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THE MACROPRUDENTIAL OVERSIGHT OF INSTITUTIONS LAW OF 2015

Preamble.
Official Journal of the EU.:
L176, 27.6.2013,
p. 338.

For the purposes of harmonization with the act of the European Union entitled "Directive 2013/36 / EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC";

The House of Representatives enacts as follows:

PART I

PRELIMINARY PROVISIONS

Short title.

1. This Law shall be cited as the Macroprudential Oversight of Institutions Law of 2015.

Interpretation.

2. (1) In this Law, unless the context otherwise requires -

66(I) of 1997
74(I) of 1999
94(I) of 2000
119(I) of 2003
4(I) of 2004
151 (I) of 2004
231(I) of 2004
235(I) of 2004
20(I) of 2005
80(I) of 2008
100(I) of 2009
123(I) of 2009
27(I) of 2011
104(I) of 2011

“ACI” means an authorised credit institution as defined by the Business of Credit Institutions Law, as amended, incorporated in the Republic;

107(I) of 2012
14(I) of 2013
87(I) of 2013
102(I) of 2013
141(I) of 2013
5(I) of 2015
26(I) of 2015
35(I) of 2015
71(I) of 2015
93(I) of 2015
109(I) of 2015
152(I) of 2015
168(I) of 2015
21(I) of 2016.

144(I) of 2007
106(I) of 2009
141(I) of 2012
154(I) of 2012
193(I) of 2014.

Official Gazette,
Annex One (I):
16.11.2012
30.11.2012.

“capital conservation buffer” means the own funds that ACIs and CIFs are required to maintain under section 22B of the Business of Credit Institutions Law in relation to ACIs, and under the Investment Services and Activities and Regulated Markets Law, as amended;

"G-SII buffer" means the requirement for own funds under subsection (4) of section 6;

"O-SII buffer" means the requirement for own funds under subsection (5) of section 6;

"systemic risk buffer" means the own funds that an institution is or may be required to maintain under section 7.

“competent authorities” means:

- (a) for the ACIs, the Central Bank of Cyprus, and
- (b) for the CIFs, the Cyprus Securities and Exchange Commission;

Official Journal of E.U.:
L331,
15.12.2010, p. 12.

“EBA” means the European Supervisory Authority (European Banking Authority) established by the European Union Act in accordance with the “Regulation (EU) No 1093/2010 of the European Parliament and the Council on 24 November 2010 according to the establishment of the European Supervisory Authority (European Banking Authority), the amendment of the decision No. 716/2009/EU and the repealing of the decision 2009/78/EU”;

"institution-specific countercyclical capital buffer" means the own funds that an institution is required to maintain in accordance with section 5;

138(I) of 2002
166(I) of 2003
34(I) of 2007
86(I) of 2013
66(I) of 2014
139(I) of 2014
144(I) of 2014.

"Designated Authority" means the Central Bank of Cyprus competent for the macroprudential oversight of the financial system under paragraph (e), subsection (2) of section 6 of the Central Bank of Cyprus Laws as amended;

Official Gazette,
Annex One (I):
25.10.2013
20.6.2014.

"Committee" means the European Committee;

73(I) of 2009
5(I) of 2012
65(I) of 2014.

"Securities Commission" means the Securities and Exchange Commission established and operating in accordance with the Cyprus Securities and Exchange Commission (Registry and Responsibilities) Law, as amended;

Official Gazette,
Annex One (I):
31.7.2005.

"ESRB" means the European Systemic Risk Board which has been established by the European Union Act entitled "Regulation (EU) No 1092/2010 of the European Parliament and the Council according to the macroprudential oversight of the European Union's financial system and the establishment of the European Systemic Risk Board";

Official Journal of E.U.:
L331,
15.12.2010, p.1.

"institution" shall have the meaning attributed to this term by Article 4 of Regulation (EU) No 575/2013;

"domestically-authorized institution" means an institution that has been authorised in the Member State for which a particular Designated Authority is responsible for setting the countercyclical buffer rate;

Official Journal of E.U.:
L. 176,
27.6.2013, p. 1.

"Regulation (EU) No 575/2013" means the Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

"CIF" means a Cypriot Undertaking for the Provision of Investment Services as defined under section 2 of the Investment Services and Activities and Regulated Markets Law;

Official Journal of E.U.:
L. 176,
27.6.2013, p. 338.

"Directive 2013/36/EU" means the Directive 2013/36/EU of the European Parliament and the Council of the 26 June 2013 on the access on the operations of credit institutions and the prudential supervision of credit institutions and investment firms, for the amendment of the Directive 2002/87/EU and for the repealing of the Directives 2006/48/EU and 2006/49/EU;

Official Journal of E.U.:
L. 208,
2.8.2013, p. 73.

