

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 U.K.

**PRUDENTIAL SUPERVISION**

CHAPTER 3 U.K.

*Supervision on a consolidated basis*

Section I U.K.

*Principles for conducting supervision on a consolidated basis*

[<sup>F1</sup>Article 111 U.K.]

**Determination of the consolidating supervisor**

1 Where a parent undertaking is a parent credit institution in a Member State or an EU parent credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent credit institution in the Member State or that EU parent credit institution on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm and none of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority that supervises that parent investment firm in the Member State or that EU parent investment firm on an individual basis.

Where a parent undertaking is a parent investment firm in a Member State or an EU parent investment firm, and at least one of its subsidiaries is a credit institution, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution, or where there are several credit institutions, the credit institution with the largest balance sheet total.

2 Where the parent of an institution is a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authority that supervises the institution on an individual basis.

3 Where two or more institutions authorised in the Union have the same parent financial holding company in a Member State, parent mixed financial holding company in a Member State, EU parent financial holding company or EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by:

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- a the competent authority of the credit institution where there is only one credit institution within the group;
- b the competent authority of the credit institution with the largest balance sheet total, where there are several credit institutions within the group; or
- c the competent authority of the investment firm with the largest balance sheet total, where the group does not include any credit institution.

4 Where consolidation is required pursuant to Article 18(3) or (6) of Regulation (EU) No 575/2013, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total or, where the group does not include any credit institution, by the competent authority of the investment firm with the largest balance sheet total.

5 By way of derogation from the third subparagraph of paragraph 1, from point (b) of paragraph 3 and from paragraph 4, where a competent authority supervises on an individual basis more than one credit institution within a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more credit institutions within the group where the sum of the balance sheet totals of those supervised credit institutions is higher than that of the credit institutions supervised on an individual basis by any other competent authority.

By way of derogation from point (c) of paragraph 3, where a competent authority supervises on an individual basis more than one investment firm within a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more investment firms within the group with the highest balance sheet total in aggregate.

6 In particular cases, the competent authorities may waive by common agreement the criteria referred to in paragraphs 1, 3 and 4 and appoint a different competent authority to exercise supervision on a consolidated basis where the application of the criteria referred to therein would be inappropriate, taking into account the institutions concerned and the relative importance of their activities in the relevant Member States, or the need to ensure the continuity of supervision on a consolidated basis by the same competent authority. In such cases, the EU parent institution, EU parent financial holding company, EU parent mixed financial holding company or the institution with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.

7 The competent authorities shall notify the Commission and EBA without delay of any agreement falling within paragraph 6.]

#### 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 112 **U.K.**

### Coordination of supervisory activities by the consolidating supervisor

1 In addition to the obligations imposed by this Directive and by Regulation (EU) No 575/2013, the consolidating supervisor shall carry out the following tasks:

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- a coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;
- b planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Title VII, Chapter 3, in cooperation with the competent authorities involved;
- c planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with ESCB central banks, in preparation for and during emergency situations, including adverse developments in institutions or in financial markets using, where possible, existing channels of communication for facilitating crisis management.

2 Where the consolidating supervisor fails to carry out the tasks referred to in paragraph 1 or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in paragraph 1, any of the competent authorities concerned may refer the matter to EBA and request its assistance under Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

3 The planning and coordination of supervisory activities referred to in paragraph 1(c) of this Article includes exceptional measures referred to in Article 117(1)(d) and Article 117(4)(b), the preparation of joint assessments, the implementation of contingency plans and communication to the public.

<sup>[<sup>F</sup>]</sup> Article 113 **U.K.**

### **Joint decisions on institution-specific prudential requirements**

1 The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company shall do everything within their power to reach a joint decision:

- a on the application of Articles 73 and 97 to determine the adequacy of the consolidated level of own funds held by the group of institutions with respect to its financial situation and risk profile and the required level of own funds for the application of point (a) of Article 104(1) to each entity within the group of institutions and on a consolidated basis;
- b on measures to address any significant matters and material findings relating to liquidity supervision, including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 and relating to the need for institution-specific liquidity requirements in accordance with Article 105;
- c on any guidance on additional own funds referred to in Article 104b(3).

