

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 I

Buffers

Article 128

Definitions

For the purpose of this Chapter, the following definitions shall apply:

- (1) 'capital conservation buffer' means the own funds that an institution is required to maintain in accordance with Article 129;
- (2) 'institution-specific countercyclical capital buffer' means the own funds that an institution is required to maintain in accordance with Article 130;
- (3) 'G-SII buffer' means the own funds that are required to be maintained in accordance with Article 131(4);
- (4) 'O-SII buffer' means the own funds that may be required to be maintained in accordance with Article 131(5);
- (5) 'systemic risk buffer' means the own funds that an institution is or may be required to maintain in accordance with Article 133;
- (6) 'combined buffer requirement' means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:
 - (a) an institution-specific countercyclical capital buffer;
 - (b) a G-SII buffer;
 - (c) an O-SII buffer;
 - (d) a systemic risk buffer;

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- (7) 'countercyclical buffer rate' means the rate that institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Article 136, Article 137 or by a relevant third-country authority, as the case may be;
- (8) 'domestically authorised institution' means an institution that has been authorised in the Member State for which a particular designated authority is responsible for setting the countercyclical buffer rate;
- (9) 'buffer guide' means a benchmark buffer rate calculated in accordance with Article 135(1).

[^{F1}Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in point (6) of the first paragraph of this Article, to meet any of the requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, the additional own funds requirements imposed pursuant to Article 104a of this Directive to address risks other than the risk of excessive leverage, and the guidance communicated in accordance with Article 104b(3) of this Directive to address risks other than the risk of excessive leverage.

Institutions shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of its combined buffer requirement to meet the other applicable elements of its combined buffer requirement.

Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement referred to in point (6) of the first paragraph of this Article to meet the risk-based components of the requirements set out in Articles 92a and 92b of Regulation (EU) No 575/2013 and in Articles 45c and 45d of Directive 2014/59/EU.]

This Chapter shall not apply to investment firms that are not authorised to provide the investment services listed in points 3 and 6 of Section A of Annex I to Directive 2004/39/EC.

Textual Amendments

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

[^{F2}Article 129

Requirement to maintain a capital conservation buffer

1 In addition to the Common Equity Tier 1 capital that is maintained to meet any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013, Member States shall require institutions to maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2,5 % of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and on a consolidated basis, as applicable in accordance with Title II of Part One of that Regulation.

2 By way of derogation from paragraph 1, a Member State may exempt small and medium-sized investment firms from complying with the requirements set out in paragraph 1 if such an exemption does not threaten the stability of the financial system of that Member State.

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Decisions on the application of the exemption referred to in the first subparagraph shall be fully reasoned, shall include an explanation as to why the exemption does not threaten the stability of the financial system of the Member State and shall contain the exact definition of the small and medium-sized investment firms which are to be exempted.

Member States which decide to apply the exemption referred to in the first subparagraph shall notify the ESRB thereof. The ESRB shall forward such notifications to the Commission, to EBA and to the competent and designated authorities of the Member States concerned without delay.

3 For the purposes of paragraph 2, Member States shall designate an authority to be responsible for the application of this Article. That authority shall be the competent authority or the designated authority.

4 For the purposes of paragraph 2, investment firms shall be categorised as small or medium-sized in accordance with Commission Recommendation 2003/361/EC⁽¹⁾.

5 Where an institution fails to fully meet the requirement set out in paragraph 1 of this Article, it shall be subject to the restrictions on distributions set out in Article 141(2) and (3).

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

Article 130

Requirement to maintain an institution-specific countercyclical capital buffer

1 Member States shall require institutions to maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with Article 140 of this Directive on an individual and on a consolidated basis, as applicable in accordance with Title II of Part One of that Regulation. That buffer shall consist of Common Equity Tier 1 capital.

2 By way of derogation from paragraph 1, a Member State may exempt small and medium-sized investment firms from complying with the requirements set out in paragraph 1 if such an exemption does not threaten the stability of the financial system of that Member State.

Decisions on the application of the exemption referred to in the first subparagraph shall be fully reasoned, shall include an explanation as to why the exemption does not threaten the stability of the financial system of the Member State and shall contain the exact definition of small and medium-sized investment firms which are to be exempted.

Member States which decide to apply the exemption referred to in the first subparagraph shall notify the ESRB thereof. The ESRB shall forward such notifications to the Commission, to EBA and to the competent and designated authorities of the Member States concerned without delay.

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3 For the purposes of paragraph 2, Member States shall designate an authority to be responsible for the application of this Article. That authority shall be the competent authority or the designated authority.

4 For the purposes of paragraph 2, investment firms shall be categorised as small and medium-sized in accordance with Recommendation 2003/361/EC.

5 Where an institution fails to fully meet the requirement set out in paragraph 1 of this Article, it shall be subject to the restrictions on distributions set out in Article 141(2) and (3).]

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

Article 131

Global and other systemically important institutions

[^{F21} Member States shall designate an authority to be responsible for identifying, on a consolidated basis, G-SIIs, and, on an individual, sub-consolidated or consolidated basis, as applicable, other systemically important institutions (O-SIIs), which have been authorised within their jurisdiction. That authority shall be the competent authority or the designated authority. Member States may designate more than one authority.

G-SIIs shall be any of the following:

- a a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or
- b an institution that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

O-SIIs may either be an institution or a group headed by an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company, a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State.]

