

## I

*(Legislative acts)*

## REGULATIONS

**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)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The G-20 Declaration of 2 April 2009 on Strengthening of the Financial System called for internationally consistent efforts that are aimed at strengthening transparency, accountability and regulation by improving the quantity and quality of capital in the banking system once the economic recovery is assured. That declaration also called for introduction of a supplementary non-risk based measure to contain the build-up of leverage in the banking system, and the development of a framework for stronger liquidity buffers. In response to the mandate

given by the G-20, in September 2009 the Group of Central Bank Governors and Heads of Supervision (GHOS), agreed on a number of measures to strengthen the regulation of the banking sector. Those measures were endorsed by the G-20 leaders at their Pittsburgh Summit of 24-25 September 2009 and were set out in detail in December 2009. In July and September 2010, GHOS issued two further announcements on design and calibration of those new measures, and in December 2010, the Basel Committee on Banking Supervision (BCBS) published the final measures, that are referred to as the Basel III framework.

- (2) The High Level Group on Financial Supervision in the EU chaired by Jacques de Larosière (the "de Larosière group") invited the Union to develop a more harmonised set of financial regulations. In the context of the future European supervisory architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a 'European Single Rule Book' applicable to all credit institutions and investment firms in the internal market.

- (3) As stated in the de Larosière group's report of 25 February 2009 (the "de Larosière report"), "a Member State should be able to adopt more stringent national regulatory measures considered to be domestically appropriate for safeguarding financial stability as long as the principles of the internal market and agreed minimum core standards are respected".

- (4) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions <sup>(3)</sup> and Directive 2006/49/EC of the European Parliament and of

<sup>(1)</sup> OJ C 105, 11.4.2012, p. 1.

<sup>(2)</sup> OJ C 68, 6.3.2012, p. 39.

<sup>(3)</sup> OJ L 177, 30.6.2006, p. 1.

the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions<sup>(1)</sup> have been significantly amended on several occasions. Many provisions of Directives 2006/48/EC and 2006/49/EC are applicable to both credit institutions and investment firms. For the sake of clarity and in order to ensure a coherent application of those provisions, they should be merged into new legislative acts that are applicable to both credit institutions and investment firms, namely this Regulation and Directive 2013/36/EU of the European Parliament and of the Council<sup>(2)</sup>. For greater accessibility, the provisions of the Annexes to Directives 2006/48/EC and 2006/49/EC should be integrated into the enacting terms of Directive 2013/36/EU and this Regulation.

- (5) Together, this Regulation and Directive 2013/36/EU should form the legal framework governing the access to the activity, the supervisory framework and the prudential rules for credit institutions and investment firms (referred to collectively as "institutions"). This Regulation should therefore be read together with that Directive
- (6) Directive 2013/36/EU, based on Article 53(1) of the Treaty on the Functioning of the European Union (TFEU), should, inter alia, contain the provisions concerning the access to the activity of institutions, the modalities for their governance, and their supervisory framework, such as provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of the competent authorities of the home and the host Member States in this regard and the provisions governing the initial capital and the supervisory review of institutions.
- (7) This Regulation should, inter alia, contain the prudential requirements for institutions that relate strictly to the functioning of banking and financial services markets and are meant to ensure the financial stability of the operators on those markets as well as a high level of protection of investors and depositors. This Regulation aims at contributing in a determined manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 TFEU, as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.
- (8) Directives 2006/48/EC and 2006/49/EC, although having harmonised the rules of Member States in the area of prudential supervision to a certain degree, include a significant number of options and possibilities for Member States to impose stricter rules than those laid down by those Directives. This results in divergences

between national rules, which might hamper the cross-border provision of services and the freedom of establishment and so create obstacles to the smooth functioning of the internal market.

- (9) For reasons of legal certainty and because of the need for a level playing field within the Union, a single set of regulations for all market participants is a key element for the functioning of the internal market. In order to avoid market distortions and regulatory arbitrage, prudential minimum requirements should therefore ensure maximum harmonisation. As a consequence, the transitional periods provided for in this Regulation are essential for the smooth implementation of this Regulation and to avoid uncertainty for the markets.
- (10) Having regard to work of the BCBS' Standards Implementation Group in monitoring and reviewing member countries' implementation of the Basel III framework, the Commission should provide update reports on an ongoing basis, and at least following the publication of each Progress Report by BCBS, on the implementation and domestic adoption of the Basel III framework in other major jurisdictions, including an assessment of the consistency of other countries' legislation or regulations with the international minimum standards, in order to identify differences that could raise level playing field concerns.
- (11) In order to remove obstacles to trade and distortions of competition resulting from divergences between national laws and to prevent further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a regulation establishing uniform rules applicable in all Member States.
- (12) Shaping prudential requirements in the form of a regulation would ensure that those requirements will be directly applicable. This would ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation would entail that all institutions follow the same rules in all the Union, which would also boost confidence in the stability of institutions, especially in times of stress. A regulation would also reduce regulatory complexity and firms' compliance costs, especially for institutions operating on a cross-border basis, and contribute to eliminating competitive distortions. With regard to the peculiarity of immovable property markets which are characterised by economic developments and jurisdictional differences that are specific to Member States, regions or local areas, competent authorities should be allowed to set higher risks weights or to apply stricter criteria based on default experience and expected market developments to exposures secured by mortgages on immovable property in specific areas.

<sup>(1)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(2)</sup> See page 338 of this Official Journal.