

Subsidiary Legislation made under s. 79.

**FINANCIAL SERVICES (CONSOLIDATED
SUPERVISION OF CREDIT INSTITUTIONS)
REGULATIONS 2007**

Repealed by LN. 2013/198 as from 1.1.2014

(LN. 2007/039)

Commencement **8.3.2007**

Amending enactments	Relevant current provisions	Commencement date
LN. 2011/050	rr. 2, 3(1), 4(1), 5(1), 6, 7(2), (3) & (5), 8(2), (4) & (5), 9(1), (2) & (5) 13(1) & (2) & 14	12.4.2011
2012/178	rr. 2, 4(3), 6A, 6B, 6C, 8(2A), 12(5), 12A, 12B, 13(1A) & (2A), 14(3), (3)(a), (5) & (10) & 15	22.11.2012
2013/083	rr. 2, 3(3), (4), (5), (6), 4(2), (3), 5(2), (3), (4), 8(6), 10(2), 12(5), (6), (7), (8), (9), 13(1), (3), 14(6)	10.6.2013

Transposing:

Directive 98/26/EC	Directive 2000/12/EC
Directive 98/78/EC	Directive 2006/48/EC
Directive 2002/87/EC	Directive 2006/49/EC
Directive 2003/6/EC	Directive 2009/65/EC
Directive 2003/41/EC	Directive 2009/111/EC
Directive 2003/71/EC	Directive 2009/138/EC
Directive 2004/39/EC	Directive 2010/78/EU
Directive 2004/109/EC	Directive 2011/89/EU
Directive 2005/60/EC	

EU Legislation/International Agreements involved:

Regulation (EU) No 1093/2010

Arrangement of Regulations

Regulation

1992-11

Repealed
Subsidiary
2007/039

Financial Services (Banking)

FINANCIAL SERVICES (CONSOLIDATED SUPERVISION OF CREDIT INSTITUTIONS) REGULATIONS 2007

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Financial Services (Banking)

**FINANCIAL SERVICES (CONSOLIDATED SUPERVISION OF
CREDIT INSTITUTIONS) REGULATIONS 2007**

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Financial Services (Banking)

FINANCIAL SERVICES (CONSOLIDATED SUPERVISION OF CREDIT INSTITUTIONS) REGULATIONS 2007

In exercise of the powers conferred on him by section 79 of the Financial Services (Banking) Act and all other enabling powers, the Minister has made the following regulations to transpose, in part, into the law of Gibraltar Council Directive 2006/48/EC, of the European Parliament and of the Council, of 14 June 2006 which recasts the Banking Consolidation Directive 2000/12/EC and which relates to the taking up and pursuit of the business of credit institutions and their prudential supervision.

Title.

1. These Regulations may be cited as the Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007.

Interpretation.

2. In the Regulations, unless the context otherwise requires—

“alternative investment fund manager” means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of which is in a third country and which would require authorisation under the Directive if its registered office were within the European Union;

“ancillary services undertaking” means an undertaking whose principal activity consists in owning or managing property, managing data processing services or any other activity of one or more credit institutions;

“asset management company” means a management company of an undertaking for collective investment in transferable securities and an undertaking whose registered office is not in an EEA State;

“EBA” means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;

“European consolidating supervisor” means the competent authority in an EEA State responsible for the exercise of supervision on a consolidated basis of European parent credit institutions and credit institutions controlled by European parent financial holding companies or European parent mixed financial holding companies;

“European parent credit institution” means a parent credit institution in an EEA State which is not a subsidiary of another credit institution authorised in any EEA State or of a financial holding company or mixed financial holding company established in any EEA State;

“European parent financial holding company” means a parent financial holding company in an EEA State which is not a subsidiary of a credit institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in any EEA State;

“European parent mixed financial holding company” means a parent mixed financial holding company in an EEA State which is not a subsidiary of a credit institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in an EEA State;

“financial holding company” means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution;

“mixed-activity holding company” means a parent undertaking, other than a financial holding company or a credit institution or a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC, the subsidiaries of which include at least one credit institution;

