

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 108*

**Internal capital adequacy assessment process**

1 Competent authorities shall require every institution which is neither a subsidiary in the Member State where it is authorised and supervised, nor a parent undertaking, and every institution not included in the consolidation pursuant to Article 19 of Regulation (EU) No 575/2013, to meet the obligations set out in Article 73 of this Directive on an individual basis.

Competent authorities may waive the requirements set out in Article 73 of this Directive in regard to a credit institution in accordance with Article 10 of Regulation (EU) No 575/2013.

Where the competent authorities waive the application of own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013, the requirements of Article 73 of this Directive shall apply on an individual basis.

2 Competent authorities shall require parent institutions in a Member State, to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No 575/2013 to meet the obligations set out in Article 73 of this Directive on a consolidated basis.

<sup>F13</sup> .....

4 Competent authorities shall require subsidiary institutions to apply the requirements set out in Article 73 on a sub-consolidated basis if those institutions, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary in a third country, or hold a participation in such an undertaking.

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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 \(Text with EEA relevance\).](#)

## 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.

[<sup>F2</sup> 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.]

[<sup>F34</sup> 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;
- 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.

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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**

- 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** 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 110*

#### **Review and evaluation and supervisory measures**

1 Competent authorities shall apply the review and evaluation process referred to in Section III of this Chapter and the supervisory measures referred to in Section IV of this Chapter in accordance with the level of application of the requirements of Regulation (EU) No 575/2013 set out in Part One, Title II of that Regulation.

2 Where the competent authorities waive the application of own funds requirements on a consolidated basis as provided for in Article 15 of Regulation (EU) No 575/2013, the requirements of Article 97 of this Directive shall apply to the supervision of investment firms on an individual basis.