

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 XI

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

Transitional provisions on the supervision of institutions exercising the freedom of establishment and the freedom to provide services

Article 151

Scope

1 The provisions in this Chapter shall apply instead of Articles 40, 41, 43, 49, 50 and 51 until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted pursuant to Article 460 of Regulation (EU) No 575/2013.

2 In order to ensure that the phasing in of supervisory arrangements for liquidity is fully aligned with the development of uniform liquidity rules, the Commission shall be empowered to adopt delegated acts in accordance with Article 145 postponing the date referred to in paragraph 1 by up to two years, where uniform liquidity rules have not been introduced in the Union because international standards on liquidity supervision have not yet been agreed upon at the date referred to in paragraph 1 of this Article.

Article 152

Reporting requirements

Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 156 of this Directive, host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.

Article 153

Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State

1 Where the competent authorities of a host Member State ascertain that a credit institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that Member State pursuant to this Directive involving powers of the host Member State's competent authorities, those authorities shall require the credit institution concerned to remedy its non-compliance.

2 If the credit institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly.

3 The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the credit institution concerned remedies its non-compliance. The nature of those measures shall be communicated to the competent authorities of the host Member State.

4 If, despite the measures taken by the home Member State or because such measures prove inadequate or are not provided for in the Member State in question, the credit institution persists in violating the legal rules referred to in paragraph 1 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further breaches and, in so far as is necessary, to prevent that credit institution from initiating further transactions within its territory. Member States shall ensure that it is possible to serve the legal documents necessary for those measures on credit institutions within their territories.

Article 154

Precautionary measures

Before following the procedure provided for in Article 153, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question shall amend or abolish those measures.

Article 155

Responsibility

1 The prudential supervision of an institution, including that of the activities it carries out in accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent authorities of the host Member State.

2 Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

3 The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

Article 156

Liquidity supervision

Host Member States shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.

Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of their monetary policies.

Such measures shall not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Article 157

Collaboration concerning supervision

The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of institutions operating, in particular through a branch, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

Article 158

Significant branches

1 The competent authorities of a host Member State may make a request to the consolidating supervisor where Article 112(1) applies or to the competent authorities of the home Member State, for a branch of an institution other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.

2 That request shall provide reasons for considering the branch to be significant with particular regard to the following:

- a whether the market share of the branch in terms of deposits exceeds 2 % in the host Member State;

- b the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the host Member State;
- c the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the host Member State.

The competent authorities of the home and host Member States, and the consolidating supervisor where Article 112(1) applies, shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

If no joint decision is reached within two months of receipt of a request under the first subparagraph, the competent authorities of the host Member State shall take their own decision within a further period of two months on whether the branch is significant. In taking their decision, the competent authorities of the host Member State shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

The decisions referred to in the second and third subparagraphs shall be set out in a document containing full reasons, shall be transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the competent authorities of the Member States concerned.

The designation of a branch as being significant shall not affect the rights and responsibilities of the competent authorities under this Directive.

3 The competent authorities of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) and carry out the tasks referred to in Article 112(1)(c) in cooperation with the competent authorities of the host Member State.

4 If a competent authority of a home Member State becomes aware of an emergency situation as referred to in Article 114(1), it shall alert as soon as practicable the authorities referred to in Article 58(4) and in Article 59(1).

5 Where Article 116 does not apply, the competent authorities supervising a institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the reaching of a joint decision on the designation of a branch as being significant under paragraph 2 of this Article and the exchange of information under Article 60. The establishment and functioning of the college shall be based on written arrangements determined, after consulting the competent authorities concerned, by the competent authority of the home Member State. The competent authority of the home Member State shall decide which competent authorities participate in a meeting or in an activity of the college.

6 The decision of the competent authority of the home Member State 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 referred to in Article 155(3) and the obligations referred to in paragraph 2 of this Article.

7 The competent authority of the home Member State 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 competent authority of the home Member State 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.

Article 159

On-the-spot checks

1 Host Member States shall provide that, where an institution authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through an intermediary on-the-spot checks of the information referred to in Article 50.

2 The competent authorities of the home Member State may also, for the purposes of such on-the-spot checking of branches, have recourse to one of the other procedures set out in Article 118.

3 Paragraphs 1 and 2 shall not affect the right of the competent authorities of the host Member State to carry out, in the discharge of their responsibilities under this Directive, on-the-spot checks of branches established within their territory.

CHAPTER 2

Transitional provisions for capital buffers

Article 160

Transitional provisions for capital buffers

1 This Article amends the requirements of Articles 129 and 130 for a transitional period between 1 January 2016 and 31 December 2018.

2 For the period from 1 January 2016 until 31 December 2016:

- a the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 0,625 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
- b the institution-specific countercyclical capital buffer shall be no more than 0,625 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

3 For the period from 1 January 2017 until 31 December 2017:

- a the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1,25 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
- b the institution-specific countercyclical capital buffer shall be no more than 1,25 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

4 For the period from 1 January 2018 until 31 December 2018:

- a the capital conservation buffer shall consist of Common Equity Tier 1 capital equal to 1,875 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

- b the institution-specific countercyclical capital buffer shall be no more than 1,875 % of the total of the risk-weighted exposure amounts of the institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

5 The requirement for a capital conservation plan and the restrictions on distributions referred to in Articles 141 and 142 shall apply during the transitional period between 1 January 2016 and 31 December 2018 where institutions fail to meet the combined buffer requirement taking into account the requirements set out in paragraphs 2 to 4 of this Article.

