

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 IV

Supervisory measures and powers

Article 102

Supervisory measures

1 Competent authorities shall require an institution to take the necessary measures at an early stage to address relevant problems in the following circumstances:

- a the institution does not meet the requirements of this Directive or of Regulation (EU) No 575/2013;
- b the competent authorities have evidence that the institution is likely to breach the requirements of this Directive or of Regulation (EU) No 575/2013 within the following 12 months.

2 For the purposes of paragraph 1, the powers of competent authorities shall include those referred to in Article 104.

^{F1}Article 103

[^{F1}Application of supervisory measures to institutions with similar risk profiles]

Textual Amendments

- F1** Deleted 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 \(Text with EEA relevance\).](#)

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Article 104

Supervisory powers

[^{F21} For the purposes of Article 97, Article 98(4) and (5), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:

- a require institutions to have additional own funds in excess of the requirements set out in Regulation (EU) No 575/2013, under the conditions set out in Article 104a of this Directive;
- b require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 73 and 74;
- c require institutions to submit a plan to restore compliance with supervisory requirements pursuant to this Directive and to Regulation (EU) No 575/2013 and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- d require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- e restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- f require the reduction of the risk inherent in the activities, products and systems of institutions, including outsourced activities;
- g require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- h require institutions to use net profits to strengthen own funds;
- i restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
- j impose additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage;
- k impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- l require additional disclosures.

2 For the purposes of point (j) of paragraph 1, competent authorities may only impose additional or more frequent reporting requirements on institutions where the relevant requirement is appropriate and proportionate with regard to the purpose for which the information is required and the information requested is not duplicative.

For the purposes of Articles 97 to 102, any additional information that may be required from institutions shall be deemed as duplicative where the same or substantially the same information has already been otherwise reported to the competent authority or may be produced by the competent authority.

The competent authority shall not require an institution to report additional information where it has previously received it in a different format or level of granularity and that different format or granularity does not prevent the competent authority from producing information of the same quality and reliability as that produced on the basis of the additional information that would be otherwise reported.]

^{F13}

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Textual Amendments

- F1** Deleted 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** 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).

[^{F3} Article 104a

Additional own funds requirement

1 Competent authorities shall impose the additional own funds requirement referred to in point (a) of Article 104(1) where, on the basis of the reviews carried out in accordance with Articles 97 and 101, they determine any of the following situations for an individual institution:

- a the institution is exposed to risks or elements of risk that are not covered or not sufficiently covered, as specified in paragraph 2 of this Article, by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council⁽¹⁾;
- b the institution does not meet the requirements set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013 and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe;
- c the adjustments referred to in Article 98(4) are deemed to be insufficient to enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;
- d the evaluation carried out in accordance with Article 101(4) reveals that the non-compliance with the requirements for the application of the permitted approach will likely lead to inadequate own funds requirements;
- e the institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance communicated in accordance with Article 104b(3);
- f other institution-specific situations deemed by the competent authority to raise material supervisory concerns.

The competent authorities shall only impose the additional own funds requirement referred to in point (a) of Article 104(1) to cover the risks incurred by individual institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual institution.

2 For the purposes of point (a) of paragraph 1 of this Article, risks or elements of risk shall only be considered as not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 where the amounts, types and distribution of capital considered adequate by the competent authority, taking into account the supervisory review of the assessment carried out by institutions in accordance with the first paragraph of Article 73 of this Directive, are higher than the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

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For the purposes of the first subparagraph, competent authorities shall assess, taking into account the risk profile of each individual institution, the risks to which the institution is exposed, including:

- a institution-specific risks or elements of such risks that are explicitly excluded from or not explicitly addressed by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402;
- b institution-specific risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

To the extent that risks or elements of risk are subject to transitional arrangements or grandfathering provisions laid down in this Directive or in Regulation (EU) No 575/2013, they shall not be considered risks or elements of such risks likely to be underestimated despite compliance with the applicable requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

For the purposes of the first subparagraph, the capital considered adequate shall cover all risks or elements of risks identified as material pursuant to the assessment laid down in the second subparagraph of this paragraph that are not covered or not sufficiently covered by the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

Interest rate risk arising from non-trading book positions may be considered material at least in the cases referred to in Article 98(5), unless the competent authorities, in performing the review and evaluation, come to the conclusion that the institution's management of interest rate risk arising from non-trading book activities is adequate and that the institution is not excessively exposed to interest rate risk arising from non-trading book activities.

