 81, 20.3.2008, p. 40.

⁴⁵ OJ No. L. 335, 17.12.2009, p. 1.

⁴⁶ OJ No. L. 331, 15.12.2010, p. 120.

⁴⁷ OJ No. L. 326, 8.12.2011, p. 113.

⁴⁸ OJ No. L. 176, 27.6.2013, p. 338.

⁴⁹ OJ No. L. 314, 5.12.2019, p. 64.

Amendment of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

57. The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) are amended—

- (a) in Regulation 3, in paragraph (1), by the substitution of the following definition for the definition of “Directive”:
- “ ‘Directive’ means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009⁵⁰, as amended by—
- (a) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁵¹,
- (b) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011⁵²,
- (c) Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013⁵³,
- (d) Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014⁵⁴,
- (e) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017⁵⁵,
- (f) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019⁵⁶,
- (g) Directive (EU) 2019/2034 of the European Parliament and of the Council of 20 June 2019⁵⁷, and
- (h) Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019⁵⁸,”
- (b) in Regulation 17, by the substitution of the following paragraph for paragraph (6):
- “(6) The own funds of the management company shall never be less than the amount prescribed in Article 13 of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019⁵⁹.”, and
- (c) in Regulation 35(4)(a), by the substitution of “Article 9(1) of Directive (EU) 2019/2034 of the European Parliament and

⁵⁰ OJ No. L. 302, 17.11.2009, p. 32.

⁵¹ OJ No. L. 331, 15.12.2010, p. 120.

⁵² OJ No. L. 174, 1.7.2011, p. 1.

⁵³ OJ No. L. 145, 31.5.2013, p. 1.

⁵⁴ OJ No. L. 257, 28.8.2014, p. 186.

⁵⁵ OJ No. L. 347, 28.12.2017, p. 35.

⁵⁶ OJ No. L. 188, 12.7.2019, p. 106.

⁵⁷ OJ No. L. 324, 5.12.2019, p. 64.

⁵⁸ OJ No. L. 328, 18.12.2019, p. 29.

⁵⁹ OJ No. L. 314, 5.12.2019, p. 1.

Council of 27 November 2019⁶⁰” for “Article 28(2) Directive 2013/36/EU”.

Amendment of European Union (Alternative Investment Fund Managers) Regulations 2013

58. The European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) are amended—

- (a) in Regulation 5(1), by the substitution of the following definition for the definition of “Directive”:

“ ‘Directive’ means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011⁶¹, as amended by—

- (a) Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013⁶²,
- (b) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014⁶³,
- (c) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016⁶⁴,
- (d) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017⁶⁵,
- (e) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019⁶⁶, and
- (f) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019⁶⁷,” and
- (b) in Regulation 10(5), by the substitution of the following paragraph for paragraph (5):
- “(5) Irrespective of paragraph (3), the own funds of the AIFM shall never be less than the amount required under Article 13 of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019⁶⁸.”.

Amendment of European Union (Capital Requirements) Regulations 2014

59. The European Union (Capital Requirements) Regulations 2014 are amended—

- (a) in Regulation 2—

⁶⁰ OJ No. L. 314, 5.12.2019, p. 64.

⁶¹ OJ No. L. 174, 1.7.2011, p. 1.

⁶² OJ No. L. 145, 31.5.2013, p. 1.

⁶³ OJ No. L. 173, 12.6.2014, p. 349.

⁶⁴ OJ No. L. 354, 23.12.2016, p. 37.

⁶⁵ OJ No. L. 347, 28.12.2017, p. 35.

⁶⁶ OJ No. L. 188, 12.7.2019, p. 106.

⁶⁷ OJ No. L. 314, 5.12.2019, p. 64.

⁶⁸ OJ No. L. 314, 5.12.2019, p. 1.