"buffer guide" means a benchmark buffer rate calculated in accordance with article 8(1);

"countercyclical buffer rate" means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with articles 10 and 11 or by a relevant third-country authority, as the case may be.

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

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

"systemic risk" means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

"systemically important institution" means an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk.

(2) For the purposes of this Law, the terms that are not defined in any way in it, unless it is otherwise mentioned in the text, mean as they are defined by the Central Bank of Cyprus Laws, the Business of Credit Institutions Law, the Securities and Exchange (Establishment and Responsibilities) Law, the Investment Services and Activities and Regulated Markets Law and Regulation (EU) No 575/2013.

(3) In this Law and under the delegated acts pursuant to this Law, any reference to an EU legal act, such as a Directive, Regulation or Decision, means this act as corrected, amended or replaced, unless the context otherwise requires.

Designated authority, oversight, and exclusion from the scope of this Law.

3. (1) The Central Bank, as the Designated Authority, and in cooperation and communication with the competent authorities in the Republic, is appointed responsible for the implementation of the provisions of Articles 129(3), 130(3), 131(1) and (5), 133(2) of the Directive 2013/36/EU as well as Article 458(1) of the Regulation 575/2013.

(2) The oversight of compliance of the ACIs and CIFs with the provisions of this Law and directives issued by virtue of this Law is assigned to the Central Bank and the Cyprus Securities and Exchange Commission, respectively.

(3) This Law does not apply to CIFs which are not authorised to provide the investment services according to paragraphs 3 and 6 of section I of Annex Three of the Investment Services and Activities and Regulated Markets Law, as amended.

PART II

GENERAL PROVISIONS

Exemptions from capital conservation buffer requirements.

4. (1) By way of derogation from the provisions of the Investment Services and Activities and Regulated Markets Law, as amended, the Designated Authority, in cooperation and communication with the Cyprus Securities and Exchange Commission, may exempt small and medium-sized investment firms from the requirements set out in Article 129(1) of Directive 2013/36/EU, provided that such an exemption shall not threaten the stability of the financial system of the Republic.

(2) The decision of the Designated Authority regarding the exemption outlined in subsection (1) should be completely reasoned, should include an explanation as to why the exemption shall not threaten the stability of the financial system of the Republic and should contain the exact definition of the small and medium-sized investment firms which are exempt.

(3) The Designated Authority shall notify the Commission, the ESRB, the EBA and the competent authorities of the Member States concerned, about its decision to apply the exemption outlined in this section.

Official Journal of E.U.:
L 124,
20.5.2003, p. 36.

(4) For the purposes of subsection (1), investment firms shall be categorised as small or medium-sized in accordance with Commission's Recommendation 2003/361/EC of 6 May 2003, concerning the definition of micro, small and medium-sized enterprises.

Requirement to maintain an institution-specific countercyclical capital buffer.

5. (1) ACIs and investment firms are required to maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with Article 14 of this Directive on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.

(2) (a) By way of derogation from subsection (1), the Designated Authority, after cooperating and communicating with the Cyprus Securities and Exchange Commission, may exempt small and medium-sized investment firms from the

requirements set out in subsection (1), provided that such an exemption shall not threaten the stability of the financial system of the Republic.

(b) The decision of the Designated Authority on the application of the exemption outlined in paragraph (a) should be fully reasoned, should include an explanation as to why the exemption shall not threaten the stability of the financial system of the Republic and should contain the exact definition of small and medium-sized investment firms which are exempt.

(c) The Designated Authority shall notify the Commission, the ESRB, EBA and the competent authorities of the Member States concerned, about its decision to apply the exemption provided by the present section.

(3) For the purposes of paragraph 2, investment firms shall be categorised as small and medium-sized in accordance with the Commission's Recommendation 2003/361/EC, of 6 May 2003, regarding the definition of micro, small and medium-sized investment firms.

(4) ACIs and investment firms shall meet the requirement of subsection (1), by using Common Equity Tier 1 capital, which is additional to any Common Equity Tier 1 capital maintained to meet the own funds requirement provided by Article 92 of Regulation (EU) No 575/2013, the capital conservation buffer requirement provided by section 22B of the Business of Credit Institutions Law, as amended and any requirement under section 30 of the Business of Credit Institutions Law, in relation to ACIs and the Directive of the Securities and Exchange Commission issued by virtue of Article 73 of the Investment Services and Activities and Regulated Markets Law, in relation to investment firms.

(5) Where an ACI or an investment firm fails to meet fully the requirement under subsection (1), it shall be subject to the restrictions on distributions set out in section 22C, subsections (2) and (3) of the Business of Credit Institutions Law as amended, in relation to ACIs and the Directive of the Commission issued by virtue of section 73 of the Investment Services and Activities and Regulated Markets Law, in relation to investment firms.

Global and other
systemically important
institutions.

