

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 28

Initial capital of investment firms

1 The initial capital of investment firms shall comprise only one or more of the items referred to in points (a) to (e) of Article 26(1) of Regulation (EU) No 575/2013.

2 All investment firms other than those referred to in Article 29 shall have initial capital of EUR 730 000.

Article 29

Initial capital of particular types of investment firms

1 An investment firm that does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis, but which holds client money or securities and which offers one or more of the following services, shall have initial capital of EUR 125 000:

- a the reception and transmission of investors' orders for financial instruments;
- b the execution of investors' orders for financial instruments;
- c the management of individual portfolios of investments in financial instruments.

2 The competent authorities may allow an investment firm which executes investors' orders for financial instruments to hold such instruments for its own account if the following conditions are met:

- a such positions arise only as a result of the firm's failure to match investors' orders precisely;
- b the total market value of all such positions is subject to a ceiling of 15 % of the firm's initial capital;
- c the firm meets the requirements set out in Articles 92 to 95 and Part Four of Regulation (EU) No 575/2013;
- d such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

3 Member States may reduce the amount referred to in paragraph 1 to EUR 50 000 where a firm is not authorised to hold client money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.

4 The holding of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing for its own account in relation to the services set out in paragraph 1 or for the purposes of paragraph 3.

Article 30

Initial capital of local firms

Local firms shall have initial capital of EUR 50 000 insofar as they benefit from the freedom of establishment or to provide services specified in Articles 31 and 32 of Directive 2004/39/EC.

Article 31

Coverage for firms not authorised to hold client money or securities

1 Coverage for the firms referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 shall take one of the following forms:

- a initial capital of EUR 50 000;
- b professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per annum for all claims;
- c a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

The Commission shall periodically review the amounts referred to in the first subparagraph.

2 If a firm referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 is also registered under Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation⁽¹⁾, it shall comply with Article 4(3) of that Directive and have coverage in one of the following forms:

- a initial capital of EUR 25 000;
- b professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 500 000 applying to each claim and in aggregate EUR 750 000 per annum for all claims;
- c a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in points (a) or (b).

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.

Status: This is the original version (as it was originally adopted).

(1) OJ L 9, 15.1.2003, p. 3.