

Single Rulebook Q&A

Question ID	2014_719
Status	Final Q&A
Legal act	Directive 2013/36/EU (CRD)
Topic	Passporting and supervision of branches
Article	34
Paragraph	3
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	n/a
Date of submission	10/01/2014
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Disclose name of institution / entity	Yes
Name of institution / submitter	Alcimos Ltd.
Country of incorporation / residence	Malta
Type of submitter	Investment firm
Subject matter	Passporting for financial institutions
Question	<p>Article 34(3) of Directive 2013/36/EU (CRD) (same wording with 24(3) of the Banking Consolidation Directive) states that "Paragraphs 1 and 2 shall apply accordingly to subsidiaries of a financial institution as referred to in the first subparagraph of paragraph 1". We are trying to understand what this para. 34 (3) means. Let us assume that there is a financial institution (Institution A), as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013 CRR, which is not "a subsidiary of a credit institution or the jointly owned subsidiary of two or more credit institutions". That financial institution then has a subsidiary (Institution B) that is itself a financial institution within the meaning of point (26) of Article 4(1) of Regulation (EU) No 575/2013. Would that subsidiary (Institution B) be able to passport itself into another member state, per the provisions of Article 34(3)?</p>
Background on the	If Alcimos becomes authorized to provide portfolio management and

question	investment advice services under Annex I, Section A (4) and (5) of Directive 2004/39/EC (“Investment advice”) it is then a “ financial institution” as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013, since it will be providing the activities listed in points 9 and 11 of Annex I to Directive 2013/36/EU. Let us now assume that Alcimos sets up a financial leasing company, authorized in is a home member state. Would that financial leasing subsidiary be able to passport itself into another member state by virtue of Article 34(3)?
Final answer	The right to carry out relevant activities in other Member States, either by establishing a branch or by providing services, is under the Directive 2013/36/EC provided to a financial institution and its subsidiaries, if that financial institution is a subsidiary of a credit institution or is jointly held by two or more credit institutions and all conditions referred to in Article 34 of that Directive are met. Hence, financial institutions (and their subsidiaries) which are not subsidiaries of credit institutions or jointly held by two or more credit institutions do not fall under the scope of Article 34.
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_719

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