6. (1) (a) The Designated Authority in cooperation and communication with the competent authorities shall identify, on a consolidated basis, global systemically important institutions (G-SIIs) and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised to operate in the Republic, by virtue of the Business of Credit Institutions Law or by the Investment Services and Activities and Regulated Markets Law, as amended.

(b) G-SIIs shall be EU parent institutions, EU parent financial holding companies, EU parent mixed financial holding companies or institutions. G-SIIs shall not be institutions that are subsidiaries of EU parent institutions, of EU parent financial holding companies or of EU parent mixed financial holding companies.

(c) O-SIIs can either be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company or institution.

2 (a) The identification methodology for G-SIIs is based on the following categories:

- (i) size of the group;
- (ii) interconnectedness of the group with the financial system;
- (iii) substitutability of the services or of the financial infrastructure provided by the group;
- (iv) complexity of the group;
- (v) cross-border activity of the group, including cross border activity between the Republic and other Member States and between the Republic and a third country.

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

(c) An overall score is produced from the implementation of the methodology for each assessed entity referred to in paragraph (a), which allows G-SIIs to be identified and allocated into a sub-category as provided by subsection (9).

(3) O-SIIs shall be identified in accordance with subsection (1) and systemic importance shall be assessed on the basis of at least any of the following criteria:

- (i) size;
- (ii) importance for the economy of the Union or that of the Republic;
- (iii) significance of cross-border activities;
- (iv) interconnectedness of the institution or group with the financial system.

(4) Each G-SII maintain, on a consolidated basis, a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(5) The Designated Authority, in cooperation and communication with the competent authorities, may require from each O-SII to maintain, on a consolidated or sub-consolidated or individual basis, as applicable an O-SII buffer of up to 2% of the total risk exposure amount calculated in accordance with Article 92, paragraph (3) of Regulation (EU) No 575/2013, taking into account the criteria for the identification of the O-SII. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(6) When requiring an O-SII buffer to be maintained, the Designated Authority shall ensure that:

- (a) the O-SII buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole, forming or creating an obstacle to the functioning of the internal market;
- (b) in cooperation and communication with the competent authorities, the O-SII buffer is reviewed by the Designated Authority at least annually.

(7) Before setting or resetting an O-SII buffer, the Designated Authority shall notify the Commission, the ESRB, EBA, and the competent and designated authorities of the Member States concerned one month prior to the publication of the decision referred to in subsection (5). That notification shall describe in detail:

- (a) the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;
- (b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the Republic;
- (c) the O-SII buffer rate that the Designated Authority wishes to set.

(8) Without prejudice to section 7 and subsection (5) of this section, where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies to the individual or sub-consolidated level for the O-SII shall not exceed the higher of:

- (a) 1% of the total risk exposure amount calculated in accordance with Article 92, paragraph (3) of Regulation (EU) No 575/2013; and
- (b) G-SII or O-SII buffer rate applicable to the group at consolidated level.

(9) There are at least five subcategories of G-SIIs -

- (a) the lowest threshold and thresholds between each subcategory shall be determined by the scores under the identification methodology.
- (b) the cut-off scores between adjacent sub-categories are defined clearly and adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of the highest sub-category;
- (c) the lowest sub-category is assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92, paragraph (3) of Regulation (EU) No 575/2013 and the buffer assigned to each sub-category shall increase in gradients of 0,5% of the total risk exposure amount calculated in accordance with Article 92, paragraph (3) of Regulation (EU) No 575/2013 up to the fourth sub-category;
- (d) the highest sub-category of the G-SII buffer shall be subject to a buffer of 3,5 % of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013:

It is provided that for the purposes of this subsection, “systemic significance” is the expected impact of the G-SII's distress on the global financial market.

(10) Without prejudice to subsections (1) and (9), the Designated Authority may, in cooperation and communication with the competent authorities, may:

- (a) re-allocate a G-SII from a lower sub-category to a higher sub-category;
- (b) allocate an entity referred to in subsection (1) that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

(11) Where the Designated Authority takes a decision in accordance with paragraph (b) of subsection (10), it shall notify EBA accordingly, providing its reasoning.

(12) (a) The Designated Authority shall notify the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated, to the Commission, the ESRB and EBA, and shall disclose their names and the sub-category to which each G-SII is allocated.

(b) The Designated Authority shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the Commission, the ESRB and EBA and disclose the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated.

(13) Systemically important institutions shall not use Common Equity Tier 1 capital, maintained to meet the requirements under subsections (4) and (5), to meet any requirements provided by Article 92 of Regulation (EU) No 575/2013, Article 22B of the Business of Credit Institutions Laws as amended and by Article 5 of the present law, as well as any requirements provided by sections 29A and 30 of the Business Credit Institutions Laws as amended, in relation to ACIs, and the Directive of the Securities and Exchange Commission issued by virtue of Article 73 of the Investment Services and Activities and Regulated Markets Law as amended, in relation to investment firms.