3 Where additional own funds are required to address risks other than the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of Regulation (EU) No 575/2013, competent authorities shall determine the level of the additional own funds required under point (a) of paragraph 1 of this Article as the difference between the capital considered adequate pursuant to paragraph 2 of this Article and the relevant own funds requirements set out in Parts Three and Four of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of Regulation (EU) No 575/2013, competent authorities shall determine the level of the additional own funds required under point (a) of paragraph 1 of this Article as the difference between the capital considered adequate pursuant to paragraph 2 of this Article and the relevant own funds requirements set out in Parts Three and Seven of Regulation (EU) No 575/2013.

[^{X14} The institution shall meet the additional own funds requirement imposed by the competent authority under point (a) of Article 104(1) to address risks other than the risk of excessive leverage with own funds that satisfy the following conditions:

- a at least three quarters of the additional own funds requirement shall be met with Tier 1 capital;
- b at least three quarters of the Tier 1 capital referred to in point (a) shall be composed of Common Equity Tier 1 capital.

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The institution shall meet the additional own funds requirement imposed by the competent authority under point (a) of Article 104(1) to address the risk of excessive leverage with Tier 1 capital.

By way of derogation from the first and the second subparagraphs, the competent authority may require the institution to meet its additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital, where necessary, and having regard to the specific circumstances of the institution.]

Own funds that are used to meet the additional own funds requirement referred to in point (a) of Article 104(1) of this Directive imposed by competent authorities to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

- a own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013;
- b the combined buffer requirement;
- c the guidance on additional own funds referred to in Article 104b(3) of this Directive where that guidance addresses risks other than the risk of excessive leverage.

Own funds that are used to meet the additional own funds requirement referred to in point (a) of Article 104(1) of this Directive imposed by competent authorities to address the risk of excessive leverage not sufficiently covered by point (d) of Article 92(1) of Regulation (EU) No 575/2013 shall not be used to meet any of the following:

- a the own funds requirement set out in point (d) of Article 92(1) of Regulation (EU) No 575/2013;
- b the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013;
- c the guidance on additional own funds referred to in Article 104b(3) of this Directive, where that guidance addresses risks of excessive leverage.

5 The competent authority shall duly justify in writing to each institution the decision to impose an additional own funds requirement under point (a) of Article 104(1), at least by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 4 of this Article. That justification shall include, in the case set out in point (e) of paragraph 1 of this Article, a specific statement of the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 150 of 7 June 2019\)](#).

Textual Amendments

- F3** 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 \(Text with EEA relevance\)](#).

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Article 104b

Guidance on additional own funds

1 Pursuant to the strategies and processes referred to in Article 73, institutions shall set their internal capital at an adequate level of own funds that is sufficient to cover all the risks that an institution is exposed to and to ensure that the institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test referred to in Article 100.

2 Competent authorities shall regularly review the level of the internal capital set by each institution in accordance with paragraph 1 of this Article as part of the reviews and evaluations performed in accordance with Articles 97 and 101, including the results of the stress tests referred to in Article 100.

Pursuant to that review, competent authorities shall determine for each institution the overall level of own funds they consider appropriate.

3 Competent authorities shall communicate their guidance on additional own funds, to institutions.

The guidance on additional own funds shall be the own funds exceeding the relevant amount of own funds required pursuant to Parts Three, Four and Seven of Regulation (EU) No 575/2013, Chapter 2 of Regulation (EU) 2017/2402, point (a) of Article 104(1) and point (6) of Article 128 of this Directive or pursuant to Article 92(1a) of Regulation (EU) No 575/2013, as relevant, which are needed to reach the overall level of own funds considered appropriate by the competent authorities pursuant to paragraph 2 of this Article.

