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 I

# SUBJECT MATTER, SCOPE AND DEFINITIONS

- Article 1 Subject matter
- Article 2 Scope
- Article 3 Definitions

# TITLE II

# COMPETENT AUTHORITIES

- Article 4 Designation and powers of the competent authorities
- Article 5 Coordination within Member States
- Article 6 Cooperation within the European System of Financial Supervision
- Article 7 Union dimension of supervision

# TITLE III

# REQUIREMENTS FOR ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS

# CHAPTER 1

# General requirements for access to the activity of credit institutions

Article 8 Authorisation Article 9 Prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public Article 10 Programme of operations and structural organisation Economic needs Article 11 Initial capital Article 12 Article 13 Effective direction of the business and place of the head office Article 14 Shareholders and members Article 15 Refusal of authorisation Article 16 Prior consultation of the competent authorities of other Member States Article 17 Branches of credit institutions authorised in another Member State Withdrawal of authorisation Article 18 Article 19 Name of credit institutions

# Article 20Notification of authorisation and withdrawal of authorisationArticle 21Waiver for credit institutions permanently affiliated to a central

body

# CHAPTER 2

## Qualifying holding in a credit institution

- Article 22 Notification and assessment of proposed acquisitions
- Article 23 Assessment criteria
- Article 24 Cooperation between competent authorities
- Article 25 Notification in the case of a divestiture
- Article 26 Information obligations and penalties
- Article 27 Criteria for qualifying holdings

# TITLE IV

# INITIAL CAPITAL OF INVESTMENT FIRMS

- Article 28 Initial capital of investment firms
- Article 29 Initial capital of particular types of investment firms
- Article 30 Initial capital of local firms
- Article 31 Coverage for firms not authorised to hold client money or securities
- Article 32 Grandfathering provision

# TITLE V

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

# CHAPTER 1

# **General Principles**

- Article 33 Credit institutions
- Article 34 Financial institutions

# CHAPTER 2

## The right of establishment of credit institutions

- Article 35 Notification requirement and interaction between competent authorities
- Article 36 Commencement of activities
- Article 37 Information about refusals
- Article 38 Aggregation of branches

## CHAPTER 3

## Exercise of the freedom to provide services

## Article 39 Notification procedure

# CHAPTER 4

## Powers of the competent authorities of the host Member State

Article 40	Reporting requirements
Article 41	Measures taken by the competent authorities of the home
	Member State in relation to activities carried out in the host
	Member State
Article 42	Reasons and communication
Article 43	Precautionary measures
Article 44	Powers of host Member States
Article 45	Measures following withdrawal of authorisation
Article 46	Advertising

## TITLE VI

## **RELATIONS WITH THIRD COUNTRIES**

Article 47	Notification in relation to third-country branches and conditions
	of access for credit institutions with such branches

Article 48 Cooperation with supervisory authorities of third countries regarding supervision on a consolidated basis

# TITLE VII

## PRUDENTIAL SUPERVISION

# CHAPTER 1

## Principles of prudential supervision

## Section I

## Competence and duties of home and host Member States

- Article 49 Competence of the competent authorities of the home and host Member States
- Article 50 Collaboration concerning supervision
- Article 51 Significant branches
- Article 52 On-the-spot checking and inspection of branches established in another Member State

# Section II

## Exchange of information and professional secrecy

Article 53	Professional secrecy
Article 54	Use of confidential information
Article 55	Cooperation agreements
Article 56	Exchange of information between authorities
Article 57	Exchange of information with oversight bodies
Article 58	Transmission of information concerning monetary, deposit
	protection, systemic and payment aspects
Article 59	Transmission of information to other entities
Article 60	Disclosure of information obtained by on-the-spot checks and
	inspections
Article 61	Disclosure of information concerning clearing and settlement
	services
Article 62	Processing of personal data

# Section III

Duty of persons responsible for the legal control of annual and consolidated accounts

Article 63 Duty of persons responsible for the legal control of annual and consolidated accounts

# Section IV

# Supervisory powers, powers to impose penalties and right of appeal

Article 64	Supervisory powers and powers to impose penalties
Article 65	Administrative penalties and other administrative measures
Article 66	Administrative penalties and other administrative measures for
	breaches of authorisation requirements and requirements for
	acquisitions of qualifying holdings
Article 67	Other provisions
Article 68	Publication of administrative penalties
Article 69	Exchange of information on penalties and maintenance of a
	central database by EBA
Article 70	Effective application of penalties and exercise of powers to
	impose penalties by competent authorities
Article 71	Reporting of breaches

Article 72 Right of appeal

# CHAPTER 2

# **Review Processes**

# Section I

## Internal capital adequacy assessment process

Article 73 Internal Capital

#### Section II

#### Arrangements, processes and mechanisms of institutions

## Sub-Section 1

#### General principles

Article 74	Internal governance and recovery and resolution plans
Article 75	Oversight of remuneration policies

#### Sub-Section 2

Technical criteria concerning the organisation and treatment of risks

- Article 76 Treatment of risks
- Article 77 Internal Approaches for calculating own funds requirements
- Article 78 Supervisory benchmarking of internal approaches for calculating
- own funds requirements
- Article 79 Credit and counterparty risk
- Article 80 Residual risk
- Article 81 Concentration risk
- Article 82 Securitisation risk
- Article 83 Market risk
- Article 84 Interest risk arising from non-trading book activities
- Article 85 Operational risk
- Article 86 Liquidity risk
- Article 87 Risk of excessive leverage

#### Sub-Section 3

#### Governance

- Article 88 Governance arrangements
- Article 89 Country-by-country reporting
- Article 90 Public disclosure of return on assets
- Article 91 Management body
- Article 92 Remuneration policies
- Article 93 Institutions that benefit from government intervention
- Article 94 Variable elements of remuneration
- Article 95 Remuneration Committee
- Article 96 Maintenance of a website on corporate governance and remuneration

