

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 IV

### INITIAL CAPITAL OF INVESTMENT FIRMS

#### *Article 32*

#### **Grandfathering provision**

1 By way of derogation from Article 28(2), Article 29(1) and (3) and Article 30, Member States may continue authorising investment firms and firms covered by Article 30 which were in existence on or before 31 December 1995, the own funds of which are less than the initial capital levels specified for them in Article 28(2), Article 29(1) or (3) or Article 30.

The own funds of such investment firms or firms shall not fall below the highest reference level calculated after 23 March 1993. That reference level shall be the average daily level of own funds calculated over a six-month period preceding the date of calculation. It shall be calculated every six months in respect of the corresponding preceding period.

2 If control of an investment firm or a firm covered by paragraph 1 is taken by a natural or legal person other than the person who controlled it on or before 31 December 1995, the own funds of that investment firm or firm shall attain at least the level specified for them in Article 28(2), Article 29(1) or (3), or Article 30, except in the case of a first transfer by inheritance made after 31 December 1995, subject to the approval of the competent authorities and for a period of not more than 10 years from the date of that transfer.

3 In the event of a merger of two or more investment firms or firms covered by Article 30, the own funds of the firm resulting from the merger need not attain the level specified in Article 28(2), Article 29(1) or (3) or Article 30. Nevertheless, during any period when the level specified in Article 28(2), Article 29(1) or (3) or Article 30 has not been attained, the own funds of the firm resulting from the merger shall not fall below the total own funds of the merged firms at the time of the merger.

4 The own funds of investment firms and firms covered by Article 30 shall not fall below the levels specified in Article 28(2), Article 29(1) or (3) or Article 30 and in paragraphs 1 and 3 of this Article.

5 Where competent authorities consider it necessary, in order to ensure the solvency of such investment firms and firms, that the requirements set out in paragraph 4 are met, paragraphs 1, 2 and 3 shall not apply.