(14) (a) Where a group, on a consolidated basis, is subject to the following, the higher buffer shall apply in each case:

- (i) a G-SII buffer and an O-SII buffer;
- (ii) a G-SII buffer, an O-SII buffer and a systemic risk buffer in accordance with section 6.

(b) Where a group, on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with section 6, the higher of the two shall apply.

(15) Notwithstanding the provisions of subsection (14), where the systemic risk buffer applies to all exposures in the Republic for addressing the macroprudential risk of the Republic, but does not apply to exposures outside the Republic, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer applied in accordance with this section.

(16) Where the provisions of subsection (14) are applied and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that institution is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, and the systemic countercyclical capital buffer, and the higher of the O-SII buffer risk buffer applicable to it on an individual basis.

(17) Where the provisions of subsection (15) are applied and an institution is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall not, in any case, implies that that institution is subject, on an individual basis, to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

Requirement to maintain a systemic risk buffer.

7. (1) The Designated Authority, in cooperation and communication with the competent authorities, may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector of the Republic or for one or more subsets of that sector, in order to prevent and mitigate long term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No 575/2013, in the sense of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy of the Republic.

(2) For the purposes of subsection (1), the Designated Authority, in cooperation and communication with the competent authorities, may require ACIs and CIFs to maintain, in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement as provided by Article 92 of Regulation (EU) No 575/2013, a systemic risk buffer of Common Equity Tier 1 capital of at least 1% based on the exposures to which the systemic risk buffer applies in accordance with subsection (7), on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Part One, Title II of that Regulation. The Designated Authority, in cooperation and communication with the competent authorities, may require ACIs and CIFs to maintain the systemic risk buffer on an individual and on a consolidated level.

(3) (a) ACIs and CIFs shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under subsection (2) to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013, section 22B of the Business of Credit Institutions Law as amended, as well as and any requirements provided by sections 29A and 30 of the Business of Credit Institutions Laws as amended, in relation to ACIs and under the requirements of the Directive of the Securities and Exchange Commission issued under section 73 of the Investment Services and Activities and Regulated Markets Law, in relation to CIFs.

(b) Where a group identified as a systemically important institution is subject to a G-SII buffer or an O-SII buffer on a consolidated basis in accordance with section 6 is also subject to a systemic risk buffer on a consolidated basis in accordance with this section, the higher of the buffers shall apply.

- (c) Where an ACI and CIF, on an individual or sub-consolidated basis, is subject to an O-SII buffer in accordance with section 6 and a systemic risk buffer in accordance with this section, the higher of the two shall apply.
- (4) Notwithstanding paragraphs (b) and (c) of subsection (3), where the systemic risk buffer applies to all exposures located in the Republic to address the macroprudential risk of the Republic, but does not apply to exposures outside the Republic, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with section 6.
- (5) Where subsection (3) applies and an ACI and CIF is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that the said an ACI and CIF is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.
- (6) Where subsection (4) applies and an ACI and CIF are part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that the said an ACI and CIF is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.
- (7) The systemic risk buffer may apply to exposures located in the Republic and may also apply to exposures in third countries. The systemic risk buffer may also apply to exposures located in other Member States, subject to subsections (14) and (17).
- (8) The systemic risk buffer shall apply to all ACIs and CIFs, or to one or more subsets of those institutions and shall be set in gradual or accelerated steps of adjustment of 0,5 percentage point. The Designated Authority, in cooperation and communication with the competent authorities, may, in accordance with a Directive issued for this purpose under this Law, introduce different requirements for different subsets of the sector.
- (9) The Designated Authority, when requiring a systemic risk buffer, shall seek for the following:
- (a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;
 - (b) the systemic risk buffer must be reviewed by the Designated Authority, in cooperation and communication with the competent authorities, at least every second year.
- (10) (a) Before setting or resetting a systemic risk buffer rate of up to 3%, the Designated Authority shall notify the Commission, the ESRB, EBA and the competent and designated authorities of the Member States concerned one month before the publication of the decision referred to in subsection (15).

(b) If the buffer applies to exposures located in third countries, the Designated Authority shall also notify the supervisory authorities of those third-countries.

(c) The notification under paragraphs (a) and (b) shall describe in detail:

- (i) the systemic or macroprudential risk in the Republic;
- (ii) the justification on why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
- (iii) the justification on why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- (iv) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Republic;
- (v) the justification on why none of the existing measures in the Business of Credit Institutions Law and in the Investment Services and Activities and Regulated Markets Law, accordingly, or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of the said Regulation, alone or in combination, are sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;
- (vi) the systemic risk buffer rate that the Designated Authority wishes to require.

