MFSA MALTA FINANCIAL SERVICES AUTHORITY

Feedback Document

Feedback Statement on the National Transposition of Directive (EU) 2024/1619 and Implementation of Regulation (EU) 2024/1623 – the Banking Package

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1. Introduction

On 9 May 2025, the Malta Financial Services Authority (the 'Authority' or the 'MFSA') issued a Consultation Document on the National Transposition of Directive (EU) 2024/1619 and Implementation of Regulation (EU) 2024/1623 – the Banking Package (the 'Public Consultation'). The objective of the Public Consultation was to gather the industry's feedback on the MFSA's proposed stances in relation to the Member State options and discretions present in both the CRDVI[1] and CRRIII[2] texts.

The responses received showed support for the Authority's intended approach in relation to the options and discretions as presented in the Public Consultation. Through the feedback received stakeholders have requested clarifications on matters, specifically in relation to the imposition of Periodic Penalty Payments ('PPPs') and the implementation of the Third-Country Branches ('TCBs') framework. In this regard, the Feedback Statement seeks to provide the required clarifications on the above-mentioned matters.

Section 2 of the Feedback Statement provides an overview of the stakeholders' requests and the associated clarifications provided by the Authority. Section 3 then highlights developments and the intended way forward in relation to the transitional provision in Article 495e of the CRR. Section 4 outlines the next steps and includes concluding remarks.

2. Requests for Clarification and Guidance

a. Periodic Penalty Payments

CRDVI introduces PPPs, a tool aimed at targeting ongoing breaches by institutions. They shall be imposed on a per-day basis for each day of non-compliance by the legal or natural person concerned, until full compliance with the applicable regulations is restored. In this regard, Articles 66(2) and 67(2) of the CRD, as amended by CRDVI, provide Member States with the option to apply PPPs on a weekly or monthly basis, rather than daily. The Authority's proposal is to conform to the CRDVI text and apply the frequency on a daily basis.

Industry Feedback

No objections were received from stakeholders in terms of the Authority's proposal with respect to the option on PPPs.

[1] Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks.
[2] Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No. 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor.

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One respondent requested clarification on the method of calculation of PPPs and whether a deviation from daily to weekly or monthly basis, if taken on board, would constitute a substantive change in regulatory impact or merely a deferral and aggregation of the existing daily fines.

Clarification by the Authority

As outlined in the respective third sub-paragraphs of Articles 66(2) and 67(2) of the CRD, as amended by CRDVI, where a Member State exercises the option to apply PPPs on a weekly or a monthly basis, the maximum amount of penalty applicable for the relevant period shall not exceed the maximum amount that would otherwise apply on a daily basis. This implies that the amount to be paid on a weekly basis, if that option is applied by the Member State, should not exceed the aggregate amount to be paid daily over a seven (7) day period. The same would apply if the monthly option is applied by the Member State. Consequently, if such an option is exercised, there would ultimately be no difference in the amount imposed by the penalty, but rather the change would consist in the operationalisation of the PPPs, notably in terms of their frequency of application.

b. Framework for Third-Country Branches

CRDVI introduces a new framework for TCBs, whereby undertakings from outside the EU that carry out core banking activities within the EU, including deposit taking, lending and/or guarantees and commitments, will be required to establish a branch and apply for authorisation from the regulator in the Member State where they will be carrying out such activities. In Article 48a(4) of the CRD, as amended by CRDVI, the framework presents Member States with an option to apply to TCBs the prudential framework equivalent to that applied for credit institutions. The Authority's position is not to avail itself of this option.

Industry Feedback

The industry welcomed the Authority's proposal for not availing of the Member State discretion presented under Article 48a(4) of the CRD, as amended by CRDVI. Through the Public Consultation other requests for clarification on the framework arose. Specifically, questions were raised on the transposition of the CRDVI text into national legislation, and the manner in which the new TCBs framework will impact the current requirements for TCBs as stipulated in the Banking Act (Chapter 371 of the Laws of Malta). Reference was also made to the potential impact on specific sectors in Malta that seek funding from non-European banks on a reverse solicitation basis, and that the new framework also captures certain third-country investment firms that provide specific services under Directive 2014/65/EU and have total value of assets equal to or more than €30 billion.