“mixed financial holding company” means a mixed financial holding company as defined in article 2(15) of Directive 2002/87/EC;

“parent credit institution in an EEA State” means a credit institution which has a credit or financial institution as a subsidiary or which holds a participation in such institution and which is not itself a subsidiary of another credit institution authorised in the same EEA State, or of a financial holding company or mixed financial holding company established in the same EEA State;

“parent financial holding company in an EEA State” means a financial holding company which is not itself a subsidiary of a credit

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institution authorised in the same EEA State or of a financial holding company or mixed financial holding company established in the same EEA State;

“parent mixed financial holding company in an EEA State” means a mixed financial holding company which is not itself a subsidiary of a credit institution authorised in the same EEA State, or of a financial holding company or mixed financial holding company established in the same EEA State;

“recast Directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 which recasts the Banking Consolidation Directive 2000/12/EC and which relates to the taking up and pursuit of the business of credit institutions and their prudential supervision, as extended, where applicable, by the EEA Agreement.

Consolidated supervision by the Commissioner.

3.(1) The Commissioner shall become the European consolidating supervisor in the circumstances mentioned in sub-regulations (2) to (6).

(2) Where a licensee is a parent credit institution in an EEA State or a European parent credit institution.

(3) Where the parent of a licensee is a parent financial holding company in an EEA State, a parent mixed financial holding company in an EEA State, a European parent financial holding company or a European parent mixed financial holding company.

(4) Where a licensee, and other credit institutions authorised in two or more EEA States, have the same parent financial holding company in an EEA State, the same parent mixed financial holding company in an EEA State, the same European parent financial holding company or the same European parent mixed financial holding company and that financial holding company or mixed financial holding company has its head office in Gibraltar.

(5) Where the parents of a licensee, and other credit institutions authorised in two or more EEA States, comprise more than one financial holding company or mixed financial holding company with head offices in different EEA States and there is a credit institution in each of those States, if the licensee is the credit institution with the largest balance sheet total.

(6) Where a licensee, and one or more other credit institution authorised in EEA States, have as their parent the same financial holding company or the

same mixed financial holding company and neither the licensee nor those credit institutions have been authorised in the State in which the financial holding company or the mixed financial holding company has its head office, if the licensee is the credit institution with the largest balance sheet total.

(7) In the circumstances referred to in sub-regulation (6) the licensee shall be considered as the credit institution controlled by a European parent financial holding company.

Power to waive regulation 3 requirements.

4.(1) The Commissioner and the other competent authorities may, by common agreement, waive the criteria referred to in regulations 3(4) to (6) if the application of that criteria would be inappropriate, taking into account the credit institutions and the relative importance of their activities in the different EEA States, appoint a different competent authority to be the European consolidating supervisor.

(2) Before taking the decision referred to in sub-regulation (1), the Commissioner and the other competent authorities shall, by common agreement, give the European parent credit institution, or the European parent financial holding company, European parent mixed financial holding company, or the credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

(3) The European Commission and the EBA shall be notified of any agreement reached under sub-regulation (1).

Inclusion of financial holding companies and mixed financial holding companies.

5.(1) This regulation applies where the Commissioner is the European consolidating supervisor.

(2) The Commissioner may adopt any measures necessary, where appropriate, to include financial holding companies or mixed financial holding companies in the consolidated supervision.

(3) Any decision under sub-regulation (2) to consolidate the financial situation of the financial holding company or mixed financial holding companies shall not be taken as requiring the Commissioner to supervise the financial holding company or mixed financial holding companies on a stand alone basis.

(4) The Commissioner may request the subsidiaries of a credit institution, a financial holding company or a mixed financial holding company, which are not included in the consolidated supervision, for the information referred to in regulation 10 which shall be verified in accordance with that regulation.

Consolidated supervision arrangements.

6. Where the Commissioner is the European consolidating supervisor, he shall, so far as reasonably practicable, have written co-ordination and co-operation arrangements in place with other competent authorities.

Consolidating supervisor's duties.