6 Member States may impose a shorter transitional period than that specified in paragraphs 1 to 4 and thereby implement the capital conservation buffer and the countercyclical capital buffer from 31 December 2013. Where a Member State imposes such a shorter transitional period, it shall inform the relevant parties, including the Commission, the ESRB, EBA and the relevant supervisory colleges, accordingly. Such a shorter transitional period may be recognised by other Member States. Where another Member State recognises such a shorter transitional period, it shall notify the Commission, the ESRB, EBA and the relevant supervisory college accordingly.

7 Where a Member State imposes a shorter transitional period for the countercyclical capital buffer the shorter period shall apply only for the purposes of the calculation of the institution-specific countercyclical capital buffer by institutions that are authorised in the Member State for which the designated authority is responsible.

CHAPTER 3

Final provisions

Article 161

Review and report

1 The Commission shall conduct periodic reviews of the implementation of this Directive in order to ensure that its implementation does not result in manifest discrimination between institutions on the basis of their legal structure or ownership model.

2 By 30 June 2016, the Commission shall, in close cooperation with EBA, submit a report to the European Parliament and to the Council, together with a legislative proposal if appropriate, on the provisions on remuneration in this Directive and in Regulation (EU) No 575/2013, following a review thereof, taking into account international developments and with particular regard to:

- a their efficiency, implementation and enforcement, including the identification of any lacunae arising from the application of the principle of proportionality to those provisions;
- b the impact of compliance with the principle in Article 94(1)(g) in respect of:
 - (i) competitiveness and financial stability; and
 - (ii) any staff working effectively and physically in subsidiaries established outside the EEA of parent institutions established within the EEA.

That review shall consider, in particular, whether the principle set out in Article 94(1)(g) should continue to apply to any staff covered by point (b)(ii) of the first subparagraph.

3 From 2014, EBA shall, in cooperation with EIOPA and ESMA, publish a biannual report analysing the extent to which Member States' law refers to external credit ratings for regulatory purposes and the steps taken by Member States to reduce such references. Those reports shall outline how the competent authorities meet their obligations under Article 77(1) and (3) and Article 79(b). Those reports shall also outline the degree of supervisory convergence in that regard.

4 By 31 December 2014, the Commission shall review and report on the application of Articles 108 and 109 and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

5 By 31 December 2016, the Commission shall review and report on the results achieved under Article 91(11), including the appropriateness of benchmarking diversity practices, taking into account all relevant Union and international developments, and shall submit that report to the European Parliament and to the Council together with a legislative proposal if appropriate.

6 By 31 December 2015, the Commission shall consult the ESRB, EBA, EIOPA, ESMA and other relevant parties on the effectiveness of information-sharing arrangements under this Directive, both in normal times and during times of stress.

7 By 31 December 2015, EBA shall review and submit a report to the Commission on the application of this Directive and of Regulation (EU) No 575/2013 on the cooperation of the Union and Member States with third countries. That report shall identify any areas which require further development as regards cooperation and information sharing. EBA shall publish the report on its website.

8 Upon receiving a mandate from the Commission, EBA shall explore whether financial sector entities which declare that they carry out their activities in accordance with Islamic banking principles are adequately covered by this Directive and by Regulation (EU) No 575/2013. The Commission shall review the report prepared by EBA and shall submit a legislative proposal to the European Parliament and to the Council if appropriate.

9 By 1 July 2014, EBA shall report to the Commission on credit institutions' use of and benefits from ESCB central banks longer-term refinancing operations and similar central bank funding support measures. Based on that report and after consulting the ECB, the Commission shall, by 31 December 2014, submit a report to the European Parliament and to the Council on the use of and benefits from those refinancing operations and funding support measures for credit institutions authorised in the Union, together with a legislative proposal on the use of such refinancing operations and funding support measures if appropriate.

Article 162

Transposition

1 By 31 December 2013 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive.

Member States shall apply those provisions from 31 December 2013.

Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive. Where the documents accompanying notification of transposition measures provided by Member States are not sufficient to assess fully the compliance of the transposing provisions with certain provisions of this Directive, the Commission may, upon EBA's request with a view to carrying out its tasks under Regulation (EU) No 1093/2010, or on

its own initiative, require Member States to provide more detailed information regarding the transposition and implementation of those provisions and this Directive.

2 By way of derogation from paragraph 1, Title VII, Chapter 4 shall apply from 1 January 2016.

3 The laws, regulations and administrative provisions necessary to comply with Article 94(1)(g) shall require institutions to apply the principles laid down therein to remuneration awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before or after 31 December 2013.

4 When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

5 By way of derogation from paragraph 1 of this Article, Article 131 shall apply from 1 January 2016. Member States shall implement Article 131(4) from 1 January 2016 in the following manner:

- a 25 % of the G-SII buffer, set in accordance with Article 131(4), in 2016;
- b 50 % of the G-SII buffer, set in accordance with Article 131(4), in 2017;
- c 75 % of the G-SII buffer, set in accordance with Article 131(4), in 2018; and
- d 100 % of the G-SII buffer, set in accordance with Article 131(4), in 2019.

6 By way of derogation from paragraph 2 of this Article, Article 133 shall apply from 31 December 2013.

Article 163

Repeal

Directives 2006/48/EC and 2006/49/EC are repealed with effect from 1 January 2014.

References to the repealed Directives shall be construed as references to this Directive and to Regulation (EU) No 575/2013 and shall be read in accordance with the correlation table set out in Annex II to this Directive and in Annex IV to Regulation (EU) No 575/2013.

Article 164

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 165

Addressees

This Directive is addressed to the Member States.