

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

PART ONE

GENERAL PROVISIONS

TITLE II

LEVEL OF APPLICATION OF REQUIREMENTS

CHAPTER I

Application of requirements on an individual basis

Article 6

General principles

- 1 Institutions shall comply with the obligations laid down in Parts Two to Five and Eight on an individual basis.
- 2 Every institution which is either a subsidiary in the Member State where it is authorised and supervised, or a parent undertaking, and every institution included in the consolidation pursuant to Article 19, shall not be required to comply with the obligations laid down in Articles 89, 90 and 91 on an individual basis.
- 3 Every institution which is either a parent undertaking, or a subsidiary, and every institution included in the consolidation pursuant to Article 19, shall not be required to comply with the obligations laid down in Part Eight on an individual basis.
- 4 Credit institutions and investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall comply with the obligations laid down in Part Six on an individual basis. Pending the report from the Commission in accordance with Article 508(3), competent authorities may exempt investment firms from compliance with the obligations laid down in Part Six taking into account the nature, scale and complexity of the investment firms' activities.
- 5 Institutions, except for investment firms referred to in Article 95(1) and Article 96(1) and institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3), shall comply with the obligations laid down in Part Seven on an individual basis.

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Article 7

Derogation to the application of prudential requirements on an individual basis

1 Competent authorities may waive the application of Article 6(1) to any subsidiary of an institution, where both the subsidiary and the institution are subject to authorisation and supervision by the Member State concerned, and the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking, and all of the following conditions are satisfied, in order to ensure that own funds are distributed adequately between the parent undertaking and the subsidiary:

- a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by its parent undertaking;
- b either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the permission of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of negligible interest;
- c the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
- d the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

2 Competent authorities may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or a mixed financial holding company set up in the same Member State as the institution, provided that it is subject to the same supervision as that exercised over institutions, and in particular to the standards laid down in Article 11(1).

3 Competent authorities may waive the application of Article 6(1) to a parent institution in a Member State where that institution is subject to authorisation and supervision by the Member State concerned, and it is included in the supervision on a consolidated basis, and all the following conditions are satisfied, in order to ensure that own funds are distributed adequately among the parent undertaking and the subsidiaries:

- a there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the parent institution in a Member State;
- b the risk evaluation, measurement and control procedures relevant for consolidated supervision cover the parent institution in a Member State.

The competent authority which makes use of this paragraph shall inform the competent authorities of all other Member States.

Article 8

Derogation to the application of liquidity requirements on an individual basis

1 The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries in the Union and supervise them as a single liquidity sub-group so long as they fulfil all of the following conditions:

- a the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six;

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- b the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions of all institutions within the group or sub-group, that are subject to the waiver and ensures a sufficient level of liquidity for all of these institutions;
- c the institutions have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between them to enable them to meet their individual and joint obligations as they come due;
- d there is no current or foreseen material practical or legal impediment to the fulfilment of the contracts referred to in (c).

By 1 January 2014 the Commission shall report to the European Parliament and the Council on any legal obstacles which are capable of rendering impossible the application of point (c) of the first subparagraph and is invited to make a legislative proposal, if appropriate, by 31 December 2015 on which of those obstacles should be removed.

2 The competent authorities may waive in full or in part the application of Part Six to an institution and to all or some of its subsidiaries where all institutions of the single liquidity sub-group are authorised in the same Member State and provided that the conditions in paragraph 1 are fulfilled.

3 Where institutions of the single liquidity sub-group are authorised in several Member States, paragraph 1 shall only be applied after following the procedure laid down in Article 21 and only to the institutions whose competent authorities agree about the following elements:

- a their assessment of the compliance of the organisation and of the treatment of liquidity risk with the conditions set out in Article 86 of Directive 2013/36/EU across the single liquidity sub-group;
- b the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group;
- c the determination of minimum amounts of liquid assets to be held by institutions for which the application of Part Six will be waived;
- d the need for stricter parameters than those set out in Part Six;
- e unrestricted sharing of complete information between the competent authorities;
- f a full understanding of the implications of such a waiver.

4 Competent authorities may also apply paragraphs 1, 2 and 3 to institutions which are members of the same institutional protection scheme referred to in Article 113(7)(b), provided that they meet all the conditions laid down in Article 113(7), and to other institutions linked by a relationship referred to in Article 113(6) provided that they meet all the conditions laid down therein. Competent authorities shall in that case determine one of the institutions subject to the waiver to meet Part Six on the basis of the consolidated situation of all institutions of the single liquidity sub-group.

5 Where a waiver has been granted under paragraph 1 or paragraph 2, the competent authorities may also apply Article 86 of Directive 2013/36/EU, or parts thereof, at the level of the single liquidity sub-group and waive the application of Article 86 of Directive 2013/36/EU, or parts thereof, on an individual basis.

Article 9

Individual consolidation method

1 Subject to paragraphs 2 and 3 of this Article and to Article 144(3) of Directive 2013/36/EU, the competent authorities may permit on a case by case basis parent institutions to

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incorporate in the calculation of their requirement under Article 6(1) subsidiaries which meet the conditions laid down in points (c) and (d) of Article 7(1), and whose material exposures or material liabilities are to that parent institution.

2 The treatment set out in paragraph 1 shall be permitted only where the parent institution demonstrates fully to the competent authorities the circumstances and arrangements, including legal arrangements, by virtue of which there is no material practical or legal impediment, and none are foreseen, to the prompt transfer of own funds, or repayment of liabilities when due by the subsidiary to its parent undertaking.

3 Where a competent authority exercises the discretion laid down in paragraph 1, it shall on a regular basis and not less than once a year inform the competent authorities of all the other Member States of the use made of paragraph 1 and of the circumstances and arrangements referred to in paragraph 2. Where the subsidiary is in a third country, the competent authorities shall provide the same information to the competent authorities of that third country as well.

Article 10

Waiver for credit institutions permanently affiliated to a central body

1 Competent authorities may, in accordance with national law, partially or fully waive the application of the requirements set out in Parts Two to Eight to one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, if the following conditions are met:

- a the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;
- b the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions;
- c the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

Member States may maintain and make use of existing national legislation regarding the application of the waiver referred to in the first subparagraph as long as it does not conflict with this Regulation and Directive 2013/36/EU.

2 Where the competent authorities are satisfied that the conditions set out in paragraph 1 are met, and where the liabilities or commitments of the central body are entirely guaranteed by the affiliated institutions, the competent authorities may waive the application of Parts Two to Eight to the central body on an individual basis.

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