(11) (a) Prior to setting or resetting a systemic risk buffer rate of above 3%, the Designated Authority shall notify the Commission, the ESRB, EBA and the competent and designated authorities of the Member States concerned.

(b) In case the buffer applies to exposures located in third-countries the Designated Authority shall also notify the supervisory authorities of those third-countries.

(c) The notification provided under paragraphs (a) and (b) shall describe in detail:

- i) the systemic or macroprudential risk in the Republic;
- ii) the justification on the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;

- iii) the justification on why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- iv) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Republic;
- v) the justification on why none of the existing measures in the Business of Credit Institutions Law and in the Investment Services and Activities and Regulated Markets Law, accordingly, or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of the said Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;
- vi) the systemic risk buffer rate that the Designated Authority wishes to require.

(12) The Designated Authority in cooperation and communication with the competent authorities, may, from 1 January 2015, under a Directive issued for this purpose by virtue of this Law, set or reset a systemic risk buffer rate that applies to exposures located in the Republic and may also apply to exposures in third countries of up to 5% and follow the procedures set out in subsection (10). When setting or resetting a systemic risk buffer rate above 5%, the procedures set out in subsection (11) should be followed.

(13)(a) Where the systemic risk buffer rate is set between 3% and 5% in accordance with subsection (12), the Designated Authority always notifies the Commission and awaits the opinion of the Commission before adopting the measures in question.

(b) Where the opinion of the Commission is negative, the Designated Authority shall comply with that opinion or provide the reasons for not doing so.

(c) (i) Where one subset of the financial sector is a subsidiary whose parent is established in another Member State, the Designated Authority shall notify the authorities of that Member State, the Commission and the ESRB.

(ii) Where the authorities disagree and in the case of a negative recommendation of both the Commission and the ESRB, the Designated Authority may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Council and the Council of the 24th of November 2010, in relation to the establishment of the European Supervisory Authority (European Banking Authority), the amendment of the decision No 716/2009/EC and the repealing of the decision 2009/78/EC.

(iii) The decision to set the buffer for those exposures shall be suspended until EBA takes a decision.

(14) The Designated Authority adopts the proposed measure if within two months from the notification date, the Commission, taking into account the assessment of the ESRB and EBA on the appropriateness of the systemic risk buffer,

and if the Commission is satisfied that the systemic risk buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole, forming or creating an obstacle to the proper functioning of the internal market, shall adopt an implementing act authorising the Designated Authority to adopt the proposed measure.

(15) (a) The Designated Authority shall announce the setting of the systemic risk buffer with a publication in its website. The publication shall include at least the following information:

- (i) the systemic risk buffer rate;
- (ii) the institutions to which the systemic risk buffer applies;
- (iii) a justification for the systemic risk buffer;
- (iv) the date from which the institutions must apply the setting or resetting of the systemic risk buffer; and
- (v) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(b) If the publication referred to in point (iii) of paragraph (a) could jeopardise the stability of the financial system, the information under point (iii) of paragraph (a) shall not be included in the publication.

(16) (a) Where an ACI fails to meet fully the requirement under subsection (1) of this section, it shall be subject to the restrictions on distributions set out in subsections (2) and (3) of section 22C of the Business of Credit Institutions Law, as amended.

(b) Where a CIF fails to meet fully the requirement under subsection (1) of this section, it shall be subject to the restrictions on distributions set out in the Directive of the Securities and Exchange Commission issued by virtue of section 73 of the Investment Services and Activities and Regulated Markets Law, as amended.

(c) Where the application of those restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the ACI or the CFI in the light of the relevant systemic risk, the competent authority may take additional measures in accordance with Section 41B of the Business Credit Institutions Law, as amended, or under Sections 126 and 127 of the Investment Services and Activities and Regulated Markets Law, respectively.

(17) Following the notification referred to in subsection (11), the Designated Authority may apply the buffer to all exposures. Where the Designated Authority, in cooperation and communication with the competent authorities, decides to set the buffer up to 3% on the basis of exposures in other Member States, the buffer shall be set equally on all exposures located within the Union.

Recognition of a systemic risk buffer rate.

8. (1) The Designated Authority, in cooperation and communication with the competent authorities, may recognise the systemic risk buffer rate set by the competent authority or the designated authority in other Member States, in accordance with Article 133 of the Directive 2013/36/EU and may apply that buffer rate to ACIs and CIFs for the exposures located in the Member State that sets that buffer rate.

(2) If the Designated Authority recognises the systemic risk buffer rate for ACIs and CIFs, it shall notify the Commission, the ESRB, EBA and the Member State that sets that systemic risk buffer rate.

(3) When the Designated Authority is deciding whether to recognise a systemic risk buffer rate, it shall take into consideration the information presented by the Member State that sets that buffer rate in accordance with Article 133, paragraphs (11), (12) or (13) of Directive 2013/36/EU.

