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 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

1 Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 10 to 14, they shall lay down the requirements for such authorisation and notify EBA.

2 EBA shall develop draft regulatory technical standards to specify:

[F1a the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations, structural organisation and governance arrangements provided for in Article 10;

b the requirements applicable to shareholders and members with qualifying holdings, or, where there are no qualifying holdings, to the 20 largest shareholders or members, pursuant to Article 14; and**]**

c obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as referred to in Article 14.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in points (a), (b) and (c) of the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

3 EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in point (a) of the first subparagraph of paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

4 EBA shall submit the draft technical standards referred to in paragraphs 2 and 3 to the Commission by 31 December 2015.

[F25 EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, addressed to the competent authorities to specify a common assessment methodology for granting authorisations in accordance with this Directive.**]**

Textual Amendments

F1 Substituted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

F2 Inserted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

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

1 Member States shall prohibit persons or undertakings that are not credit institutions from carrying out the business of taking deposits or other repayable funds from the public.

2 Paragraph 1 shall not apply to the taking of deposits or other funds repayable by a Member State, or by a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, or to cases expressly covered by national or Union law, provided that those activities are subject to regulations and controls intended to protect depositors and investors.

[F2 3 Member States shall notify to the Commission and to EBA the national laws that expressly allow undertakings other than credit institutions to carry out the business of taking deposits and other repayable funds from the public.

4 Pursuant to this Article, Member States may not exempt credit institutions from the application of this Directive and Regulation (EU) No 575/2013.**]**

Textual Amendments

F2 Inserted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

*[*F1 *Article 10*

Programme of operations, structural organisation and governance arrangements

1 Member States shall require applications for authorisation to be accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the credit institution, including indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group. Member States shall also require applications for authorisation to be accompanied by a description of the arrangements, processes and mechanisms referred to in Article 74(1).

2 Competent authorities shall refuse authorisation to commence the activity of a credit institution unless they are satisfied that the arrangements, processes and mechanisms referred to in Article 74(1) enable sound and effective risk management by that institution.**]**

Textual Amendments

F1 Substituted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

Article 11

Economic needs

Member States shall not require the application for authorisation to be examined in terms of the economic needs of the market.

Article 12

Initial capital

1 Without prejudice to other general conditions laid down in national law, the competent authorities shall refuse authorisation to commence the activity of a credit institution where a credit institution does not hold separate own funds or where its initial capital is less than EUR 5 million.

2 Initial capital shall comprise only one or more of the items referred to in Article 26(1)(a) to (e) of Regulation (EU) No 575/2013.

3 Member States may decide that credit institutions which do not fulfil the requirement to hold separate own funds and which were in existence on 15 December 1979 may continue to carry out their business. They may exempt such credit institutions from complying with the requirement contained in the first subparagraph of Article 13(1).

4 Member States may grant authorisation to particular categories of credit institutions the initial capital of which is less than that specified in paragraph 1, subject to the following conditions:

a the initial capital is no less than EUR 1 million;

b the Member States concerned notify the Commission and EBA of their reasons for exercising that option.

Article 13

Effective direction of the business and place of the head office

1 The competent authorities shall grant authorisation to commence the activity of a credit institution only where at least two persons effectively direct the business of the applicant credit institution.

They shall refuse such authorisation if the members of the management body do not meet the requirements referred to in Article 91(1).

2 Each Member State shall require that:

a a credit institution which is a legal person and which, under its national law, has a registered office, has its head office in the same Member State as its registered office;

b a credit institution other than that referred to in point (a) has its head office in the Member State which granted it authorisation and in which it actually carries out its business.

Article 14

Shareholders and members

1 The competent authorities shall refuse authorisation to commence the activity of a credit institution unless a credit institution has informed them of the identities of its shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings or, where there are no qualifying holdings, of the 20 largest shareholders or members.

In determining whether the criteria for a qualifying holding are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[(1)] and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which institutions hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

[[F1]2 Competent authorities shall refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members in accordance with the criteria set out in Article 23(1). Article 23(2) and (3) and Article 24 shall apply.**]**

3 Where close links exist between the credit institution and other natural or legal persons, competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall refuse authorisation to commence the activity of a credit institution where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

The competent authorities shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on an ongoing basis.

Textual Amendments

F1 Substituted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

Article 15

Refusal of authorisation

Where a competent authority refuses authorisation to commence the activity of a credit institution, it shall notify the applicant of the decision and the reasons therefor within six months of receipt of the application or, where the application is incomplete, within six months of receipt of the complete information required for the decision.

