

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 I

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:

- a the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 10;
- b the requirements applicable to shareholders and members with qualifying holdings 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.

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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.

Article 10

Programme of operations and structural organisation

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.

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.

2 The 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 particular where the criteria set out in Article 23(1) are not met. Article 23(2) and (3) and Article 24 shall apply.

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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.

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) no longer meets the prudential requirements set out in Parts Three, Four or Six of Regulation (EU) No 575/2013 or imposed under Article 104(1)(a) 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).

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.

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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.

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