- (i) by the deletion of paragraphs (2) and (3),
 - (ii) in paragraph (5), by the deletion of subparagraph (a), and
 - (iii) in paragraph (6), by the substitution of “paragraph (5)(c), (d) and (e)” for “paragraph (5)(a), (c), (d) and (e)”,
- (b) in Regulation 3(1)—
- (i) by the deletion of the definition of “local firm”, and
 - (ii) by the substitution of the following definition for the definition of “Directive 2002/87/EC”:
 - “ ‘Directive 2002/87/EC’ means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002⁶⁹, as amended by;
 - (a) Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005⁷⁰,
 - (b) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006⁷¹,
 - (c) Directive 2008/25/EC of the European Parliament and of the Council of 11 March 2008⁷²,
 - (d) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009⁷³,
 - (e) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁷⁴,
 - (f) Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011⁷⁵,
 - (g) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁷⁶,
 - (h) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019⁷⁷;”
 - (iii) by the substitution of the following definition for the definition of “Directive 2009/65/EC”:

⁶⁹ OJ No. L. 35, 11.2.2003, p. 1.

⁷⁰ OJ No. L. 79, 24.3.2005, p. 9.

⁷¹ OJ No. L. 177, 30.6.2006, p. 1.

⁷² OJ No. L. 81, 20.3.2008, p. 40.

⁷³ OJ No. L. 335, 17.12.2009, p. 1.

⁷⁴ OJ No. L. 331, 15.12.2010, p. 120.

⁷⁵ OJ No. L. 326, 8.12.2011, p. 113.

⁷⁶ OJ No. L. 176, 27.6.2013, p. 338.

⁷⁷ OJ No. L. 314, 5.12.2019, p. 64.

“ ‘Directive 2009/65/EC’ means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009⁷⁸, as amended by—

- (a) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010⁷⁹,
- (b) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011⁸⁰,
- (c) Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013⁸¹,
- (d) Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014⁸²,
- (e) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017⁸³,
- (f) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019⁸⁴,
- (g) Directive (EU) 2019/2034 of the European Parliament and of the Council of 20 June 2019⁸⁵, and
- (h) Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019⁸⁶,”

(c) in Regulation 9I, by the substitution of the following for paragraph (6):

“(6) For the purposes of this Regulation—

- (a) the total value of assets in the European Union of a third-country group shall be the sum of—
 - (i) the total value of assets of each institution in the European Union in the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where an institution’s balance sheet is not consolidated, and
 - (ii) the total value of assets of each branch of the third-country group authorised in the

⁷⁸ OJ No. L. 302, 17.11.2009, p. 32.

⁷⁹ OJ No. L. 331, 15.12.2010, p. 120.

⁸⁰ OJ No. L. 174, 1.7.2011, p. 1.

⁸¹ OJ No. L. 145, 31.5.2013, p. 1.

⁸² OJ No. L. 257, 28.8.2014, p. 186.

⁸³ OJ No. L. 347, 28.12.2017, p. 35.

⁸⁴ OJ No. L. 188, 12.7.2019, p. 106.

⁸⁵ OJ No. L. 324, 5.12.2019, p. 64.

⁸⁶ OJ No. L. 328, 18.12.2019, p. 29.

European Union in accordance with the Capital Requirements Directive, Regulation (EU) No 600/2014 of the European Parliament and of the Council or Directive 2014/65/EU, and

- (b) a reference to an institution shall include a reference to an investment firm.”,
- (d) by the deletion of Part 4,
- (e) in Regulation 47(1), by the deletion of “(other than an investment firm subject to Article 95 of the Capital Requirements Regulation)”,
- (f) in Regulation 54(2),
 - (i) in paragraph (e), by the substitution of “with a requirement under Chapter 1A of Part 3;” for “with a requirement under Chapter 1A of Part 3.”, and
 - (ii) by the insertion of the following subparagraph after subparagraph (e):
 - “(f) carrying out at least one of the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and meeting the threshold indicated in that Article without being authorised as a credit institution.”,
- (g) in Regulation 64, by the deletion of paragraph (22),
- (h) in Regulation 74—
 - (i) in paragraph (9), in subparagraph (h), by the deletion of “in order”, and
 - (ii) by the substitution the following paragraph for paragraph (11):
 - “(11) The operational steps, referred to in paragraph (9)(j), shall include holding collateral immediately available for central bank funding which shall include holding collateral in the currency of another Member State where necessary, or the currency of a third country to which the institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.”,
- (i) in Regulation 98, by the deletion of paragraph (2),
- (j) in Regulation 99—
 - (i) in paragraph (4)—