A decision to grant or refuse authorisation shall, in any event, be taken within 12 months of the receipt of the application.

Article 16

Prior consultation of the competent authorities of other Member States

1 The competent authority shall, before granting authorisation to a credit institution, consult the competent authorities of another Member State where the credit institution is:

a a subsidiary of a credit institution authorised in that other Member State;

b a subsidiary of the parent undertaking of a credit institution authorised in that other Member State;

c controlled by the same natural or legal persons as those who control a credit institution authorised in that other Member State.

2 The competent authority shall, before granting authorisation to a credit institution, consult the competent authority that is responsible for the supervision of insurance undertakings or investment firms in the Member State concerned where the credit institution is:

a a subsidiary of an insurance undertaking or investment firm authorised in the Union;

b a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Union;

c controlled by the same natural or legal persons as those who control an insurance undertaking or investment firm authorised in the Union.

3 The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of members of the management body involved in the management of another entity of the same group. They shall exchange any information regarding the suitability of shareholders and the reputation and experience of members of the management body which is of relevance for the granting of an authorisation and for the ongoing assessment of compliance with operating conditions.

Article 17

Branches of credit institutions authorised in another Member State

Host Member States shall not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with Article 35, Article 36(1), (2) and (3), Article 37, Articles 40 to 46, Article 49 and Articles 74 and 75.

Article 18

Withdrawal of authorisation

The competent authorities may only withdraw the authorisation granted to a credit institution where such a credit institution:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

(b) has obtained the authorisation through false statements or any other irregular means;

(c) no longer fulfils the conditions under which authorisation was granted;

(d) **[**F1no longer meets the prudential requirements set out in Part Three, Four or Six, except for the requirements laid down in Articles 92a and 92b of Regulation (EU) No 575/2013 or imposed under point (a) of Article 104(1) or Article 105 of this Directive or can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;**]**

(e) falls within one of the other cases where national law provides for withdrawal of authorisation; or

(f) commits one of the breaches referred to in Article 67(1).

Textual Amendments

F1 Substituted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

Article 19

Name of credit institutions

For the purposes of exercising their activities, credit institutions may, notwithstanding any provisions in the host Member State concerning the use of the words 'bank', 'savings bank' or other banking names, use throughout the territory of the Union the same name that they use in the Member State in which their head office is situated. In the event of

there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Article 20

Notification of authorisation and withdrawal of authorisation

1 Competent authorities shall notify EBA of every authorisation granted under Article 8.

2 EBA shall publish on its website, and shall update regularly, a list of the names of all credit institutions that have been granted authorisation.

3 The consolidating supervisor shall provide the competent authorities concerned and EBA with all information regarding the group of credit institutions in accordance with Article 14(3), Article 74(1) and Article 109(2), in particular regarding the legal and organisational structure of the group and its governance.

4 The list referred to in paragraph 2 of this Article shall include the names of credit institutions that do not have the capital specified in Article 12(1) and shall identify those credit institutions as such.

5 The competent authorities shall notify EBA of each withdrawal of authorisation together with the reasons for such a withdrawal.

Article 21

Waiver for credit institutions permanently affiliated to a central body

1 The competent authorities may waive the requirements set out in Articles 10 and 12 and Article 13(1) of this Directive with regard to a credit institution referred to in Article 10 of Regulation (EU) No 575/2013 in accordance with the conditions set out therein.

Member States may maintain and make use of existing national law regarding the application of such a waiver provided that it does not conflict with this Directive or with Regulation (EU) No 575/2013.

2 Where the competent authorities exercise a waiver referred to in paragraph 1, Articles 17, 33, 34 and 35, Article 36(1) to (3), Articles 39 to 46, Section II of Chapter 2 of Title VII and Chapter 4 of Title VII shall apply to the whole as constituted by the central body together with its affiliated institutions.

I[F2 Article 21a

Approval of financial holding companies and mixed financial holding companies

1 Parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies shall seek approval in accordance with this Article. Other financial holding companies or mixed financial holding companies shall seek approval in accordance with this Article where they are required to comply with this Directive or Regulation (EU) No 575/2013 on a sub-consolidated basis.

2 For the purposes of paragraph 1, financial holding companies and mixed financial holding companies referred to therein shall provide the consolidating supervisor and, where

different, the competent authority in the Member State where they are established with the following information:

a the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;

b information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company and compliance with the requirements set out in Article 121 on qualification of directors;

c information regarding compliance with the criteria set out in Article 14 concerning shareholders and members, where the financial holding company or mixed financial holding company has a credit institution as its subsidiary;

d the internal organisation and distribution of tasks within the group;

e any other information that may be necessary to carry out the assessments referred to in paragraphs 3 and 4 of this Article.

