

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 I

Competence and duties of home and host Member States

Article 49

Competence of the competent authorities of the home and host Member States

- 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.
- 3 Measures taken by the host Member State shall not allow discriminatory or restrictive treatment on the basis that an institution is authorised in another Member State.

Article 50

Collaboration concerning supervision

- 1 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 institutions, in particular with regard to liquidity, solvency, deposit guarantee, the limiting of large exposures, other factors that may influence the systemic risk posed by the institution, administrative and accounting procedures and internal control mechanisms.
- 2 The competent authorities of the home Member State shall provide the competent authorities of host Member States immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of Regulation (EU) No 575/2013 and Title VII,

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Chapter 3 of this Directive of the activities performed by the institution through its branches, to the extent that such information and findings are relevant to the protection of depositors or investors in the host Member State.

3 The competent authorities of the home Member State shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervision measures taken in that context.

4 The competent authorities of the home Member State shall communicate and explain upon request to the competent authorities of the host Member State how information and findings provided by the latter have been taken into account. Where, following communication of information and findings, the competent authorities of the host Member State maintain that no appropriate measures have been taken by the competent authorities of the home Member State, the competent authorities of the host Member State may, after informing the competent authorities of the home Member State and EBA, take appropriate measures to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

Where the competent authorities of the home Member State disagree with the measures to be taken by the competent authorities of the host Member State, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall take any decision within one month.

5 The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 TFEU, EBA may, in those situations, 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 reaching an agreement on the exchange of information under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

6 EBA shall develop draft regulatory technical standards to specify the information referred to in this Article.

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.

7 EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of institutions.

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.

8 EBA shall submit the draft technical standards referred to in paragraphs 6 and 7 to the Commission by 1 January 2014.

Article 51

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.

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, where Article 112(1) applies, the consolidating supervisor, 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 third and fourth 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 in 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.

2 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.

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 without delay the authorities referred to in Article 58(4) and Article 59(1).

The competent authorities of the home Member State shall communicate to the competent authorities of the host Member States where significant branches are established the results of the risk assessments of institutions with such branches referred to in Article 97 and, where applicable, Article 113(2). They shall also communicate decisions under Articles 104 and 105 in so far as those assessments and decisions are relevant to those branches.

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The competent authorities of the home Member States shall consult the competent authorities of the host Member States where significant branches are established about operational steps required by Article 86(11), where relevant for liquidity risks in the host Member State's currency.

Where the competent authorities of the home Member State have not consulted the competent authorities of the host Member State, or where, following such consultation, the competent authorities of the host Member State maintain that operational steps required by Article 86(11) are not adequate, the competent authorities of the host Member State may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

3 Where Article 116 does not apply, the competent authorities supervising an institution with significant branches in other Member States shall establish and chair a college of supervisors to facilitate the cooperation under paragraph 2 of this Article and under Article 50. The establishment and functioning of the college shall be based on written arrangements to be 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.

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 7 and the obligations referred to in paragraph 2 of this Article.

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.

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

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 colleges of supervisors.

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.

6 EBA shall submit the draft technical standards referred to in paragraphs 4 and 5 to the Commission by 31 December 2014.

Article 52

On-the-spot checking and inspection of branches established in another Member State

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

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Member State may, after having informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot checks of the information referred to in Article 50 and inspections of such branches.

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

3 The competent authorities of the host Member State shall have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions on their territory and require information from a branch about its activities and for supervisory purposes, where they consider it relevant for reasons of stability of the financial system in the host Member State. Before carrying out such checks and inspections, the competent authorities of the host Member State shall consult the competent authorities of the home Member State. After such checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the institution or the stability of the financial system in the host Member State. The competent authorities of the home Member State shall duly take into account that information and those findings in determining their supervisory examination programme referred to in Article 99, also having regard to the stability of the financial system in the host Member State.

4 The on-the-spot checks and inspections of branches shall be conducted in accordance with the law of the Member State where the check or inspection is carried out.