



CREDIT INSTITUTIONS
in the EU Single Financial
Market

professor
Anna Jurkowska-Zeidler




**The new legal framework of
european banking**

- The new framework divides the current Directive 2006/48/EU (Capital Requirements Directive) into two legislative instruments: a directive 2013/36/EU governing the access to deposit-taking activities and a Regulation (EU) No 575/2013 establishing the prudential requirements institutions need to respect.
- While Member States will have to transpose the directive into national law, the regulation is directly applicable, which means that it creates law that takes immediate effect in all Member States in the same way as a national instrument, without any further action on the part of the national authorities.



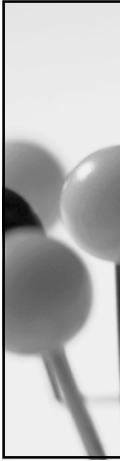
**The new legal framework of
european banking. CRD IV**

- Directive 2013/36/EU lays down the rules on the taking-up and pursuit of the business of credit institutions and on the prudential supervision of such institutions.
- It constitutes the essential instrument for the achievement of the internal market from the point of view of both the freedom of establishment and the freedom to provide financial services in the field of credit institutions.



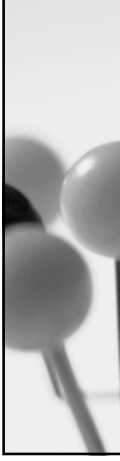
Capital Requirements Regulation.CRR

- Regulation is a "Single Rule Book": For the first time a single set of harmonised prudential rules is created which banks throughout the EU must respect.
- CRR regulation lays down: the scope of application of prudential requirements on an individual and consolidated basis; capital requirements and the method of its calculation; rules to limit risk, e.g. rules for large exposures and rules for the transfer of risk; liquidity rules; and rules for the calculation of the leverage ratio to limit banks from incurring excessive debts on financial markets.




The Single Rulebook

- derives from the idea that technical rules should be defined at the European Union level and adopted through EU Regulations.
- The Single Rulebook aims at providing *a single set of harmonised prudential rules for financial institutions* throughout the EU, helping create a level playing field and providing high protection to depositors, investors and consumers.
- That would ensure their direct applicability to all credit institutions, eliminating the additional layer of domestic rules.
- Such single rules would reduce costs of compliance, limit the scope of regulatory and supervisory arbitrage, and prevent loss of competitiveness of EU wide banking groups.



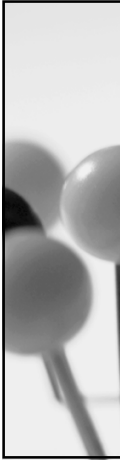
The new legal framework of european banking

- Together, Directive 2013/36/EU and Regulation (EU) No 575/2013 are 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"). The Regulation should therefore be read together with that Directive

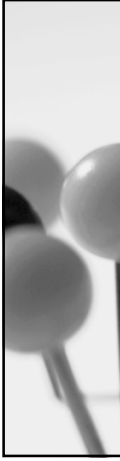


**CRD IV/CRR package:
implemented Basel III
agreement**

- is a comprehensive set of reform measures in banking prudential regulation developed by the Basel Committee on Banking Supervision, to strengthen the regulation, supervision and risk management of the banking sector.
- These measures aim to: improve the banking sector's ability to absorb shocks arising from financial and economic stress, whatever the source; improve risk management and governance; strengthen banks' transparency and disclosures.
- The Basel III agreement was endorsed by the G20 in November 2010.




Directive (Strong links with national law, less prescriptive)	Regulation (Detailed and highly prescriptive provisions establishing a single rule book)
Access to taking up/pursuit of business	Capital
Exercise of freedom of establishment and free movement of services	Liquidity
Prudential supervision	Leverage
Capital buffers	Counterparty credit risk
Corporate governance	Large exposures
Sanctions	Disclosure requirements



Harmonisation

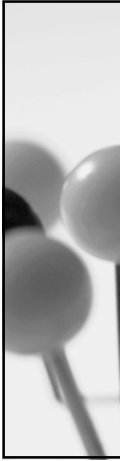
- It is appropriate to effect harmonisation which is necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the granting of a single licence recognised throughout the Union and the application of the principle of home Member State prudential supervision.



The legal definition of Credit Institution. Regulation (EU) No 575/2013

"*credit institution*" means:

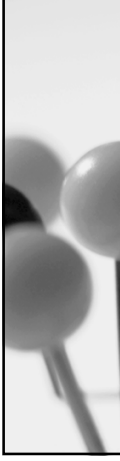
- an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;
- The EU Law does not directly define the concept of bank
- EU Law impose on the Member States an obligation to introduce restrictions against natural and legal persons lacking the status of credit institutions to provide deposit services (art. 9 CRD IV)



Polish Banking Law act

Article 2

- A bank shall constitute a legal person,
- established pursuant to the provisions of statute,
- operating on the basis of authorisations
- to perform banking operations
- that expose to risk funds which have been entrusted to the bank and which are in any way repayable



Regulation No 575/2013.