Where the approval of a financial holding company or mixed financial holding company takes place concurrently with the assessment referred to in Article 22, the competent authority for the purposes of that Article shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. **[**[X1]In that case, the assessment period referred to in the second subparagraph of Article 22(2) shall be suspended for a period exceeding 20 working days until the procedure set out in this Article is complete.**]**

3 Approval may be granted to a financial holding company or mixed financial holding company pursuant to this Article only where all of the following conditions are fulfilled:

a the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by this Directive and Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis and, in particular, are effective to:

(i) coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

b the structural organisation of the group of which the financial holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject. The assessment of that criterion shall take into account, in particular:

(i) the position of the financial holding company or mixed financial holding company in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the financial holding company or mixed financial holding company within the group;

c the criteria set out in Article 14 and the requirements laid down in Article 121 are complied with.

4 Approval of the financial holding company or mixed financial holding company under this Article shall not be required where all of the following conditions are met:

a the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holdings in subsidiaries;

b the financial holding company or mixed financial holding company has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to Directive 2014/59/EU;

c a subsidiary credit institution is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;

d the financial holding company or mixed financial holding company does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;

e there is no impediment to the effective supervision of the group on a consolidated basis.

Financial holding companies or mixed financial holding companies exempted from approval in accordance with this paragraph shall not be excluded from the perimeter of consolidation as laid down in this Directive and in Regulation (EU) No 575/2013.

5 The consolidating supervisor shall monitor compliance with the conditions referred to in paragraph 3 or, where applicable, paragraph 4 on an ongoing basis. Financial holding companies and mixed financial holding companies shall provide the consolidating supervisor with the information required to monitor on an ongoing basis the structural organisation of the group and compliance with the conditions referred to in paragraph 3 or, where applicable, paragraph 4. The consolidating supervisor shall share that information with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established.

6 Where the consolidating supervisor has established that the conditions set out in paragraph 3 are not met or have ceased to be met, the financial holding company or mixed financial holding company shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of consolidated supervision and ensuring compliance with the requirements laid down in this Directive and in Regulation (EU) No 575/2013 on a consolidated basis. In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate.

The supervisory measures referred to in the first subparagraph may include:

a suspending the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;

b issuing injunctions or penalties against the financial holding company, the mixed financial holding company or the members of the management body and managers, subject to Articles 65 to 72;

c giving instructions or directions to the financial holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary institutions;

d designating on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for ensuring compliance with the requirements laid down in this Directive and in Regulation (EU) No 575/2013 on a consolidated basis;

e restricting or prohibiting distributions or interest payments to shareholders;

f requiring financial holding companies or mixed financial holding companies to divest from or reduce holdings in institutions or other financial sector entities;

g requiring financial holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

7 Where the consolidating supervisor has established that the conditions set out in paragraph 4 are no longer met, the financial holding company or mixed financial holding company shall seek approval in accordance with this Article.

8 For the purpose of taking decisions on the approval and exemption from approval referred to in paragraphs 3 and 4, respectively, and the supervisory measures referred to in paragraphs 6 and 7, where the consolidating supervisor is different from the competent authority in the Member State where the financial holding company or the mixed financial holding company is established, the two authorities shall work together in full consultation. The consolidating supervisor shall prepare an assessment on the matters referred to in paragraphs 3, 4, 6 and 7, as applicable, and shall forward that assessment to the competent authority in the Member State where the financial holding company or the mixed financial holding company is established. The two authorities shall do everything within their powers to reach a joint decision within two months of receipt of that assessment.

The joint decision shall be duly documented and reasoned. The consolidating supervisor shall communicate the joint decision to the financial holding company or mixed financial holding company.

In the event of a disagreement, the consolidating supervisor or the competent authority in the Member State where the financial holding company or the mixed financial holding company is established shall refrain from taking a decision and shall refer the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. EBA shall take its decision within one month of receipt of the referral to EBA. The competent authorities concerned shall adopt a joint decision in conformity with the decision of EBA. The matter shall not be referred to EBA after the end of the two-month period or after a joint decision has been reached.

