

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.

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### *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;

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- 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).

[<sup>X15</sup> 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 50. 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.

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

*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.