6A.(1) In addition to any other duties provided for in these Regulations, the Commissioner, where he is the EEA consolidating supervisor, shall carry out the following duties—

- (a) coordination of the gathering and dissemination of relevant or essential information in going-concern and emergency situations; and
- (b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Articles 123, 124, 136, in Chapter 5 and in Annex V of the recast Directive, in cooperation with the competent authorities involved;
- (c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.

(2) In the event that the EEA consolidating supervisor fails to carry out the duties referred to in subregulation (1) or where the competent authorities do not cooperate with the EEA consolidating supervisor to the extent required in carrying out the duties in subregulation (1), any of the competent authorities concerned may refer the matter to EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.

(3) The planning and coordination of supervisory activities referred to in subregulation (1)(c) includes exceptional measures referred to in Article 132(3)(b) of the recast Directive, the preparation of joint assessments, the implementation of contingency plans and communication to the public.

Cooperation between competent authorities.

6B.(1) In the case of applications for the permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Part 6 of Annex III of the recast Directive respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

(2) An application under subregulation (1) shall be submitted only to the competent authority referred to in regulation 6A.

(3) The competent authorities shall do everything within their power to reach a joint decision on the application within 6 months and that joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in regulation 6A.

(4) The period referred to in subregulation (3) shall begin on the date of receipt of the complete application by the competent authority referred to in regulation 6A, who shall forward the complete application to the other competent authorities without delay.

(5) In the absence of a joint decision between the competent authorities within 6 months, the competent authority referred to in regulation 6A shall—

- (a) make its own decision on the application and such decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the 6 months period; and
- (b) provide the applicant and the other competent authorities with that decision.

(6) If, at the end of the 6 month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, and the Commissioner is the EEA consolidating supervisor, he shall defer his decision and await any decision that EBA may take and he shall take his decision in conformity with the decision of EBA.

(7) The 6 month period shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(8) The matter shall not be referred to EBA after the end of the 6 month period or after a joint decision has been reached.

(9) The decisions referred to in subregulations (3) and (5) shall be recognised as determinative and applied by the Commissioner.

Joint decisions.

6C.(1) The EEA consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company shall do everything within their power to reach a joint decision on the application of Articles 123 and 124 of the recast Directive to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 136(2) of the recast Directive to each entity within the banking group and on a consolidated basis.

(2) The joint decision shall be reached within 4 months after submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Articles 123 and 124 of the recast Directive to the other relevant competent authorities and the joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 123 and 124 of that Directive.

(3) The joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent credit institution by the EEA consolidating supervisor.

(4) In the event of disagreement, the EEA consolidating supervisor shall at the request of any of the other competent authorities concerned consult EBA but the EEA consolidating supervisor may also consult EBA on its own initiative.

(5) In the absence of such a joint decision between the competent authorities within 4 months, a decision on the application of Articles 123 and 124 and Article 136(2) of the recast Directive shall be taken on a consolidated basis by the EEA consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities but if at the end of the 4 month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the EEA consolidating supervisor shall defer his decision and await any decision that

EBA may take in accordance with Article 19(3) of that Regulation, and shall take his decision in conformity with the decision of EBA.

(6) The 4 month period referred to in subregulation (5) shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(7) The matter shall not be referred to EBA after the end of the 4 month period or after a joint decision has been reached.

(8) The decision on the application of Articles 123 and 124 and Article 136(2) of the recast Directive shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the EEA consolidating supervisor.

(9) If, at the end of the 4 month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA.

(10) The 4 month period shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(11) The matter shall not be referred to EBA after the end of the 4 month period or after a joint decision has been reached.

(12) The decisions shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the 4 month period and the document shall be provided by the EEA consolidating supervisor to all competent authorities concerned and to the EU parent credit institution.

(13) Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.

(14) The joint decision referred to in subregulation (1) and the decisions taken by the competent authorities in the absence of a joint decision shall be recognised as determinative and shall be applied by the Commissioner.