9 In the case of mixed financial holding companies, where the consolidating supervisor or the competent authority in the Member State where the mixed financial holding company is established is different from the coordinator determined in accordance with Article 10 of Directive 2002/87/EC, the agreement of the coordinator shall be required for the purposes of decisions or joint decisions referred to in paragraphs 3, 4, 6 and 7 of this Article, as applicable. Where the agreement of the coordinator is required, disagreements shall be referred to the relevant European Supervisory Authority, namely, EBA or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(2)], which shall take its decision within one month of receipt of the referral. Any decision taken in accordance with this paragraph shall be without prejudice to the obligations under Directive 2002/87/EC or 2009/138/EC.

10 Where approval of a financial holding company or mixed financial holding company pursuant to this Article is refused, the consolidating supervisor shall notify the applicant of the decision and the reasons therefor within four months of receipt of the application, or where the

application is incomplete, within four months of receipt of the complete information required for the decision.

A decision to grant or refuse approval shall, in any event, be taken within six months of receipt of the application. Refusal may be accompanied, where necessary, by any of the measures referred to in paragraph 6.

Editorial Information

X1 Substituted by Corrigendum to Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Official Journal of the European Union L 150 of 7 June 2019).

Textual Amendments

F2 Inserted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

Article 21b

Intermediate EU parent undertaking

1 Two or more institutions in the Union, which are part of the same third-country group, shall have a single intermediate EU parent undertaking that is established in the Union.

2 Competent authorities may allow the institutions referred to in paragraph 1 to have two intermediate EU parent undertakings where they determine that the establishment of a single intermediate EU parent undertaking would:

a be incompatible with a mandatory requirement for separation of activities imposed by the rules or supervisory authorities of the third country where the ultimate parent undertaking of the third-country group has its head office; or

b render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the competent resolution authority of the intermediate EU parent undertaking.

3 An intermediate EU parent undertaking shall be a credit institution authorised in accordance with Article 8, or a financial holding company or mixed financial holding company that has been granted approval in accordance with Article 21a.

By way of derogation from the first subparagraph of this paragraph, where none of the institutions referred to in paragraph 1 of this Article is a credit institution or where a second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in paragraph 2 of this Article, the intermediate EU parent undertaking or the second intermediate EU parent undertaking, may be an investment firm authorised in accordance with Article 5(1) of Directive 2014/65/EU that is subject to Directive 2014/59/EU.

4 Paragraphs 1, 2 and 3 shall not apply where the total value of assets in the Union of the third-country group is less than EUR 40 billion.

5 For the purposes of this Article, the total value of assets in the Union of the third-country group shall be the sum of the following:

a the total value of assets of each institution in the Union of the third country-group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and

b the total value of assets of each branch of the third-country group authorised in the Union in accordance with this Directive, Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council[(3)].

6 Competent authorities shall notify the following information in respect of each third-country group operating in their jurisdiction to EBA:

a the names and the total value of assets of supervised institutions belonging to a third-country group;

b the names and the total value of assets corresponding to branches authorised in that Member State in accordance with this Directive, Directive 2014/65/EU or Regulation (EU) No 600/2014, and the types of activities that they are authorised to carry out;

c the name and the type as referred to in paragraph 3 of any intermediate EU parent undertaking set up in that Member State and the name of the third-country group of which it is part.

7 EBA shall publish on its website a list of all third-country groups operating in the Union and their intermediate EU parent undertaking or undertakings, where applicable.

Competent authorities shall ensure that each institution under their jurisdiction that is part of a third-country group meets one of the following conditions:

a it has an intermediate EU parent undertaking;

b it is an intermediate EU parent undertaking;

c it is the only institution in the Union of the third-country group; or

d it is part of a third-country group with a total value of assets in the Union of less than EUR 40 billion.

[[X1]8 By way of derogation from paragraph 1, third-country groups operating through more than one institution in the Union and with a total value of assets in the Union equal to or greater than EUR 40 billion on 27 June 2019 shall have an intermediate EU parent undertaking or, if paragraph 2 applies, two intermediate EU parent undertakings by 30 December 2023.**]**

9 By 30 December 2026 the Commission shall, after consulting EBA, review the requirements imposed on institutions by this Article and submit a report to the European Parliament and to the Council. That report shall, at least, consider:

a whether the requirements laid down in this Article are operable, necessary and proportionate and whether other measures would be more appropriate;

b whether the requirements imposed on institutions by this Article should be revised to reflect best international practices.