2 The joint decisions referred to in paragraph 1 shall be reached:

- a for the purposes of point (a) of paragraph 1 of this Article, within four months of submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Article 104a to the other relevant competent authorities;
- b for the purposes of point (b) of paragraph 1 of this Article, within four months of submission by the consolidating supervisor of a report containing the assessment of the liquidity risk profile of the group of institutions in accordance with Articles 86 and 105;

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- c for the purposes of point (c) of paragraph 1 of this Article, within four months of submission by the consolidating supervisor of a report containing the risk assessment of the group of institutions in accordance with Article 104b.

The joint decisions referred to in paragraph 1 of this Article shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 73, 97, 104a and 104b.

The joint decisions referred to in points (a) and (b) of paragraph 1 shall be set out in documents containing full reasons which shall be provided to the EU parent institution by the consolidating supervisor. In the event of disagreement, the consolidating supervisor shall at the request of any of the other competent authorities concerned consult EBA. The consolidating supervisor may consult EBA on its own initiative.

3 In the absence of such a joint decision between the competent authorities within the time periods referred to in paragraph 2 of this Article, a decision on the application of Articles 73, 86 and 97, point (a) of Article 104(1), Article 104b and Article 105 of this Directive shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the time periods referred to in paragraph 2 of this Article, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The time periods referred to in paragraph 2 of this Article shall be deemed the conciliation periods within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month of receipt of the referral to EBA. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

The decision on the application of Articles 73, 86 and 97, point (a) of Article 104(1), Article 104b and Article 105 of this Directive shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or EU parent financial holding company or EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of any of the time periods referred to in paragraph 2 of this Article, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take their decision in conformity with the decision of EBA. The time periods referred to in paragraph 2 of this Article shall be deemed the conciliation periods within the meaning of that Regulation. EBA shall take its decision within one month of receipt of the referral to EBA. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

The decisions shall be set out in a document containing full reasons and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the time periods referred to in paragraph 2. The document shall be provided by the consolidating supervisor to all competent authorities concerned and to the EU parent institution.

Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.

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4 The joint decisions referred to in paragraph 1 and the decisions taken by the competent authorities in the absence of a joint decision referred to in paragraph 3 shall be recognised as determinative and applied by the competent authorities in the Member States concerned.

The joint decisions referred to in paragraph 1 of this Article and any decision taken in the absence of a joint decision in accordance with paragraph 3 of this Article, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent institution or, EU parent financial holding company or EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of point (a) of Article 104(1), Articles 104b and 105. In those exceptional circumstances, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.

5 EBA shall develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this Article, with regard to the application of Articles 73, 86 and 97, point (a) of Article 104(1), Articles 104b and 105 with a view to facilitating joint decisions.

EBA shall submit those draft implementing technical standards to the Commission by 1 July 2014.

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.]

#### 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 114 **U.K.**

#### Information requirements in emergency situations

1 Where an emergency situation, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 51 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Articles 54 and 58 of Directive 2004/39/EC, alert as soon as is practicable, EBA and the authorities referred to in Article 58(4) and Article 59 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities.

If an ESCB central bank becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Article 112, and EBA.

Where possible, the competent authority and the authority referred to in Article 58(4) shall use existing channels of communication.

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2 The consolidating supervisor shall, where it needs information which has already been given to another competent authority, contact that authority where possible in order to prevent duplication of reporting to the various authorities involved in supervision.

#### Article 115 **U.K.**

### Coordination and cooperation arrangements

1 In order to facilitate and establish effective supervision, the consolidating supervisor and the other competent authorities shall have written coordination and cooperation arrangements in place.

Under those arrangements additional tasks may be entrusted to the consolidating supervisor and procedures for the decision-making process and for cooperation with other competent authorities, may be specified.

2 The competent authorities responsible for authorising the subsidiary of a parent undertaking which is an institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. EBA shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.

[<sup>F23</sup> Where the consolidating supervisor is different from the competent authority in the Member State where a financial holding company or mixed financial holding company that has been granted approval in accordance with Article 21a is established, the coordination and cooperation arrangements referred to in paragraph 1 of this Article shall also be concluded with the competent authority of the Member State where the parent undertaking is established.]

