

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 (Text with EEA relevance)

TITLE V

PROVISIONS CONCERNING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

CHAPTER 4

Powers of the competent authorities of the host Member State

Article 40

Reporting requirements

The competent authorities of the host Member States may require that all credit institutions having branches within their territories shall report to them periodically on their activities in those host Member States.

Such reports shall only be required for information or statistical purposes, for the application of Article 51(1), or for supervisory purposes in accordance with this Chapter. They shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

The competent authorities of the host Member States may in particular require information from the credit institutions referred to in the first subparagraph in order to allow those competent authorities to assess whether a branch is significant in accordance with Article 51(1).

Article 41

Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State

1 Where the competent authorities of the host Member State on the basis of information received from the competent authorities of the home Member State under Article 50 ascertain that a credit institution having a branch or providing services within its territory fulfils one of the following conditions in relation to the activities carried out in that host Member State, they shall inform the competent authorities of the home Member State:

- a the credit institution does not comply with the national provisions transposing this Directive or with Regulation (EU) No 575/2013;
- b there is a material risk that the credit institution will not comply with the national provisions transposing this Directive or with Regulation (EU) No 575/2013.

The competent authorities of the home Member State shall, without delay, take all appropriate measures to ensure that the credit institution concerned remedies its non-

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compliance or takes measures to avert the risk of non-compliance. The competent authorities of the home Member State shall communicate those measures to the competent authorities of the host Member State without delay.

2 Where the competent authorities of the host Member State consider that the competent authorities of the home Member State have not fulfilled their obligations or will not fulfil their obligations pursuant to the second subparagraph of paragraph 1, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision under Article 19(3) of that Regulation within 24 hours. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

Article 42

Reasons and communication

Any measure taken pursuant to Article 41(1), or Article 43 or 44 involving penalties or restrictions on the exercise of the freedom to provide services or the freedom of establishment shall be properly reasoned and communicated to the credit institution concerned.

Article 43

Precautionary measures

1 Before following the procedure set out in Article 41, the competent authorities of the host Member State may, in emergency situations, pending measures by the competent authorities of the home Member State or reorganisation measures referred to in Article 3 of Directive 2001/24/EC, take any precautionary measures necessary to protect against financial instability that would seriously threaten the collective interests of depositors, investors and clients in the host Member State.

2 Any precautionary measures under paragraph 1 shall be proportionate to their purpose to protect against financial instability that would seriously threaten collective interests of depositors, investors and clients in the host Member State. Such precautionary measures may include a suspension of payment. They shall not result in a preference for the creditors of the credit institution in the host Member State over creditors in other Member States.

3 Any precautionary measure under paragraph 1 shall cease to have effect when the administrative or judicial authorities of the home Member State take reorganisation measures under Article 3 of Directive 2001/24/EC.

4 The competent authorities of the host Member State shall terminate precautionary measures where they consider those measures to have become obsolete under Article 41, unless they cease to have effect in accordance with paragraph 3 of this Article.

5 The Commission, EBA and the competent authorities of the other Member States concerned shall be informed of precautionary measures taken under paragraph 1 without undue delay.

Where the competent authorities of the home Member State or of any other affected Member State object to measures taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with

Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision under Article 19(3) of that Regulation within 24 hours. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

Article 44

Powers of host Member States

Host Member States may, notwithstanding Articles 40 and 41, exercise the powers conferred on them under this Directive to take appropriate measures to prevent or to punish breaches committed within their territories of the rules they have adopted pursuant to this Directive or in the interests of the general good. This shall include the possibility of preventing offending credit institutions from initiating further transactions within their territories.

Article 45

Measures following withdrawal of authorisation

In the event of withdrawal of authorisation, the competent authorities of the home Member State shall inform the competent authorities of the host Member State without delay. The competent authorities of the host Member State shall take appropriate measures to prevent the credit institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors.

Article 46

Advertising

Nothing in this Chapter shall prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interests of the general good.