(4) The Designated Authority, when setting a systemic risk buffer rate in accordance with section 7 of this Law, may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and the Council of the 24th November 2010 in relation to the macroprudential Oversight of the financial system in the European Union and the establishment of a Systemic Risk European Council to one or more Member States which may recognise the systemic risk buffer rate.

PART III - SETTING AND CALCULATING COUNTERCYCLICAL CAPITAL BUFFERS

ESRB guidance on setting countercyclical buffer rates.

9. For the setting of the countercyclical buffer rates the Designated Authority may receive guidance from the ESRB in the form of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, including the following:

(a) principles to guide the Designated Authority when exercising its judgment as to the appropriate countercyclical buffer rate, ensure that authorities adopt a sound approach to relevant macro-economic cycles and promote sound and consistent decision-making across Member States;

(b) general guidance on:

(i) the measurement and calculation of the deviation from long term trends of ratios of credit to gross domestic product (GDP);

(ii) the calculation of buffer guides required by section 10 subsection (2);

(c) guidance on variables that indicate the build-up of system-wide risk associated with periods of excessive credit growth in a financial system, in particular the relevant credit-to-GDP ratio and its deviation from the long-term trend, and on other relevant factors, including the treatment of economic developments within individual sectors of the economy, that should inform the decisions of the Designated Authority on the appropriate countercyclical buffer rate under section 10;

(d) guidance on variables, including qualitative criteria, that indicate that the buffer should be maintained, reduced or fully released.

Setting countercyclical buffer rates.

10. (1) The Designated Authority shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgment in setting the countercyclical buffer rate in accordance with subsection (2). The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Republic and shall duly take into account specificities of the national economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia:

(a) an indicator of growth of levels of credit within the Republic and, in particular, an indicator reflective of the changes in the ratio of credit granted in that Republic to GDP;

(b) any current guidance maintained by the ESRB in accordance with paragraph (b) of subsection (1) of section 9.

(2) The Designated Authority shall assess and set the appropriate countercyclical buffer rate for the Republic on a quarterly basis, taking into account:

(a) the buffer guide calculated in accordance with subsection (1);

(b) any current guidance of the ESRB in accordance with Article 135 paragraph 1, points (a), (c) and (d) of the Directive 2013/36/EU and any recommendations issued by the ESRB on the setting of a buffer rate;

(c) other variables that the Designated Authority considers relevant for addressing cyclical systemic risk.

(3) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph 3, of Regulation (EU) No 575/2013 of institutions that have credit exposures in the Republic, shall be between 0% and 2,5%, calibrated in steps of 0,25% or multiples of 0,25%. Where justified on the basis of the considerations set out in subsection (2), the Designated Authority may set a countercyclical buffer rate in excess of 2,5% of the total risk exposure amount calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013 for the purpose set out in subsection (1) of section 13 of this Law.

(4) Where the Designated Authority, in cooperation and communication with the competent authorities, sets the countercyclical buffer rate above zero for the first time, or where, thereafter, it increases the prevailing countercyclical buffer rate setting, the Designated Authority in cooperation and communication with the competent authorities shall also decide of the date from which the ACIs and CIFs must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer.

That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with subsection (6). If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

(5) Where the Designated Authority, in cooperation and communication with the competent authorities, reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the Designated Authority.

(6) (a) The Designated Authority shall announce the quarterly setting of the countercyclical buffer rate by publication on its website. The announcement shall include at least the following information:

- (i) the applicable countercyclical buffer rate;
- (ii) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;
- (iii) the buffer guide calculated in accordance with subsection (1);
- (iv) a justification for that buffer rate;
- (v) where the buffer rate is increased, the date from which the ACIs and CIFs must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- (vi) where the date referred to in point (v) is less than 12 months after the date of the announcement under paragraph (a), a reference to the exceptional circumstances that justify that shorter deadline for application;
- (vii) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period;

(b) The Designated Authority shall take all reasonable steps to coordinate the timing of that announcement.

(c) The Designated Authority shall notify the ESRB of the quarterly countercyclical buffer rate set and the information specified in points (i) to (vii) of paragraph (a).

Recognition of
countercyclical buffer
rates in excess of 2,5%.

11. (1) Where a designated authority of other Member State or a relevant third-country authority has set a countercyclical buffer rate in excess of 2,5% of the total risk exposure amount calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013, the Designated Authority, in cooperation and coordination with the competent authorities, may recognise that buffer rate for the purposes of the calculation by the ACIs and CIFs of their institution-specific countercyclical capital buffers.

(2) Where the Designated Authority in accordance with subsection (1) recognises a buffer rate in excess of 2,5% of the total risk exposure amount calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013, it

shall announce that recognition by publication on its website. The announcement shall include at least the following information:

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

Decision by the Designated Authority on third country countercyclical buffer rates.