- (I) in subparagraph (a), by the substitution of “parent undertaking of a credit institution or an investment firm” for “parent undertaking of an institution”, and
- (II) in subparagraph (b), by the substitution of “supervises the credit institution or investment firm” for “supervises the institution”,
- (ii) in paragraph (5)(a), by the substitution of “two or more credit institutions or investment firms” for “two or more institutions”,
- (iii) in paragraph (9)(a), by the substitution of “taking into account the credit institutions or investment firms concerned” for “taking into account the institutions concerned”,
- (iv) in paragraph (10)(a), by the substitution of “taking into account the credit institutions or investment firms concerned” for “taking into account the institutions concerned”, and
- (v) in paragraph (11), by the substitution of “the credit institution or investment firm with the largest balance sheet total” for “the institution with the largest balance sheet total”,
- (k) in Regulation 102, by the substitution of the following paragraph for paragraph (1):
 - “(1) Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010, or a situation of adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches, as referred to in Regulation 47, are established, the Bank, where it is responsible for supervision on a consolidated basis, shall, subject to—
 - (a) section 33AK of the Act of 1942,
 - (b) Regulations 50A, 50B and 51, and
 - (c) where applicable, Regulations 13, 14 and 15 of the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021),
 alert, as soon as is practicable, the EBA and the authorities referred to in Articles 58(4) and 59 of the Capital Requirements Directive and shall communicate all information essential for the pursuance of their tasks.”,
- (l) in Regulation 104—

- (i) by the substitution of the following paragraph for paragraph (3):

“(3) The Bank, when participating in the colleges of supervisors, shall cooperate closely with the other competent authorities, and the confidentiality requirements under—

- (a) section 33AK of the Act of 1942,
- (b) Regulations 50A, 50B and 51, and
- (c) where applicable, Regulations 13, 14 and 15 of the European Union (Investment Firms) Regulations 2021,

shall not prevent the Bank from exchanging confidential information within colleges of supervisors.”,

- (ii) in paragraph (5), by the substitution of the following subparagraph for subparagraph (d):

“(d) third countries’ competent authorities, where appropriate, and subject to confidentiality requirements that are equivalent, in the opinion of all participating competent authorities in Member States, to the requirements under Articles 53 to 62 of the Capital Requirements Directive and, where applicable, Section 2 of Chapter 1 of Title IV of Directive (EU) 2019/2034;”, and

- (iii) by the substitution of the following paragraph for paragraph (8):

“(8) Where the Bank is the chair of a college of supervisors, it shall, subject to the confidentiality requirements of—

- (a) section 33AK of the Act of 1942,
- (b) Regulations 50A, 50B and 51, and
- (c) where applicable, Regulations 13, 14 and 15 of the European Union (Investment Firms) Regulations 2021,

inform the EBA of the activities of the college, including in emergency situations, and shall communicate to the EBA all information that is of particular relevance for the purposes of supervisory convergence.”,

- (m) in Regulation 113, in paragraph (3)—

- (i) by the substitution of “Information received within” for “Information received, within”, and