#### 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 116 **U.K.**

### Colleges of supervisors

1 The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 112 and 113 and Article 114(1) and subject to the confidentiality requirements of paragraph 2 of this Article and to Union law, ensure appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate.

EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010. To that end, EBA shall participate as appropriate and shall be considered to be a competent authority for that purpose.

Colleges of supervisors shall provide a framework for the consolidating supervisor, EBA and the other competent authorities concerned to carry out the following tasks:

- a exchanging information between each other and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;
- b agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- c determining supervisory examination programmes referred to in Article 99 based on a risk assessment of the group in accordance with Article 97;
- d increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 114 and Article 117(3);
- e consistently applying the prudential requirements under this Directive and under Regulation (EU) No 575/2013 across all entities within a group of institutions without prejudice to the options and discretions available in Union law;
- f applying Article 112(1)(c) taking into account the work of other forums that may be established in that area.

[<sup>F2</sup>1a To facilitate the tasks referred to in Articles 112(1), 114(1) and 115(1) of this Directive, the consolidating supervisor shall also establish colleges of supervisors where all the cross-border subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company have their head offices in third countries, provided that the third countries' supervisory authorities are subject to confidentiality requirements that are equivalent to the requirements laid down in Section II of Chapter 1 of this Directive and, where applicable, in Articles 76 and 81 of Directive 2014/65/EU.]

2 The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Chapter 1, Section II of this Directive, and Articles 54 and 58 of Directive 2004/39/EC shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive and under Regulation (EU) No 575/2013.

3 The establishment and functioning of the colleges shall be based on written arrangements referred to in Article 115, determined after consulting competent authorities concerned by the consolidating supervisor.

4 EBA shall develop draft regulatory technical standards in order to specify general conditions of functioning of the colleges of supervisors.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2014.

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

5 EBA shall develop draft implementing technical standards in order to determine the operational functioning of the colleges of supervisors.

EBA shall submit those draft implementing technical standards to the Commission by 31 December 2014.

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.



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6 The competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company and the competent authorities of a host Member State where significant branches as referred to in Article 51 are established, ESCB central banks as appropriate, and third countries' supervisory authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Chapter 1, Section II of this Directive and where applicable, Articles 54 and 58 of Directive 2004/39/EC, may participate in colleges of supervisors.

[<sup>F2</sup>The competent authority in the Member State where a financial holding company or a mixed financial holding company that has been granted approval in accordance with Article 21a is established may participate in the relevant college of supervisors.]

7 The consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college. The consolidating supervisor shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The consolidating supervisor shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

8 The decision of the consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned as referred to in Article 7 and the obligations referred to in Article 51(2).

9 The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section II, of this Directive, and where applicable, Articles 54 and 58 of Directive 2004/39/EC, shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.

In the event of a disagreement between competent authorities on the functioning of supervisory colleges, any of the competent authorities concerned may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the functioning of supervisory colleges under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

#### 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 117 **U.K.**

### Cooperation obligations

1 The competent authorities shall cooperate closely with each other. They shall provide one another with any information which is essential or relevant for the exercise of the other



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authorities' supervisory tasks under this Directive and Regulation (EU) No 575/2013. In that regard, the competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

The competent authorities shall cooperate with EBA for the purposes of this Directive and Regulation (EU) No 575/2013, in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall provide EBA with all information necessary to carry out its duties under this Directive, under Regulation (EU) No 575/2013, and under Regulation (EU) No 1093/2010, in accordance with Article 35 of Regulation (EU) No 1093/2010.

Information referred to in the first subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of an institution or financial institution in another Member State.

In particular, consolidating supervisors of EU parent institutions and institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of those parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.

