

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 VII

### PRUDENTIAL SUPERVISION

#### CHAPTER I

#### *Principles of prudential supervision*

##### *Section II*

#### *Exchange of information and professional secrecy*

##### *Article 53*

#### **Professional secrecy**

1 Member States shall provide that all persons working for or who have worked for the competent authorities and auditors or experts acting on behalf of the competent authorities shall be bound by the obligation of professional secrecy.

Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be disclosed in civil or commercial proceedings.

2 Paragraph 1 shall not prevent the competent authorities from exchanging information with each other or transmitting information to the ESRB, EBA, or the European Supervisory Authority (European Securities and Markets Authority) ("ESMA") established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(1)</sup> in accordance with this Directive, with Regulation (EU) No 575/2013, with other Directives applicable to credit institutions, with Article 15 of Regulation (EU) No 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010. That information shall be subject to paragraph 1.

3 Paragraph 1 shall not prevent the competent authorities from publishing the outcome of stress tests carried out in accordance with Article 100 of this Directive or Article 32 of Regulation (EU) No 1093/2010 or from transmitting the outcome of stress tests to EBA for the purpose of the publication by EBA of the results of Union-wide stress tests.

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#### Article 54

##### **Use of confidential information**

Competent authorities receiving confidential information under Article 53 shall use it only in the course of their duties and only for any of the following purposes:

- (a) to check that the conditions governing access to the activity of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such activity, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;
- (b) to impose penalties;
- (c) in an appeal against a decision of the competent authority including court proceedings pursuant to Article 72;
- (d) in court proceedings initiated pursuant to special provisions provided for in Union law adopted in the field of credit institutions.

#### Article 55

##### **Cooperation agreements**

Member States and EBA, in accordance with Article 33 of Regulation (EU) No 1093/2010, may conclude cooperation agreements, providing for exchanges of information, with the supervisory authorities of third countries or with authorities or bodies of third countries in accordance with Article 56 and Article 57(1) of this Directive only if the information disclosed is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive are complied with. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

Where the information originates in another Member State, it shall only be disclosed with the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

#### Article 56

##### **Exchange of information between authorities**

Article 53(1) and Article 54 shall not preclude the exchange of information between competent authorities within a Member State, between competent authorities in different Member States or between competent authorities and the following, in the discharge of their supervisory functions:

- (a) authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;
- (b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macroprudential rules;

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- (c) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
- (d) contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- (e) bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;
- (f) persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

Article 53(1) and Article 54 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions.

The information received shall in any event be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

#### *Article 57*

### **Exchange of information with oversight bodies**

1 Notwithstanding Articles 53, 54 and 55, Member States may authorise exchange of information between the competent authorities and the authorities responsible for overseeing:

- a the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;
- b contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- c persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions.

2 In the cases referred to in paragraph 1, Member States shall require fulfilment of at least the following conditions:

- a that the information is exchanged for the purpose of performing the tasks referred to in paragraph 1;
- b that the information received is subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1);
- c where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

3 Notwithstanding Articles 53, 54 and 55, Member States may, with the aim of strengthening the stability and integrity of the financial system, authorise the exchange of information between competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

In such cases Member States shall require fulfilment of at least the following conditions:

- a that the information is exchanged for the purpose of detecting and investigating breaches of company law;
- b that the information received is subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1);

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- c where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

4 Where the authorities or bodies referred to in paragraph 1 perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, a Member State may extend the possibility of exchanging information provided for in the first subparagraph of paragraph 3 to such persons under the conditions specified in the second subparagraph of paragraph 3.

5 The competent authorities shall communicate to EBA the names of the authorities or bodies which may receive information pursuant to this Article.

6 In order to implement paragraph 4, the authorities or bodies referred to in paragraph 3 shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

#### *Article 58*

#### **Transmission of information concerning monetary, deposit protection, systemic and payment aspects**

1 Nothing in this Chapter shall prevent a competent authority from transmitting information to the following for the purposes of their tasks:

- a ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;
- b contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
- c where appropriate, other public authorities responsible for overseeing payment systems;
- d the ESRB, 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<sup>(2)</sup> and ESMA, where that information is relevant for the exercise of their tasks under Regulations (EU) No 1092/2010, (EU) No 1094/2010 or (EU) No 1095/2010.

Member States shall take the appropriate measures to remove obstacles preventing competent authorities from transmitting information in accordance with the first subparagraph.

2 Nothing in this Chapter shall prevent the authorities or bodies referred to in paragraph 1 from communicating to the competent authorities such information as the competent authorities may need for the purposes of Article 54.

3 Information received in accordance with paragraphs 1 and 2 shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

4 Member States shall take the necessary measures to ensure that, in an emergency situation as referred to in Article 114(1), the competent authorities communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision,

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the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks.

#### *Article 59*

### **Transmission of information to other entities**

1 Notwithstanding Article 53(1) and Article 54, Member States may, by virtue of provisions laid down in national law, authorise the disclosure of certain information to other departments of their central government administrations responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential supervision, and prevention and resolution of failing institutions. Without prejudice to paragraph 2 of this Article, persons having access to the information shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

In an emergency situation as referred to in Article 114(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first subparagraph of this paragraph in all Member States concerned.

2 Member States may authorise the disclosure of certain information relating to the prudential supervision of institutions to parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under the following conditions:

- a that the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;
- b that the information is strictly necessary for fulfilling the mandate referred to in point (a);
- c the persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in Article 53(1);
- d where the information originates in another Member State that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement.

To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the entities referred to in the first subparagraph shall comply with the applicable national laws transposing Directive 95/46/EC.

#### *Article 60*

### **Disclosure of information obtained by on-the-spot checks and inspections**

Member States shall ensure that information received under Article 52(3), Article 53(2) and Article 56 and information obtained by means of an on-the-spot check or inspection referred to in Article 52(1) and (2) shall not be disclosed under Article 59 save with the express consent of the competent authorities which disclosed the information or of

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the competent authorities of the Member State in which such an on-the-spot check or inspection was carried out.

#### *Article 61*

##### **Disclosure of information concerning clearing and settlement services**

1 Nothing in this Chapter shall prevent the competent authorities of a Member State from communicating the information referred to in Articles 53, 54 and 55 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1).

2 Member States shall, however, ensure that information received under Article 53(2) shall not be disclosed in the circumstances referred to in paragraph 1 without the express consent of the competent authorities, which have disclosed it.

#### *Article 62*

##### **Processing of personal data**

The processing of personal data for the purposes of this Directive shall be carried out in accordance with Directive 95/46/EC and, where relevant, with Regulation (EC) No 45/2001.

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- (1) [OJ L 331, 15.12.2010, p. 84.](#)
- (2) [OJ L 331, 15.12.2010, p. 48.](#)