(15) The joint decision referred to in subregulation (1) and any decision taken in the absence of a joint decision in accordance with subregulation (5)

and (6), shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the EEA consolidating supervisor to update the decision on the application of Article 136(2) of the recast Directive, in the latter case, the update may be addressed on a bilateral basis between the EEA consolidating supervisor and the competent authority making the request.

Consolidated supervision obligations.

7.(1) The Commissioner shall, on request, provide a relevant competent authority for the purposes of consolidated supervision, with all information which he considers to be relevant for the exercise of that authority's supervisory tasks having regard to the importance of the credit institution within the financial system of the EEA State in which it is authorised.

(2) Where the Commissioner is considering whether to impose a major sanction or exceptional measure on a licensee he shall, before making a decision, consult the European consolidating supervisor, and where his decision would be of importance to another competent authority's supervisory tasks, that authority.

(3) Where the Commissioner is considering whether to approve a change to a licensee's management or organisational structure, he shall, before making a decision, consult the European consolidating supervisor and any other competent authority where his decision would be of importance to that authority's supervisory tasks.

(4) Sub-regulations (2) and (3) shall not apply where the Commissioner considers that—

- (a) there is an urgent need to act; or
- (b) such consultation may jeopardise the effectiveness of the decision referred to in those sub-regulations.

(5) Where sub-regulations (2) or (3) does not apply by virtue of sub-regulation (4), the Commissioner shall, without delay, inform the European consolidating supervisor and any other competent authorities of the action that he has taken.

Disclosed information.

8.(1) The Commissioner shall take such steps as he considers appropriate to cooperate with the European consolidating supervisor and other relevant competent authorities.

(2) The Commissioner shall provide the European consolidating supervisor and other relevant competent authorities with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the recast Directive.

(2A) The competent authorities shall cooperate with EBA for the purposes of these Regulations and the recast Directive in accordance with Regulation (EU) No 1093/2010 and the competent authorities shall provide EBA with all information necessary to carry out its duties under the recast Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.

(3) For the purposes of sub-regulation (2), information shall be regarded as essential if it could materially influence the assessment of the financial soundness of a credit institution or financial institution in an EEA State.

(4) Where a licensee is a subsidiary of a European parent credit institution and the Commissioner needs information regarding the implementation of such approaches and methodologies as set out in the recast Directive which may already be available to the European consolidating supervisor, he shall, so far as possible, obtain that information by requesting that the European consolidating supervisor discloses the information to him.

(5) Where the Commissioner is the European consolidating supervisor and he needs information which has already been given to a competent authority in an EEA State, he shall, so far as it is possible, obtain that information by requesting the other competent authority which holds the information, to disclose it to him.

(6) Sub-regulation (1) includes, in particular, a requirement to cooperate in accordance with Article 140 of Directive 2006/48/EC as amended by Article 3(23) of Directive 2011/89/EU.

Consolidated supervision procedures.

9.(1) This regulation applies where the Commissioner is the European consolidating supervisor.

(2) The Commissioner shall require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

(3) The Commissioner may require only proportional consolidation where, in his opinion, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital in view of the liability of the other shareholders or members whose solvency is satisfactory.

(4) The Commissioner shall require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

(5) In the case of participations or capital ties other than those referred to in sub-regulations (2) to (4), the Commissioner shall determine whether and how consolidation is to be carried out.

(6) In a case under sub-regulation (5), the Commissioner may permit or require use of the equity method but that method shall not be taken as including the undertakings concerned in consolidated supervision.

Determination of consolidated supervision in certain circumstances.

10.(1) Without prejudice to regulation 9, where a licensee is involved, the Commissioner and other relevant competent authorities shall, in consultation with each other, determine whether and how consolidation is to be carried out in the following case—

- (a) where a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in those institutions; and
- (b) where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association.

(2) Where consolidated supervision is determined under regulations 3, ancillary services undertakings, alternative investment fund managers and asset management companies shall be included in consolidations in those cases, and in accordance with the methods in regulation 9.

Supply of information to the Commissioner.

