

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 V

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

CHAPTER I

General Principles

Article 33

Credit institutions

Member States shall provide that the activities listed in Annex I may be carried out within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46 either by establishing a branch or by providing services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.

Article 34

Financial institutions

1 Member States shall provide that the activities listed in Annex I may be carried out within their territories, in accordance with Article 35, Article 36(1), (2) and (3), Article 39(1) and (2) and Articles 40 to 46, either by establishing a branch or by providing services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying out of those activities and which fulfils each of the following conditions:

- a the parent undertaking or undertakings are authorised as credit institutions in the Member State by the law of which the financial institution is governed;
- b the activities in question are actually carried out within the territory of the same Member State;
- c the parent undertaking or undertakings holds 90 % or more of the voting rights attaching to shares in the capital of the financial institution;
- d the parent undertaking or undertakings satisfies the competent authorities regarding the prudent management of the financial institution and has declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;
- e the financial institution is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent

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undertakings, in accordance with Title VII, Chapter 3 of this Directive and Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013, in particular for the purposes of the own funds requirements set out in Article 92 of that Regulation, for the control of large exposures provided for in Part Four of that Regulation and for the purposes of the limitation of holdings provided for in Articles 89 and 90 of that Regulation.

The competent authorities of the home Member State shall check compliance with the conditions set out in the first subparagraph and shall supply the financial institution with a certificate of compliance which shall form part of the notification referred to in Articles 35 and 39.

2 If a financial institution as referred to in the first subparagraph of paragraph 1 ceases to fulfil any of the conditions imposed, the competent authorities of the home Member State shall notify the competent authorities of the host Member State and the activities carried out by that financial institution in the host Member State shall become subject to the law of the host Member State.

3 Paragraphs 1 and 2 shall apply accordingly to subsidiaries of a financial institution as referred to in the first subparagraph of paragraph 1.