The essential information referred to in the first subparagraph shall include, in particular, the following items:

- a identification of the group's legal structure and the governance structure including organisational structure, covering all regulated entities, non-regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 14(3), Article 74(1) and Article 109(2), and of the competent authorities of the regulated entities in the group;
  - b procedures for the collection of information from the institutions in a group, and the checking of that information;
  - c adverse developments in institutions or in other entities of a group, which could seriously affect the institutions;
  - d significant penalties and exceptional measures taken by competent authorities in accordance with this Directive, including the imposition of a specific own fund requirement under Article 104 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.
- 2 The competent authorities may refer to EBA any of the following situations:
- a where a competent authority has not communicated essential information;
  - b where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in developing consistent cooperation practices on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

3 The competent authorities responsible for the supervision of institutions controlled by an EU parent institution shall where possible contact the consolidating supervisor when they need information regarding the implementation of approaches and methodologies set out in this

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Directive and in Regulation (EU) No 575/2013 that may already be available to the consolidating supervisor.

4 The competent authorities concerned shall, before taking a decision, consult each other with regard to the following items, [<sup>X1</sup>where such a decision is of importance for other competent authorities' supervisory tasks:]

- a changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities; and
- b significant penalties or exceptional measures taken by competent authorities, including the imposition of a specific own funds requirement under Article 104 and the imposition of any limitation on the use of the advances measurement approaches for the calculation of the own funds requirements under Article 312(2) of Regulation (EU) No 575/2013.

For the purposes of point (b), the consolidating supervisor shall always be consulted.

However, a competent authority may decide not to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision. In such cases, the competent authority shall, without delay, inform the other competent authorities after taking its decision.

[<sup>F25</sup> Competent authorities, financial intelligence units and authorities entrusted with the public duty of supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 for compliance with that Directive, shall cooperate closely with each other within their respective competences and shall provide each other with information relevant for their respective tasks under this Directive, Regulation (EU) No 575/2013 and under Directive (EU) 2015/849, provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the competent authority, financial intelligence unit or authority entrusted with the public duty of supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 is located.

EBA may assist the competent authorities in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010.

6 By 1 January 2020, EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, specifying the manner for cooperation and information exchange between the authorities referred to in paragraph 5 of this Article, particularly in relation to cross-border groups and in the context of identifying serious breaches of anti-money laundering rules.]

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#### **Editorial Information**

- X1** 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 \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

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#### **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 \(Text with EEA relevance\)](#).

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## Article 118 **U.K.**

### Checking information concerning entities in other Member States

Where, in applying this Directive and Regulation (EU) No 575/2013, the competent authorities of one Member State wish in specific cases to check the information concerning an institution, a financial holding company, a mixed financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary as referred to in Article 125 or a subsidiary as referred to in Article 119(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that check carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the check themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may, if it so wishes, participate in the check where it does not carry out the check itself.

## Section II **U.K.**

### *Financial holding companies, mixed financial holding companies and mixed-activity holding companies*

## Article 119 **U.K.**

### Inclusion of holding companies in consolidated supervision

[<sup>F1</sup> Subject to Article 21a, Member States shall adopt any measures necessary to include financial holding companies and mixed financial holding companies in consolidated supervision.]

2 Where a subsidiary that is an institution is not included in supervision on a consolidated basis under one of the cases provided for in Article 19 of Regulation (EU) No 575/2013, the competent authorities of the Member State in which that subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that subsidiary.

3 Member States shall enable their competent authorities responsible for exercising supervision on a consolidated basis to ask the subsidiaries of an institution, a financial holding company or mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 122. In such a case, the procedures for transmitting and checking the information set out in that Article shall apply.

#### 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 \(Text with EEA relevance\).](#)

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## Article 120 **U.K.**

### Supervision of mixed financial holding companies

1 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only Directive 2002/87/EC to that mixed financial holding company.

[<sup>F12</sup> Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions of the Directive relating to the most significant financial sector as defined in Article 3(2) of Directive 2002/87/EC.]

3 The consolidating supervisor shall inform EBA and EIOPA of the decisions taken under paragraphs 1 and 2.

4 EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines aiming to converge supervisory practices and shall, within three years of the adoption of those guidelines, develop draft regulatory technical standards for the same purpose.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

#### 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 121 **U.K.**

### Qualification of directors

Member States shall require that the members of the management body of a financial holding company or mixed financial holding company be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company.