11.(1) Where a licensee and one or more other credit institutions, have as their same parent a mixed activity holding company, the Commissioner

shall require that parent and the licensee to supply him with such information as he may require for the purpose of supervising the licensee.

(2) The Commissioner may carry out such inspections as he may require to verify information received under sub-regulation (1) from the mixed activity holding company and its subsidiaries.

(3) If the mixed activity holding company or one of its subsidiaries is an insurance undertaking, the procedure in sub-regulation (1) may be used.

(4) If a mixed activity holding company or one of its subsidiaries, other than the licensee, is situated in an EEA State, the verification of information shall be carried out in accordance with the procedure in regulation 12(6).

(5) Any exchange of information shall be done so on the understanding that the Commissioner is not required to play a supervisory role in relation to the mixed activity holding company and those of its subsidiaries which are not credit institutions.

Exchange of information for consolidated supervision purposes.

12.(1) Where a parent undertaking and those of its subsidiaries which are credit institutions, one of which is a licensee, are situated in different EEA States, the Commissioner shall communicate to the other competent authorities such information as may assist in the exercise of consolidated supervision.

(2) Where the Commissioner is requested by the European consolidating supervisor to ask a parent undertaking established in Gibraltar for any information which would be relevant for the purposes of consolidated supervision, he shall endeavour to obtain and transmit that information.

(3) Any information transmitted under this regulation shall be provided on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the Commissioner is not required to play a supervisory role in relation to those institutions or undertakings on a stand alone basis.

(4) Information received, in the framework of consolidated supervision and any exchange of information between the Commissioner and other competent authorities, shall be subject to the obligations of professional secrecy in Schedule 3 of the Act.

(5) Where the Commissioner is the European consolidating supervisor, he shall establish a list of the financial holding companies or mixed financial holding companies which have credit institutions as subsidiaries

included in the consolidated supervision and shall communicate that list to the competent authorities of EEA States, to the EBA and to the European Commission.

(6) The Commissioner shall, when so requested by a competent authority of an EEA State, verify information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a mixed financial holding company, a subsidiary mentioned in regulation 10 or a subsidiary mentioned in regulation 5(3) established in Gibraltar.

(7) Upon receipt of such a request, the Commissioner shall, within the framework of his competence, act upon it either by carrying out the verification himself, by allowing the competent authority who made the request to carry it out, or by allowing an auditor or expert to carry it out.

(8) The competent authority which made the request may participate in the verification when it does not carry out the verification itself.

(9) Where the Commissioner is the European consolidating supervisor, he shall provide the competent authorities concerned and the EBA with all information regarding the banking group in accordance with section 23(2A) and 25(3) of the Act and Article 73(3) of the recast Directive, in particular regarding the legal structure and the governance and organisational structure of the group.

Coordination and cooperation agreements.

12A.(1) The EEA consolidating supervisor shall establish written coordination and cooperation arrangements with the other competent authorities in order to facilitate and establish effective supervision.

(2) The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with the recast Directive, and EBA shall be kept informed of the existence and content of such agreements.

Exchange of information – emergency.

12B.(1) Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market

liquidity and the stability of the financial system in an EEA State where entities of a group have been authorised or where significant branches (referred to in Article 42a of the recast Directive) are established, the EEA consolidating supervisor shall, subject to Chapter 1, Section 2 (*Exchange of information and professional secrecy*) of the recast Directive, alert as soon as is practicable, EBA, ESRB and the authorities referred to in the fourth subparagraph of Article 49 and in Article 50 and shall communicate all information essential for the pursuance of their tasks.

(2) The obligations set out in subregulation (1) shall apply to all competent authorities under Articles 125 and 126 of the recast Directive and to the competent authority identified under Article 129(1) of that Directive.

(3) If the authority referred to in the fourth paragraph of Article 49 of the recast Directive becomes aware of a situation described in subregulation (1), it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126 of the recast Directive, and EBA.

(4) Where possible, the competent authority and the authority referred to in the fourth paragraph of Article 49 shall use existing defined channels of communication.

(5) Where the Commissioner is the competent authority responsible for supervision on a consolidated basis the Commissioner shall, when he needs information which has already been given to another competent authority, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Other supervisory techniques.