12. (1) This section applies irrespective of whether the ESRB has issued a recommendation to Designated Authorities as referred to in Article 138 of the Directive 2013/36/EU.

(2) Under the circumstances referred to in Article 138, paragraph (a) of Directive 2013/36/EU, the Designated Authority, may set the countercyclical buffer rate that ACIs and CIFs must apply for the purposes of the calculation of their institution-specific countercyclical capital buffer.

(3) (a) Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, the Designated Authority, in cooperation and communication with the competent authorities, may set a different buffer rate for that third country for the purposes of the calculation by ACIs and CIFs of their institution-specific countercyclical capital buffer regarding their third country exposures as well as for the purposes of the calculation of their institution-specific countercyclical capital buffer for their subsidiary institutions with domestic license, if the Designated Authority reasonably considers that the buffer rate set by the relevant third-country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

(b) When exercising the power under paragraph (a), the Designated Authority shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2,5%, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013 of institutions that have credit exposures in that third country.

(4) (a) Where the Designated Authority sets a countercyclical buffer rate for a third country pursuant to subsections (2) and (3) which increases the existing applicable countercyclical buffer rate, the Designated Authority, in cooperation and communication with the competent authorities, shall decide the date from which ACIs and CIFs must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer.

(b) The date provided by paragraph (a) may not be no later than 12 months from the date when the buffer rate is announced in accordance with subsection (5). If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

(5) The Designated Authority shall publish on its website any countercyclical buffer rate of a third country pursuant to subsections (2) and (3), together with the following information:

- (a) the countercyclical buffer rate and the third country to which it applies;
- (b) a justification for that buffer rate;
- (c) where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- (d) where the date referred to in paragraph (c) is less than 12 months after the date of the publication of the setting under the present subsection, a reference to the exceptional circumstances that justify that shorter deadline for application.

Calculation of institution-specific countercyclical capital buffer rates.

13. (1) (a) The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit risk exposures of the institution are located or are applied for the purposes of this section by virtue of subsection (2) or (3) of section 12.

(b) For the calculation of the weighted average referred to in the first paragraph, the institutions apply to each applicable countercyclical buffer rate the total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV, of Regulation (EU) No 575/2013, that relates to the relevant credit risk exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit risk exposures.

(2) If, in accordance with subsection (3) of section 10, the Designated Authority sets a countercyclical buffer rate in excess of 2,5% of total risk exposure amount calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013, the following buffer rates apply to relevant credit exposures within the Republic for the purposes of the calculation required under subsection (1), including, where relevant, the calculation of the element of consolidated capital that relates to the institution in question:

- (a) ACIs and the CIFs shall apply that buffer rate in excess of 2,5% of total risk exposure amount;
- (b) institutions authorised in another Member State shall apply a countercyclical buffer rate of 2,5% of total risk exposure amount if the Designated Authority in the Member State in which they have been authorised has not recognised the buffer rate above 2,5 % in accordance with subsection (1) of section 11;

- (c) institutions that are authorised in another Member State shall apply the countercyclical buffer rate set by the Designated Authority if the designated authority in the Member State in which they have been authorised has recognised the buffer rate set by the Designated Authority in accordance with section 11.

(3) Where the Designated Authority of other Member State sets, according to Article 136, paragraph 4, of Directive 2013/36/EU as transposed into national Law, a countercyclical buffer rate that exceeds 2,5% of total risk exposure amount calculated in accordance with Article 92, paragraph 3 of Regulation (EU) No 575/2013, shall ensure that the following buffer rates apply to relevant credit exposures located in the Member State of the respective designated authority for the purposes of the calculation required by subsection (1), including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- (a) the institutions with domestic license that are subsidiary institutions of ACIs or CIFs, apply the buffer rate that exceeds 2,5% of total risk exposure amount;
- (b) the ACIs and the CIFs apply countercyclical buffer rate 2,5% of total risk exposure amount if the Designated Authority does not acknowledge the buffer rate that exceeds 2,5% in accordance with subsection (1) of section 11;
- (c) the ACIs and the CIFs apply the countercyclical buffer rate set by the designated authority of other Member States if the Designated Authority acknowledges that buffer rate in accordance with section 11.

(4) If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2,5% of total risk exposure amount calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013, the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under subsection (1), including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the ACI or CIF in question:

- (a) ACIs and CIFs shall apply a countercyclical buffer rate of 2,5% of total risk exposure amount if the Designated Authority has not recognised the buffer rate in excess of 2,5% in accordance with subsection (1) of section 11;
- (b) ACIs and CIFs shall apply the countercyclical buffer rate set by the relevant third-country authority if the Designated Authority has recognised the buffer rate in accordance with section 11.