- (ii) by the substitution of “under Article 15 of Directive (EU) 2019/2034” for “under Directive 2004/39/EC.”,
- (n) by the deletion of Regulation 116,
- (o) by the deletion of Regulation 120, and
- (p) in Regulation 131(1), by the substitution of the following subparagraph for subparagraph (d):
 - “(d) without prejudice to the provisions set out in—
 - (i) section 33AK of the Act of 1942,
 - (ii) Regulations 50A, 50B and 51, and
 - (iii) where applicable, Regulations 13, 14 and 15 of the European Union (Investment Firms) Regulations 2021,

aggregate statistical data on key aspects of the implementation of the prudential framework in the State, including the number and nature of supervisory measures taken in accordance with Regulation 90(1) and of administrative penalties imposed in accordance with Regulation 53 or other financial services legislation.”.

Amendment of European Union (Credit Institutions: Financial Statements) Regulations 2015

60. The European Union (Credit Institutions: Financial Statements) Regulations 2015 (S.I. No. 266 of 2015) are amended, in Regulation 102, by the substitution of the following definition for the definition of “Capital Requirements Directive”:

“ ‘Capital Requirements Directive’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁸⁷ 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 as amended by—

- (a) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014⁸⁸ on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010,
- (b) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014⁸⁹ 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,

⁸⁷ OJ No. L. 176, 27.6.2013, p. 338.

⁸⁸ OJ No. L. 60, 28.2.2014, p. 34.

⁸⁹ OJ No. L. 173, 12.6.2014, p. 190.

2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council,

- (c) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015⁹⁰ on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC,
- (d) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018⁹¹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU,
- (e) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019⁹² 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, and
- (f) Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019⁹³ 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;”.

Amendment of European Union (Bank Recovery and Resolution) Regulations 2015

61. The European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) are amended—

- (a) in Regulation 3(1)—
 - (i) by the substitution of the following definition for the definition of “Bank Recovery and Resolution Directive”:

“ ‘Bank Recovery and Resolution Directive’ means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014⁹⁴ as amended by—

 - (a) Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017⁹⁵,

⁹⁰ OJ No. L. 337, 23.12.2015, p. 35.

⁹¹ OJ No. L. 156, 19.6.2018, p. 43.

⁹² OJ No. L. 150, 7.6.2019, p. 253.

⁹³ OJ No. L. 314, 5.12.2019, p. 64.

⁹⁴ OJ No. L. 173, 12.6.2014, p. 190.

⁹⁵ OJ No. L. 169, 30.6.2017, p. 46.

- (b) Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017⁹⁶,
 - (c) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019⁹⁷,
 - (d) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019⁹⁸, and
 - (e) Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019⁹⁹,”
- (ii) by the substitution of the following definition for the definition of “Capital Requirements Directive”:
- “ ‘Capital Requirements Directive’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹⁰⁰ 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 as amended by—
- (a) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014¹⁰¹ on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010,
 - (b) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014¹⁰² 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 (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council,
 - (c) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015¹⁰³ on payment services in the internal market,

⁹⁶ OJ No. L. 345, 27.12.2017, p. 96.

⁹⁷ OJ No. L. 150, 7.6.2019, p. 296.

⁹⁸ OJ No. L. 314, 5.12.2019, p. 64.

⁹⁹ OJ No. L. 328, 18.12.2019, p. 29.

¹⁰⁰ OJ No. L. 176, 27.6.2013, p. 338.

¹⁰¹ OJ No. L. 60, 28.2.2014, p. 34.

¹⁰² OJ No. L. 173, 12.6.2014, p. 190.

¹⁰³ OJ No. L. 337, 23.12.2015, p. 35.

amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC,

- (d) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018¹⁰⁴ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU,
 - (e) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019¹⁰⁵ 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, and
 - (f) Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019¹⁰⁶ 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;”
- (iii) by the substitution of the following definition for the definition of “Directive 2009/65/EC”:

“ ‘Directive 2009/65/EC’ means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009¹⁰⁷, as amended by—

- (a) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010¹⁰⁸,
- (b) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011¹⁰⁹,
- (c) Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013¹¹⁰,
- (d) Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014¹¹¹,
- (e) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017¹¹²,

¹⁰⁴ OJ No. L. 156, 19.6.2018, p. 43.