## Article 122 **U.K.**

### Requests for information and inspections

1 Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding

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company, the competent authorities responsible for the authorisation and supervision of those institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via subsidiaries that are institutions, require them to supply any information which would be relevant for the purpose of supervising those subsidiaries.

2 Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to check information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure set out in Article 125 may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which a subsidiary that is an institution is situated, on-the-spot check of information shall be carried out in accordance with the procedure set out in Article 118.

#### Article 123 **U.K.**

### Supervision

1 Without prejudice to Part Four of Regulation (EU) No 575/2013, Member States shall provide that, where the parent undertaking of one or more institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of those institutions shall exercise general supervision over transactions between the institution and the mixed-activity holding company and its subsidiaries.

2 Competent authorities shall require institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the institution of any significant transaction with those entities other than the one referred to in Article 394 of Regulation (EU) No 575/2013. Those procedures and significant transactions shall be subject to overview by the competent authorities.

#### Article 124 **U.K.**

### Exchange of information

1 Member States shall ensure that there are no legal impediments preventing the exchange, as between undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries as referred to in Article 119(3), of any information which would be relevant for the purposes of supervision in accordance with Article 110 and Chapter 3.

2 Where a parent undertaking and any of its subsidiaries that are institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 111, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to those authorities.

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3 Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.

Similarly, Member States shall authorise their competent authorities to exchange the information referred to in Article 122 on the understanding that the collection or possession of information does not imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries as referred to in Article 119(3).

#### Article 125 U.K.

### Cooperation

1 Where an institution, financial holding company, mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

[<sup>F2</sup>Where, pursuant to Article 111 of this Directive, the consolidating supervisor of a group with a parent mixed financial holding company is different from the coordinator determined in accordance with Article 10 of Directive 2002/87/EC, the consolidating supervisor and the coordinator shall cooperate for the purpose of applying this Directive and Regulation (EU) No 575/2013 on a consolidated basis. In order to facilitate and establish effective cooperation, the consolidating supervisor and the coordinator shall have written coordination and cooperation arrangements in place.]

2 Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive for credit institutions or under Directive 2004/39/EC for investment firms.

3 The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 11 of Regulation (EU) No 575/2013. Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.

#### 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 \(Text with EEA relevance\)](#).



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## Article 126 **U.K.**

### Penalties

In accordance with Chapter 1, Section IV of this Title, Member States shall ensure that administrative penalties or other administrative measures aiming to end observed breaches or the causes of such breaches may be imposed on financial holding companies, mixed financial holding companies, and mixed-activity holding companies, or their effective managers, that breach laws, regulations or administrative provisions transposing this Chapter.

## Article 127 **U.K.**

### Assessment of equivalence of third countries' consolidated supervision

1 Where an institution, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under Articles 111, the competent authorities shall assess whether the institution is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by the principles set out in this Directive and the requirements of Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013.

The assessment shall be carried out by the competent authority which would be responsible for consolidated supervision if paragraph 3 were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. That competent authority shall consult the other competent authorities involved.

2 The Commission may request the European Banking Committee to give general guidance as to whether the consolidated supervision arrangements of supervisory authorities in third countries are likely to achieve the objectives of consolidated supervision as set out in this Chapter, in relation to institutions the parent undertaking of which has its head office in a third country. The European Banking Committee shall keep any such guidance under review and take into account any changes to the consolidated supervision arrangements applied by such competent authorities. EBA shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to assessing whether such guidance should be updated.

The competent authority carrying out the assessment referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For that purpose, the competent authority shall consult EBA before adopting a decision.

3 In the absence of such equivalent supervision, Member States shall apply this Directive and Regulation (EU) No 575/2013 to the institution mutatis mutandis or shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of institutions.

Those supervisory techniques shall, after consulting the other competent authorities involved, be agreed upon by the competent authority which would be responsible for consolidated supervision.

Competent authorities may in particular require the establishment of a financial holding company or mixed financial holding company which has its head office in the Union, and apply the provisions on consolidated supervision to the consolidated position of that



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financial holding company or the consolidated position of the institutions of that mixed financial holding company.

The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as set out in this Chapter and shall be notified to the other competent authorities involved, to EBA and to the Commission.