(5) Relevant credit risk exposures shall include all those exposure classes, except those referred to in points (a) to (f) of Article 112 of Regulation (EU) No 575/2013, that are subject to:

- (a) the own funds requirements for credit risk under Part Three, Title II of the said Regulation;

(b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of the said Regulation;

(c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of the said Regulation.

(6) ACIs and CIFs shall identify the geographical location of a relevant credit risk exposure in accordance with regulatory technical standards adopted by the Commission in accordance with Article 140 paragraph 7, of the Directive 2013/36/EU.

(7) (a) For the purposes of the calculation required under subsection (1):

(i) a countercyclical buffer rate shall apply from the date specified in the information published in accordance with paragraph (e) of subsection (6) of section 10 or paragraph (c) of subsection (2) of section 11, if the effect of that decision is to increase the buffer rate;

(ii) subject to point (iii), a countercyclical buffer rate for a third country shall apply twelve months following the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;

(iii) where the Designated Authority sets the countercyclical buffer rate for a third country pursuant to subsections (2) or (3) of section 12 or recognises the countercyclical buffer rate for a third country pursuant to section 11, that buffer rate shall apply from the date specified in the information published in accordance with paragraph (c) of subsection (5) of section 12 or paragraph (c) of subsection (2) of section 11, if the effect of that decision is to increase the buffer rate;

(iv) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

(b) For the purposes of point (ii) in paragraph (a), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

Macroprudential or systemic risk identified in the Republic.

14. Where the Designated Authority notes changes in the intensity of macroprudential or systemic risk in the financial system which may have significant negative consequences on the financial system and the real economy within the Republic, it may, by legislation and in cooperation and communication with the competent authorities in the Republic, set stricter national measures, in accordance with the provisions of section 458 of Regulation 575/2013.

Securities and Exchange Committee.

15. The Central Bank and the Securities and Exchange Commission, when carrying out their responsibilities under this Law, they execute all the authorities and responsibilities assigned to them under the Business of Credit Institutions Laws as amended and the Investment Services and Activities and Regulated Markets Law, respectively, including the authority for the imposition of supervisory measures and administrative sanctions.

PART IV –TRANSITIONAL PROVISIONS

Transitional provisions for capital buffers.

16. (1) According to the requirements under sections 4 and 5, a transitional period applies from 1 January 2016 to 31 December 2018.

(2) Specifically for the period from 1 January 2016 to 31 December 2016, the institution-specific countercyclical capital buffer shall be no more than 0,625% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013.

(3) Specifically for the period from 1 January 2017 to 31 December 2017, the institution-specific countercyclical capital buffer shall be no more than 1,25% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013.

(4) Specifically for the period from 1 January 2018 to 31 December 2018, the institution-specific countercyclical capital buffer shall be no more than 1,875% of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92, paragraph 3, of Regulation (EU) No 575/2013.

(5) The Designated Authority, in cooperation and communication with the competent authorities, may impose a shorter transitional period than that specified in subsections (1) to (4). Where such a shorter transitional period is imposed, it shall inform the relevant parties, including the Commission, the ESRB, EBA and the relevant supervisory colleges, accordingly.

(6) The Designated Authority, in cooperation and communication with the competent authorities, may recognise a shorter transitional period imposed by other member state and shall notify the Commission, the ESRB, EBA and the relevant supervisory college accordingly.

(7) Where a shorter transitional period for the countercyclical capital buffer is imposed, the shorter period shall apply only for the purposes of the calculation of the institution-specific countercyclical capital buffer by ACIs and CIFs.

PART V - FINAL PROVISIONS

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| Power to issue directives. | 17. The Designated Authority may, for the accomplishment of the objectives of this Law and subject to the provisions of this Law as well as for the execution of its responsibilities by virtue of this Law, issue directives which shall publish in the Official Gazette of the Republic. |
| Updating the Parliament Committee on Financial and Budget Affairs. | 18. The Central Bank as the Designated Authority for the macro-prudential oversight of the financial system in accordance with the provisions of this Law, shall annually or more frequently update the Parliament Committee on Finance and Budget on issues concerning ACI's security stocks, as defined and provided in this Law. |
| Entry into force of this Law. | 19. (1) The provisions of this Law shall come into force on 1 January 2016.

(2) By way of derogation from subsection (1), subsection (4) of section 6 shall be put into effect in the following manner:

(a) 25% of the G-SII buffer, set in accordance with subsection (4) of section 6, as from 1 st January 2016;

(b) 50% of the G-SII buffer, set in accordance with subsection (4) of section 6, as from 1 st January 2017;

(c) 75% of the G-SII buffer, set in accordance with subsection (4) of section 6, as from 1 st January 2018; and

(d) 100% of the G-SII buffer, set in accordance with subsection (4) of section 6, as from 1 st January 2019.

(3) By way of derogation from the provisions of subsection (1), section 7 shall be put into effect from the date of publication of this Law in the Official Gazette of the Republic. |