

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 4

Capital Buffers

Section II

Setting and calculating countercyclical capital buffers

Article 139

Decision by designated authorities on third country countercyclical buffer rates

1 This Article applies irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in Article 138.

2 In the circumstances referred to in point (a) of Article 138, designated authorities may set the countercyclical buffer rate that domestically authorised institutions must apply for the purposes of the calculation of their institution-specific countercyclical capital buffer.

3 Where a countercyclical buffer rate has been set and published by the relevant third-country authority for a third country, a designated authority may set a different buffer rate for that third country for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffer if they reasonably consider that the buffer rate set by the relevant third-country authority is not sufficient to protect those institutions appropriately from the risks of excessive credit growth in that country.

When exercising the power under the first subparagraph, a designated authority shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2,5 %, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in that third country.

In order to achieve coherence for the buffer settings for third countries the ESRB may give recommendations for such settings.

4 Where a designated authority sets a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 which increases the existing applicable countercyclical buffer rate, the designated authority shall decide the date from which domestically authorised institutions must apply that buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months from the date when

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the buffer rate is announced in accordance with paragraph 5. If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

5 Designated authorities shall publish any setting of a countercyclical buffer rate for a third country pursuant to paragraph 2 or 3 on their websites, and shall include the following information:

- a the countercyclical buffer rate and the third country to which it applies;
- b a justification for that buffer rate;
- c where the buffer rate is set above zero for the first time or is increased, the date from which the institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;
- d where the date referred to in point (c) is less than 12 months after the date of the publication of the setting under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.