

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 2

Review Processes

Section V

Level of application

Article 109

Institutions' arrangements, processes and mechanisms

1 Competent authorities shall require institutions to meet the obligations set out in Section II of this Chapter on an individual basis, unless competent authorities make use of the derogation provided for in Article 7 of Regulation (EU) No 575/2013.

[^{F12} Competent authorities shall require the parent undertakings and subsidiaries subject to this Directive to meet the obligations set out in Section II of this Chapter on a consolidated or sub-consolidated basis, to ensure that the arrangements, processes and mechanisms required by Section II of this Chapter are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that parent undertakings and subsidiaries subject to this Directive implement those arrangements, processes and mechanisms in their subsidiaries not subject to this Directive, including those established in offshore financial centres. Those arrangements, processes and mechanisms shall also be consistent and well-integrated and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision. Subsidiary undertakings that are not themselves subject to this Directive shall comply with their sector-specific requirements on an individual basis.

3 Obligations resulting from Section II of this Chapter concerning subsidiary undertakings that are not themselves subject to this Directive shall not apply if the EU parent institution can demonstrate to the competent authorities that the application of Section II is unlawful under the laws of the third country where the subsidiary is established.]

[^{F24} The remuneration requirements laid down in Articles 92, 94 and 95 shall not apply on a consolidated basis to either of the following:

- a subsidiary undertakings established in the Union where they are subject to specific remuneration requirements in accordance with other Union legal acts;

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- b subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other Union legal acts if they were established in the Union.

5 By way of derogation from paragraph 4 of this Article, and in order to avoid circumvention of the rules set out in Articles 92, 94 and 95, Member States shall ensure that the requirements laid down in Articles 92, 94 and 95 apply to members of staff of subsidiaries that are not subject to this Directive on an individual basis where:

- a the subsidiary is either an asset management company, or an undertaking that provides the investment services and activities listed in points (2), (3), (4), (6) and (7) of Section A of Annex I to Directive 2014/65/EU; and
- b those members of staff have been mandated to perform professional activities that have a direct material impact on the risk profile or the business of the institutions within the group.

6 Notwithstanding paragraphs 4 and 5 of this Article, Member States may apply Articles 92, 94 and 95 on a consolidated basis to a broader scope of subsidiary undertakings and their staff.]

Textual Amendments

- F1** Substituted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).
- F2** Inserted by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).