10 By 28 June 2021, EBA shall submit a report to the European Parliament, to the Council and to the Commission on the treatment of third-country branches under national law of Member States. That report shall, at least, consider:

a whether and to what extent supervisory practices under national law for third-country branches differ between Member States;

b whether a different treatment of third-country branches under national law could result in regulatory arbitrage;

c whether further harmonisation of national regimes for third-country branches would be necessary and appropriate, especially with regard to significant third-country branches.

The Commission shall, if appropriate, submit a legislative proposal to the European Parliament and to the Council, based on the recommendations made by EBA.**]**

Editorial Information

X1 Substituted by Corrigendum to Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Official Journal of the European Union L 150 of 7 June 2019).

Textual Amendments

F2 Inserted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

CHAPTER 2

Qualifying holding in a credit institution

Article 22

Notification and assessment of proposed acquisitions

1 Member States shall require any natural or legal person or such persons acting in concert (the "proposed acquirer"), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the credit institution would become its subsidiary (the "proposed acquisition"), to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4). Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

2 The competent authorities shall acknowledge receipt of notification under paragraph 1 or of further information under paragraph 3 promptly and in any event within two working days following receipt in writing to the proposed acquirer.

The competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 23(4) (the "assessment period"), to carry out the assessment provided for in Article 23(1) (the "assessment").

The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

3 The competent authorities may, during the assessment period if necessary, and no later than on the 50th working day of the assessment period, request further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

4 The competent authorities may extend the suspension referred to in the second subparagraph of paragraph 3 up to 30 working days if the proposed acquirer is situated or regulated in a third country or is a natural or legal person **[**X2not subject to supervision under this Directive or under Directive 2009/65/EC, 2009/138/EC, or 2004/39/EC.**]**

5 If the competent authorities decide to oppose the proposed acquisition, they shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the proposed acquirer in writing, providing the reasons. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the proposed acquirer.

6 If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

7 The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8 Member States shall not impose requirements for notification to, or approval by, the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

9 EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 24.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Editorial Information

X2 Substituted by Corrigendum to 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 (Official Journal of the European Union L 176 of 27 June 2013).

Article 23

Assessment criteria

1 In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3), the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:

a the reputation of the proposed acquirer;

[[F1]b the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the credit institution as a result of the proposed acquisition;**]**

c the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

d whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and Regulation (EU) No 575/2013, and where applicable, other Union law, in particular Directives 2002/87/EC and 2009/110/EC, including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

e whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[(4)] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2 The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3 Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4 Member States shall publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 22(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5 Notwithstanding Article 22(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Textual Amendments

F1 Substituted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

Article 24

Cooperation between competent authorities

1 The relevant competent authorities shall fully consult each other when carrying out the assessment if the proposed acquirer is one of the following:

a a credit institution, insurance undertaking, reinsurance undertaking, investment firm, or a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;

b the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

c a natural or legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2 The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In that regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the credit institution in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 25

Notification in the case of a divestiture

Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a credit institution to notify the competent authorities in writing in advance of the divestiture, indicating the size of the holding concerned. Such a person shall also notify the competent authorities if it has taken a decision to reduce its qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the credit institution would cease to be its subsidiary. Member States shall not be required to apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

Article 26

Information obligations and penalties

1 Credit institutions shall, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) and Article 25, inform the competent authorities of those acquisitions or disposals.

Credit institutions admitted to trading on a regulated market shall, at least annually, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies admitted to trading on a regulated market.

2 Member States shall require that, where the influence exercised by the persons referred to in Article 22(1) is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist in injunctions, penalties, subject to Articles 65 to 72, against members of the management body and managers, or the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members of the credit institution in question.

Similar measures shall apply to natural or legal persons who fail to comply with the obligation to provide prior information as set out in Article 22(1) and subject to Articles 65 to 72.

If a holding is acquired despite opposition by the competent authorities, Member States shall, regardless of any other penalty to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Article 27

Criteria for qualifying holdings

In determining whether the criteria for a qualifying holding as referred to in Articles 22, 25 and 26 are fulfilled, the voting rights referred to in Articles 9, 10 and 11 of Directive 2004/109/EC and the conditions regarding aggregation thereof set out in Article 12(4) and (5) of that Directive, shall be taken into account.

In determining whether the criteria for a qualifying holding as referred to in Article 26 are fulfilled, Member States shall not take into account voting rights or shares which institutions may hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.

(**1**) OJ L 390, 31.12.2004, p. 38.

(**2**) **[**[F2]Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).**]**

(**3**) **[**[F2]Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).**]**

(**4**) OJ L 309, 25.11.2005, p. 15.

Textual Amendments

F2 Inserted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).