13.(1) Where a licensee is part of a group which is not subject to consolidated supervision under regulation 3 and whose parent undertaking is a credit institution, a financial holding company or a mixed financial holding company whose head office is in a non-EEA State, the Commissioner, if , were sub-regulation (2) to apply, he would be the European consolidating supervisor shall—

- (a) if he thinks it appropriate to do so; or
- (b) if so requested by the parent undertaking; or
- (c) if so requested by a member of the group which is authorised in an EEA State;

verify whether the licensee is subject to consolidated supervision by a non-EEA competent authority and if it is whether that supervision is equivalent to that governed by the recast Directive.

(1A) In carrying out the verification referred to in the subregulation (1) the Commissioner shall take into account any guidance issued pursuant to Article 143(2) of the recast Directive and prior to adopting a decision the Commissioner shall consult EBA.

(2) In the absence of an equivalent supervision, the Commissioner shall apply other appropriate supervisory techniques which will achieve the objectives of supervision of credit institutions on a consolidated basis after consultation with other relevant competent authorities in EEA States and agreement with the European consolidating supervisor, if the Commissioner is not that supervisor.

(2A) The supervisory techniques referred to in subregulation (2) shall be designed to achieve the objectives of consolidated supervision as defined in these Regulations and shall be notified to the other competent authorities involved, EBA and the European Commission.

(3) The Commissioner may, in particular, require the establishment of a financial holding company or a mixed financial holding company which has its head office in an EEA State, and may apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.

Establishment of colleges of supervisors

14.(1) This regulation applies where the Commissioner is the European consolidated supervisor.

(2) The Commissioner shall establish colleges of supervisors to facilitate the exercise of his duties and co-ordination and co-operation with other competent authorities in EEA States and, subject to statutory confidentiality requirements, ensure appropriate co-ordination and co-operation with relevant competent authorities in non-EEA States where appropriate.

(3) Colleges of supervisors shall provide a framework for the Commissioner, EBA and the other competent authorities concerned to carry out the following tasks—

- (a) exchanging information among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;

- (b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- (c) determining on-going supervisory examination programmes based on a risk assessment of a banking group;
- (d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to requests for information by other competent authorities;
- (e) consistently applying prudential requirements across all entities within a banking group without prejudice to the options and discretions available in the Act and its subsidiary legislation;
- (f) applying such co-ordination and co-operation taking into account the work of other relevant fora.

(4) Statutory confidentiality requirements shall not prevent the Commissioner from exchanging confidential information within colleges of supervisors with other competent authorities nor shall the establishment and functioning of such colleges affect the Commissioner's rights and responsibilities under the Act and its subsidiary legislation.

(5) The establishment and functioning of the colleges shall be based on written arrangements referred to in regulation 12A, determined after consultation by the Commissioner with the other competent authorities concerned.

(6) The competent authorities responsible for the supervision of subsidiaries of a European parent credit institution, a European parent financial holding company or a European parent mixed financial holding company and the competent authorities of a host EEA State where significant branches under regulation 82A of the Financial Services (Capital Adequacy of Credit Institutions) Regulations are established, central banks as appropriate and competent authorities in non-EEA States where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of the Commissioner and all other competent authorities, to the confidentiality requirements in Articles 44 to 52 of the recast Directive, may participate in colleges of supervisors.

(7) The Commissioner shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in any activity of the college.

(8) The Commissioner shall keep all members of the college fully informed of the calling of a meeting and its agenda and the courses of action agreed at the meeting.

(9) A decision to establish a college of supervisors shall take account of the relevance of the supervisory activity to be planned or coordinated with those competent authorities, in particular the potential impact on the stability of the financial system in Gibraltar and in the EEA States concerned and the obligations in regulation 82A of those Regulations.

(10) The Commissioner, subject to statutory confidentiality requirements, shall inform the EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.

Referral to EBA.

15. The Commissioner may refer to EBA situations where—

- (a) a competent authority has not communicated essential information; or
- (b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.