¹⁰⁵ OJ No. L. 150, 7.6.2019, p. 253.

¹⁰⁶ OJ No. L. 314, 5.12.2019, p. 64.

¹⁰⁷ OJ No. L. 302, 17.11.2009, p. 32.

¹⁰⁸ OJ No. L. 331, 15.12.2010, p. 120.

¹⁰⁹ OJ No. L. 174, 1.7.2011, p. 1.

¹¹⁰ OJ No. L. 145, 31.5.2013, p. 1.

¹¹¹ OJ No. L. 257, 28.8.2014, p. 186.

¹¹² OJ No. L. 347, 28.12.2017, p. 35.

- (f) Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019¹¹³,
 - (g) Directive (EU) 2019/2034 of the European Parliament and of the Council of 20 June 2019¹¹⁴, and
 - (h) Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019¹¹⁵,” and
- (iv) by the substitution of the following definition for the definition of “investment firm”:
- “‘investment firm’ means an investment firm, as defined in point (22) of Article 4(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council which is subject to the initial capital requirement in Article 9(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council;”, and
- (b) in Regulation 80B, by the insertion of the following paragraphs after paragraph (2):
- “(3) In accordance with Article 65 of Regulation (EU) 2019/2033, references to Article 92 of the Union Capital Requirements Regulation in these Regulations as regards the own funds requirements on an individual basis of investment firms which are not investment firms referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033 shall be construed as follows:
 - (a) references to point (c) of Article 92(1) of the Union Capital Requirements Regulation as regards the total capital ratio requirement in these Regulations shall be construed as referring to Article 11(1) of Regulation (EU) 2019/2033;
 - (b) references to Article 92(3) of the Union Capital Requirements Regulation as regards the total risk exposure amount in these Regulations shall be construed as referring to the applicable requirement in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12.5.
 - (4) In accordance with Article 65 of Directive (EU) 2019/2034, references in these Regulations to Regulation 92A of the Capital Requirements Regulations as regards additional own funds requirements of investment firms which are not investment firms referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033 shall be construed as referring

¹¹³ OJ No. L. 188, 12.7.2019, p. 106.

¹¹⁴ OJ No. L. 324, 5.12.2019, p. 64.

¹¹⁵ OJ No. L. 328, 18.12.2019, p. 29.

to Regulation 36 of the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021).”.

Amendment of European Union (Insurance and Reinsurance) Regulations 2015

62. The European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) are amended, in Regulation 3(1), by the substitution of the following definition for the definition of “Directive 2002/87/EC”:

“ ‘Directive 2002/87/EC’ means Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002¹¹⁶, as amended by;

- (a) Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005¹¹⁷,
- (b) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006¹¹⁸,
- (c) Directive 2008/25/EC of the European Parliament and of the Council of 11 March 2008¹¹⁹,
- (d) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009¹²⁰,
- (e) Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010¹²¹,
- (f) Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011¹²²,
- (g) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹²³,
- (h) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019¹²⁴;”.

Amendment to MiFID Regulations

63. The MiFID Regulations are amended—

- (a) in Regulation 3(1), by the substitution of the following definition for the definition of “Directive”:

“ ‘Directive’ means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014¹²⁵, as amended by—

¹¹⁶ OJ No. L. 35, 11.2.2003, p. 1.

¹¹⁷ OJ No. L. 79, 24.3.2005, p. 9.

¹¹⁸ OJ No. L. 177, 30.6.2006, p. 1.

¹¹⁹ OJ No. L. 81, 20.3.2008, p. 40.

¹²⁰ OJ No. L. 335, 17.12.2009, p. 1.

¹²¹ OJ No. L. 331, 15.12.2010, p. 120.