Clarification by the Authority

Article 5(1) of the Banking Act outlines that the business of banking shall only be transacted, in or from Malta, by a company which is possession of a licence granted by the competent authority under the Act. Subsequently, article 5(2) states that no credit institution licensed or holding an equivalent authorisation outside of Malta shall open a branch, agency or representative office or set up any

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subsidiary in Malta, unless it is in possession of a licence granted under the Act by the competent authority.

Pursuant to the newly added Article 21c of the CRD, as amended by CRDVI, paragraph (1) specifies that third-country undertakings shall establish a branch and apply for authorisation in the Member State where they intend to commence or continue carrying out any of the activities referred to in points 1, 2 and/or 6 of Annex I of the CRD. This obligation does not, however, apply in explicit circumstances as outlined in paragraph (2) of the same Article. Point (a) of the latter specifies that the requirement to establish a branch and apply for authorisation shall not apply in cases where the provision of services or activities is provided to a retail client, an eligible counterparty, or a professional client, based on reverse solicitation, that is, at the exclusive initiative of the client or counterparty. Further clarifications and details on the concept and elements surrounding the applicability of reverse solicitation are also provided in the second and third sub-paragraphs of paragraph (2) as well as in paragraph (3) of the same Article.

Whilst noting the respondent's comments, the Authority deems that the requirement for authorisation to open a branch in the respective EU Member State as outlined in the CRDVI is not conflicting with the current provisions of the Banking Act. The obligation on third-country undertakings to open a branch in an EU Member State to provide any of the prescribed services in that Member State is evidently complemented with an exception in cases of reverse solicitation. The CRDVI also elaborates further on these requirements, and all the minimum obligations, including the exceptions outlined in Article 21c(2), are intended to be reflected in the local legislative framework accordingly.

In relation to the application of the CRDVI TCBs framework to third-country investment firms, the Authority would like to clarify that the TCBs framework and the licensing requirements are not applicable to the provision of investment services, activities and ancillary services as defined under Annex I Sections A and B of Directive 2014/65/EU. The framework is, however, applicable to those third-country undertakings which are classified as credit institutions under point (1)(b) of Article 4(1) of the CRR if they were established in the European Union.

3. Developments on the Transitional Provision under the CRR on the Use of an ECAI Credit Assessment

The transitional provision in Article 495e of the CRR provides the option for competent authorities to allow institutions to continue using External Credit Agreement Institutions (ECAI) that incorporate assumptions of implicit government support. In the Public Consultation the Authority had outlined its intention to follow the discussions being pursued on the matter with the ECB, given that the ECB's decisions would be legally binding in all participating Member States.

On 25 July 2025 the ECB has issued a press release clarifying its position on the approach to the options and discretions in the Banking Package and published a feedback statement in relation to the public consultation on such policy matters. Regarding the transitional provision in Article 495e, based on the responses received from several stakeholders, the ECB has decided to extend the transitional period by an additional 6 months from the period originally proposed. This means that institutions will be allowed to continue using ECAI credit assessments that incorporate assumptions of implicit government support until 1 January 2027. All relevant documentation, including the final

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Regulation and Guideline implementing such transitional provision, can be accessed through the ECB dedicated webpage.

Regulation (EU) 2025/1520 amending Regulation (EU) 2016/445 on the exercise of options and discretions available in Union law applies directly to credit institutions classified as significant. Guideline (EU) 2025/1521 amending Guideline (EU) 2017/697 on the exercise of options and discretions available in Union law by national competent authorities in relation to less significant institutions mandates national competent authorities of participating Member States to adopt the provisions therein for credit institutions classified as less significant. In this respect, such position is intended to be implemented in the CRR (Implementing and Transitional Provisions) Regulations (S.L. 371.17), which shall be updated in due course.

4. Conclusion and Next Steps

The Authority is currently working on the transposition of the CRDVI text into local legislation as well as the implementation of CRRIII provisions. This includes the drafting of the applicable options and discretions as proposed in the Public Consultation and as reaffirmed in this Feedback Statement.

The process is a rigorous one, aimed at ensuring that all elements and principles of the new requirements are applied in their entirety, in a manner that is legally sound. In this regard, the Authority may update stakeholders with developments about the process from time to time.

Institutions are expected to take all necessary measures to ensure their timely preparedness for the application of the various new and amended requirements brought about by the CRDVI text. For any further clarification on the content of this Feedback Statement, or on any other element of the Banking Package, kindly send an email to bsupolicy@mfsa.mt.

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