4 Competent authorities' guidance on additional own funds pursuant to paragraph 3 of this Article shall be institution-specific. The guidance may cover risks addressed by the additional own funds requirement imposed pursuant to point (a) of Article 104(1) only to the extent that it covers aspects of those risks that are not already covered under that requirement.

5 Own funds that are used to meet the guidance on additional own funds communicated in accordance with paragraph 3 of this Article to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

- a the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013;
- b the requirement laid down in Article 104a of this Directive imposed by competent authorities to address risks other than the risk of excessive leverage and the combined buffer requirement.

Own funds that are used to meet the guidance on additional own funds communicated in accordance with paragraph 3 of this Article to address the risk of excessive leverage shall not be used to meet the own funds requirement set out in point (d) of Article 92(1) of Regulation (EU) No 575/2013, the requirement laid down in Article 104a of this Directive imposed by competent authorities to address the risk of excessive leverage and the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013.

6 Failure to meet the guidance referred to in paragraph 3 of this Article where an institution meets the relevant own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, the relevant

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additional own funds requirement referred to in point (a) of Article 104(1) of this Directive and, as relevant, the combined buffer requirement or the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013 shall not trigger the restrictions referred to in Article 141 or 141b of this Directive.

Textual Amendments

- F3** 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 \(Text with EEA relevance\)](#).

Article 104c

Cooperation with resolution authorities

Competent authorities shall notify the relevant resolution authorities of the additional own funds requirement imposed on institutions pursuant to point (a) of Article 104(1) and of any guidance on additional own funds communicated to institutions in accordance with Article 104b(3).]

Textual Amendments

- F3** 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 \(Text with EEA relevance\)](#).

Article 105

Specific liquidity requirements

For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following:

- (a) the particular business model of the institution;
- (b) the institution's arrangements, processes and mechanisms referred to in Section II and in particular in Article 86;
- (c) the outcome of the review and evaluation carried out in accordance with Article 97^[F2].]
- (d) ^[F1]. . . .]

In particular, without prejudice to Article 67, competent authorities should consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at national or Union level.

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Textual Amendments

- F1** Deleted 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** 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 \(Text with EEA relevance\).](#)

Article 106

Specific publication requirements

- 1 Member States shall empower the competent authorities to require institutions:
 - a to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for publication;
 - b to use specific media and locations for publications other than the financial statements.
- 2 Member States shall empower competent authorities to require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions in accordance with Article 14(3), Article 74(1) and Article 109(2).

Article 107

Consistency of supervisory reviews, evaluations and supervisory measures

- 1 Competent authorities shall inform EBA of:
 - a the functioning of their review and evaluation process referred to in Article 97;
 - b the methodology used to base decisions referred to in Articles 98, 100, 101, 102, 104 and 105 on the process referred to in point (a).

EBA shall assess the information provided by competent authorities for the purposes of developing consistency in the supervisory review and evaluation process. It may request additional information from competent authorities in order to complete its assessment, on a proportional basis in accordance with Article 35 of Regulation (EU) No 1093/2010.

- 2 EBA shall annually report to the European Parliament and the Council on the degree of convergence of the application of this Chapter between Member States.

In order to increase the degree of such convergence, EBA shall conduct peer reviews in accordance with Article 30 of Regulation (EU) No 1093/2010.

- 3 EBA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 to further specify, in a manner that is appropriate to the size, the structure and the internal organisation of institutions and the nature, scope and complexity of their activities, the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraph 1 of this Article and in Article 97 and for the assessment of the organisation and treatment of the risks referred to in Articles 76 to 87, in particular relating to concentration risk in accordance with Article 81.

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- (1) [^{F3}Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).]

Textual Amendments

- F3** 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).