¹²² OJ No. L. 326, 8.12.2011, p. 113.

¹²³ OJ No. L. 176, 27.6.2013, p. 338.

¹²⁴ OJ No. L. 314, 5.12.2019, p. 64.

¹²⁵ OJ No. L. 173, 12.6.2014, p. 349.

- (a) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014¹²⁶,
 - (b) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016¹²⁷,
 - (c) Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016¹²⁸,
 - (d) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019¹²⁹, and
 - (e) Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019¹³⁰,”
- (b) in Regulation 4(3)(c), by the substitution of the following clause for clause (iii):
- “(iii) branches of investment firms or of credit institutions authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those specified in the Directive, the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014), the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. No. 159 of 2014) or the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021);”
- (c) in Regulation 9, by the substitution of the following paragraph for paragraph (10):
- “(10) The Bank shall not grant an application for authorisation by an investment firm unless the investment firm has sufficient initial capital in accordance with the requirements of Regulation 8 of the European Union (Investment Firms) Regulations 2021, having regard to the nature of the investment services it seeks authorisation to provide.”
- (d) in Regulation 13(1), by the substitution of the following subparagraph for subparagraph (e):
- “(e) no longer meets the conditions under which authorisation was granted, including, where applicable, the conditions specified in Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019¹³¹,”
- (e) in Regulation 21(9), by the substitution of the following subparagraph for subparagraph (b):

¹²⁶ OJ No. L. 257, 28.8.2014, p. 1.

¹²⁷ OJ No. L. 26, 2.2.2016, p. 19.

¹²⁸ OJ No. L. 175, 30.6.2016, p. 8.

¹²⁹ OJ No. L. 314, 5.12.2019, p. 64.

¹³⁰ OJ No. L. 320, 11.12.2019, p. 1.

¹³¹ OJ No. L. 314, 5.12.2019, p. 1.

- “(b) is a natural or legal person not subject to supervision under these Regulations or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), the European Union (Capital Requirements) Regulations 2014 or the European Union (Investment Firms) Regulations 2021.”,
- (f) in Regulation 22(1), by the substitution of the following subparagraph for subparagraph (d):
- “(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements in these Regulations and, where applicable, prudential requirements based on Directives other than the Directive, in particular the European Communities (Financial Conglomerates) Regulations 2004 (S.I. No. 727 of 2004), the European Union (Capital Requirements) Regulations 2014, the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. No. 159 of 2014), or the European Union (Investment Firms) Regulations 2021;”,
- (g) in Regulation 43(1), by the substitution of “in accordance with these Regulations, the European Union (Capital Requirements) Regulations 2014, and the European Union (Investment Firms) Regulations 2021” for “in accordance with these Regulations and European Union (Capital Requirements) Regulations 2014”,
- (h) in Regulation 50—
- (i) in paragraph (1)(b), by the substitution of “in paragraphs (2) and (6)” for “in paragraph (2)”, and
- (ii) by the insertion of the following paragraphs after paragraph (4):
- “(5) The Bank shall notify ESMA on an annual basis of the list of branches of third-country firms active in the State.
- (6) The branch of the third-country firm that is authorised in accordance with paragraph (1) shall report the following information to the Bank on an annual basis:
- (a) the scale and scope of the services and activities carried out by the branch in the State;
- (b) for third-country firms performing the activity specified in paragraph 3 of Part 1 of Schedule 1, their monthly minimum, average and maximum exposure to EU counterparties;