#### Section III

#### Supervisory review and evaluation process

- Article 97 Supervisory review and evaluation
- Article 98 Technical criteria for the supervisory review and evaluation
- Article 99 Supervisory examination programme
- Article 100 Supervisory stress testing
- Article 101 Ongoing review of the permission to use internal approaches

## Section IV

#### Supervisory measures and powers

Article 102	Supervisory measures
Article 103	Application of supervisory measures to institutions with similar
	risk profiles
Article 104	Supervisory powers
Article 105	Specific liquidity requirements
Article 106	Specific publication requirements
Article 107	Consistency of supervisory reviews, evaluations and supervisory
	measures

## Section V

## Level of application

- Article 108 Internal capital adequacy assessment process
- Article 109 Institutions' arrangements, processes and mechanisms
- Article 110 Review and evaluation and supervisory measures

## CHAPTER 3

## Supervision on a consolidated basis

#### Section I

# Principles for conducting supervision on a consolidated basis

- Article 111 Determination of the consolidating supervisor
- Article 112 Coordination of supervisory activities by the consolidating supervisor
- Article 113 Joint decisions on institution-specific prudential requirements
- Article 114 Information requirements in emergency situations
- Article 115 Coordination and cooperation arrangements
- Article 116 Colleges of supervisors
- Article 117 Cooperation obligations
- Article 118 Checking information concerning entities in other Member States

#### Section II

Financial holding companies, mixed financial holding companies and mixed-activity holding companies

- Article 119 Inclusion of holding companies in consolidated supervision
- Article 120 Supervision of mixed financial holding companies
- Article 121 Qualification of directors
- Article 122 Requests for information and inspections
- Article 123 Supervision
- Article 124 Exchange of information
- Article 125 Cooperation
- Article 126 Penalties

# Article 127 Assessment of equivalence of third countries' consolidated supervision

## CHAPTER 4

## **Capital Buffers**

## Section I

## Buffers

1 100	
Article 128	Definitions
Article 129	Requirement to maintain a capital conservation buffer
Article 130	Requirement to maintain an institution-specific countercyclical
	capital buffer
Article 131	Global and other systemically important institutions
Article 132	Reporting
Article 133	Requirement to maintain a systemic risk buffer
Article 134	Recognition of a systemic risk buffer rate

# Section II

Setting and calculating countercyclical capital buffers

Article 135	ESRB guidance on setting countercyclical buffer rates
Article 136	Setting countercyclical buffer rates
Article 137	Recognition of countercyclical buffer rates in excess of 2,5 %
Article 138	ESRB recommendation on third country countercyclical buffer
	rates
Article 139	Decision by designated authorities on third country
	countercyclical buffer rates
Article 140	Calculation of institution-specific countercyclical capital buffer
	rates

# Section III

## Capital conservation measures

- Article 141 Restrictions on distributions
- Article 142 Capital Conservation Plan

# TITLE VIII

# DISCLOSURE BY COMPETENT AUTHORITIES

- Article 143 General disclosure requirements
- Article 144 Specific disclosure requirements

## TITLE IX

# DELEGATED AND IMPLEMENTING ACTS

Article 145	Delegated Acts
Article 146	Implementing Acts
Article 147	European Banking Committee
Article 148	Exercise of the delegation
Article 149	Objections to regulatory technical standards

#### TITLE X

# AMENDMENTS OF DIRECTIVE 2002/87/EC

Article 150 Amendments of Directive 2002/87/EC

#### TITLE XI

## TRANSITIONAL AND FINAL PROVISIONS

# CHAPTER 1

## Transitional provisions on the supervision of institutions exercising the freedom of establishment and the freedom to provide services

- Article 151 Scope
- Article 152 Reporting requirements
- Article 153 Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State
- Article 154 Precautionary measures
- Article 155 Responsibility
- Article 156 Liquidity supervision
- Article 157 Collaboration concerning supervision
- Article 158 Significant branches
- Article 159 On-the-spot checks

# CHAPTER 2

## Transitional provisions for capital buffers

Article 160 Transitional provisions for capital buffers

# CHAPTER 3

#### **Final provisions**

Article 161	Review and report
Article 162	Transposition
Article 163	Repeal
Article 164	Entry into force
Article 165	Addressees

Signature

# ANNEX I

## LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

Taking deposits and other repayable funds. Lending including, inter alia:... The services and activities provided for in Sections A and...

# ANNEX II

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (**1**) OJ C 105, 11.4.2012, p. 1.
- (2) OJ L 177, 30.6.2006, p. 1.
- (**3**) OJ L 177, 30.6.2006, p. 201.
- (4) See page 1 of this Official Journal.
- (5) OJ L 145, 30.4.2004, p. 1.
- (6) OJ L 331, 15.12.2010, p. 12.
- (7) Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).
- (8) Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).
- (9) OJ L 125, 5.5.2001, p. 15.
- (10) OJ L 331, 15.12.2010, p. 1.
- (11) OJ L 55, 28.2.2011, p. 13.
- (**12**) OJ L 35, 11.2.2003, p. 1.
- (**13**) OJ L 319, 5.12.2007, p. 1
- (14) OJ L 302, 17.11.2009, p. 32.
- (**15**) OJ L 267, 10.10.2009, p. 7.
- (**16**) OJ L 174, 1.7.2011, p. 1.
- (17) OJ L 281, 23.11.1995, p. 31.
- (**18**) OJ L 8, 12.1.2001, p. 1.
- (19) OJ C 175, 19.6.2012, p. 1.