Definitions

- "*authorisation*" an instrument issued in any form by the authorities by which the right to carry out the business is granted;
- "*competent authorities*," means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned;




Requirements for authorisation

The essential requirements for authorisation to take up and pursue the business of credit institutions are:

CAPITAL: existence of separate own funds; existence of initial capital of at least 5 million euros; (art. 12 CRD IV)

PERSONAL: presence of at least two persons who effectively direct the business of the credit institution (and who are of sufficiently good repute and have sufficient experience to perform such duties) (art. 13 CRD IV); notification to the competent authorities of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings, and of the amounts of those holdings (art. 14 CRD IV);

ORGANISATIONAL: existence of place of the head office (art. 13 CRD IV); presence of programme of operations setting out the types of business envisaged and the structural organisation of the credit institution (art. 10 CRD IV).



Requirements for authorisation

- Where a competent authority *refuses authorisation* to commence the activity of a credit institution, it shall notify the applicant of the decision and the reasons therefor within six months of receipt of the application (art. 15 CRD IV)
- The competent authorities may *withdraw an authorisation* subject to the conditions set out in the CRD directive, in particular when the above conditions are no longer fulfilled (art. 18 CRD IV)
- All authorisations must be notified to the European Banking Authority (EBA) which is responsible for drawing up a register of authorised credit institutions and making it accessible on its website (art. 20 CRD IV).



Institutional forms of the credit institutions activity in host Member States

The EU Law allows credit institutions to open:

- *Subsidiaries*
- *Branches*
- *Representative offices*


in host Member States as well as outside the European Union.

Any of those situations is associated with different rights and obligations of credit institution.



Regulation No 575/2013.
Definitions

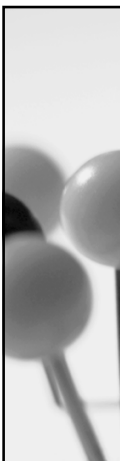
- "*branch*," means a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions;
- Host Member States shall not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected in accordance with the single licence rule ([art. 17 CRD IV](#)).



Regulation No 575/2013.
Definitions


"*subsidiary*" means:

- a subsidiary undertaking is any undertaking over which a parent undertaking effectively exercises a dominant influence.



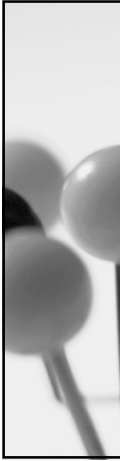
Regulation No 575/2013
Definitions

- "*home Member State*" means the Member State in which an institution has been granted authorisation;
- "*host Member State*," means the Member State in which an institution has a branch or in which it provides services;



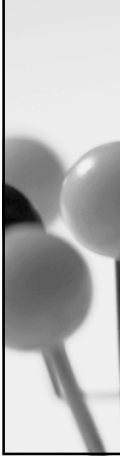
Measures taken by the competent authorities of the home Member State in relation to activities carried out in the host Member State (art. 153 Directive)

- Should a credit institution having a branch or providing services within a territory of the host Member State breach a Member State's prudential rules, the host Member State shall request the home Member State to take the necessary measures.
- If the measures taken are insufficient then the host Member State has the power to take appropriate measures to prevent or punish the breach committed by the branch. The home Member State must be informed before such measures are taken.
- In urgent cases, the competent authorities of the host Member State may take any preventive measures necessary to protect interests. In these cases, they must inform the Commission, the EBA and the competent authorities of the other Member States.



Name of credit institution (art. 19 Directive)

- For the purposes of exercising their activities, credit institutions may, notwithstanding any provisions in the host Member State concerning the use of the words "bank", "savings bank" or other banking names, use throughout the territory of the Union the same name that they use in the Member State in which their head office is situated. In the event of there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.



Single Licence (passport) rule

- Credit institutions authorised in their home Member States should be allowed to carry out throughout the Union any or all of the activities referred to in the list of activities subject to mutual recognition by or by providing services:
- by establishing branches or
- by providing services (directly from the home Member State across the borders)

without the need to grant another authorisation in the host Member State.



Requirements for access to the taking up and pursuit of the business of credit institutions

- The EU law (Articles 8-20 of the Directive 2013/36/EC) comprises requirements in the procedure of granting authorisations for credit institutions.
- As those requirements are obligatory, they have to be included in national legislation concerning this subject (conditions for establishment of domestic banks).