- (c) for third-country firms providing one or both of the services specified in paragraph 6 of Part 1 of Schedule 1, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the previous 12 months;
 - (d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in subparagraph (a);
 - (e) a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in Regulation 48(2)(f);
 - (f) their risk management policy and arrangements applied by the branch for the services and activities referred to in subparagraph (a);
 - (g) the governance arrangements, including key function holders for the activities of the branch;
 - (h) any other information considered by the Bank to be necessary to enable comprehensive monitoring of the activities of the branch.
- (7) Upon request, the Bank shall communicate the following information to ESMA:
- (a) all the authorisations for branches authorised in accordance with paragraph (1) and any subsequent changes to such authorisations;
 - (b) the scale and scope of the services and activities carried out by an authorised branch in the State;
 - (c) the turnover and the total assets corresponding to the services and activities referred to in subparagraph (b);
 - (d) the name of the third-country group to which an authorised branch belongs.
- (8) The Bank shall cooperate closely with the competent authorities of entities that are part of the same group to which branches of third-country firms authorised in accordance with paragraph (1) belong, ESMA and EBA to ensure that all

activities of that group in the European Union are subject to comprehensive, consistent and effective supervision in accordance with the Directive, Regulation (EU) No 575/2013, Regulation (EU) No 600/2014, Regulation (EU) 2019/2033, Directive 2013/36/EU, and Directive (EU) 2019/2034.”,

- (i) in Regulation 51—
 - (i) in paragraph (1), by the substitution of “by the third-country firm to that person, including” for “by the third-country firm to that person including”, and
 - (ii) by the insertion of the following paragraph after paragraph (2):
 - “(3) Without prejudice to intragroup relations, where a third-country firm, including through an entity acting on its behalf or having close links with such third-country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the European Union, it shall not be deemed, for the purposes of paragraph (1), to be a service provided at the own exclusive initiative of the client.”,
- (j) in Regulation 73, by the insertion of the following paragraph after paragraph (2):
 - “(3) The application of tick sizes shall not prevent regulated markets from matching orders large in scale at mid-point within the current bid and offer prices.”,
- (k) in Regulation 134(5), by the substitution of the following subparagraph for subparagraph (a):
 - “(a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms.”, and
- (l) by the insertion of the following Regulation after Regulation 144:
 - “*Transitional provision on the authorisation of credit institution referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013*
 - 144A. The Bank shall inform the competent authority to which an application for authorisation has been made in accordance with Article 8 of Directive 2013/36/EU where the envisaged total assets of an undertaking which has applied to the Bank for authorisation under Part 2 of these Regulations before 25 December 2019 in order to carry out the activities referred to in paragraphs 3 and 6 of Part

1 of Schedule 1 are equal to or exceed €30,000,000,000, and notify the applicant thereof.”.

Amendment of European Union (Payment Services) Regulations 2018

64. The European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018) are amended, in Regulation 2(1), by the substitution of the following definition for the definition of “Directive 2013/36/EU”:

“ ‘Directive 2013/36/EU’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹³² 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 as amended by—

- (a) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014¹³³ on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010,
- (b) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014¹³⁴ 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 (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council,
- (c) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015¹³⁵ on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC,
- (d) Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018¹³⁶ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU,
- (e) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019¹³⁷ 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, and

¹³² OJ No. L. 176, 27.6.2013, p. 338.

¹³³ OJ No. L. 60, 28.2.2014, p. 34.

¹³⁴ OJ No. L. 173, 12.6.2014, p. 190.

¹³⁵ OJ No. L. 337, 23.12.2015, p. 35.

¹³⁶ OJ No. L. 156, 19.6.2018, p. 43.

¹³⁷ OJ No. L. 150, 7.6.2019, p. 253.

- (f) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019¹³⁸ 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;”.



GIVEN under my Official Seal,
21 September, 2021.

PASCHAL DONOHOE,
Minister for Finance.

¹³⁸ OJ No. L. 314, 5.12.2019, p. 64.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give partial effect to Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms (the “Investment Firms Directive”). The Investment Firm Directive (IFD) and Regulation (IFR) puts in place a new prudential framework for Investment Firms authorised under Directive 2014/65/EU, the Markets in Financial Instruments Directive (MiFID II). The specific rules that will apply to a particular investment firm will depend on a firm’s classification under this new prudential framework.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

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