2 The identification methodology for G-SIIs shall be based on the following categories:

- a size of the group;
- b interconnectedness of the group with the financial system;
- c substitutability of the services or of the financial infrastructure provided by the group;
- d complexity of the group;
- e cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

Each category shall receive an equal weighting and shall consist of quantifiable indicators.

The methodology shall produce an overall score for each entity as referred to in paragraph 1 assessed, which allows G-SIIs to be identified and allocated into a sub-category as described in paragraph 9.

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[^{F1}2a An additional identification methodology for G-SIIs shall be based on the following categories:

- a the categories referred to in points (a) to (d) of paragraph 2 of this Article;
- b cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of Regulation (EU) No 806/2014 of the European Parliament and of the Council⁽²⁾.

Each category shall receive an equal weighting and shall consist of quantifiable indicators. For the categories referred to in point (a) of the first subparagraph of this paragraph, the indicators shall be the same as the corresponding indicators determined pursuant to paragraph 2.

The additional identification methodology shall produce an additional overall score for each entity as referred to in paragraph 1 assessed, on the basis of which competent or designated authorities may take one of the measures referred to in point (c) of paragraph 10.]

3 O-SIIs shall be identified in accordance with paragraph 1. Systemic importance shall be assessed on the basis of at least any of the following criteria:

- a size;
- b importance for the economy of the Union or of the relevant Member State;
- c significance of cross-border activities;
- d interconnectedness of the institution or group with the financial system.

[^{F2}EBA, after consulting the ESRB, shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, by 1 January 2015 on the criteria to determine the conditions of application of this paragraph in relation to the assessment of O-SIIs. Those guidelines shall take into account international frameworks for domestic systemically important institutions and Union and national specificities.

After having consulted the ESRB, EBA shall report to the Commission by 31 December 2020 on the appropriate methodology for the design and calibration of O-SII buffer rates.]

4 Each G-SII shall, on a consolidated basis, maintain a G-SII buffer which shall correspond to the sub-category to which the G-SII is allocated. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

[^{F2}5 The competent authority or the designated authority may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, taking into account the criteria for the identification of the O-SII. That buffer shall consist of Common Equity Tier 1 capital.]

[^{F1}5a Subject to the Commission authorisation referred to in the third subparagraph of this paragraph, the competent authority or the designated authority may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer higher than 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013. That buffer shall consist of Common Equity Tier 1 capital.

Within six weeks of receipt of the notification referred to in paragraph 7 of this Article, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

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Within three months of the ESRB forwarding the notification referred to in paragraph 7 to the Commission, the Commission, taking into account the assessment of the ESRB and EBA, if relevant, and if it is satisfied that the O-SII buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an act authorising the competent authority or the designated authority to adopt the proposed measure.]

6 When requiring an O-SII buffer to be maintained the competent authority or the designated authority shall comply with the following:

- a the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;
- b the O-SII buffer must be reviewed by the competent authority or the designated authority at least annually.

[^{F27} Before setting or resetting an O-SII buffer, the competent authority or the designated authority shall notify the ESRB one month before the publication of the decision referred to in paragraph 5 and shall notify the ESRB three months before the publication of the decision of the competent authority or the designated authority referred to in paragraph 5a. The ESRB shall forward such notifications to the Commission, to EBA and to the competent and designated authorities of the Member States concerned without delay. Such notifications shall set out in detail:]

- a the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;
- b an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to the Member State;
- c the O-SII buffer rate that the Member State wishes to set.

[^{F28} Without prejudice to Article 133 and paragraph 5 of this Article, where an O-SII is a subsidiary of either a G-SII or an O-SII which is either an institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis for the O-SII shall not exceed the lower of:

- a the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
- b 3 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, or the rate the Commission has authorised to be applied to the group on a consolidated basis in accordance with paragraph 5a of this Article.]

[^{F29} There shall be at least five sub-categories of G-SIIs. The lowest boundary and the boundaries between each subcategory shall be determined by the scores in accordance with the identification methodology referred to in paragraph 2 of this Article. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional Common Equity Tier 1 capital, with the exception of sub-category five and any added higher sub-category. For the purposes of this paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market. The lowest sub-category shall be assigned a G-SII buffer of 1 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the buffer assigned to each sub-category shall increase in gradients of at least 0,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation.

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10 Without prejudice to paragraphs 1 and 9 and using the sub-categories and cut-off scores referred to in paragraph 9, the competent authority or the designated authority may, in the exercise of sound supervisory judgment:

- a re-allocate a G-SII from a lower sub-category to a higher sub-category;
- b allocate an entity as referred to in paragraph 1 that has an overall score as referred to in paragraph 2 that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII;
- c taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to in paragraph 2a re-allocate a G-SII from a higher sub-category to a lower sub-category.]

F³11

[F²12 The competent authority or the designated authority shall notify to the ESRB the names of the G-SIIs and O-SIIs and the respective sub-category to which each G-SII is allocated. The notification shall contain full reasons why supervisory judgment has been exercised or not in accordance with points (a), (b) and (c) of paragraph 10. The ESRB shall forward such notifications to the Commission and to EBA without delay, and shall publicly disclose their names. The competent authorities or designated authorities shall publicly disclose the sub-category to which each G-SII is allocated.

The competent authority or the designated authority shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the systemically important institution concerned, to the ESRB which shall forward the results to the Commission and to EBA without delay. The competent authority or the designated authority shall publicly disclose the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated.]

F³13

[F²14 Where a group, on a consolidated basis, is subject to a G-SII buffer and to an O-SII buffer the higher buffer shall apply.

15 Where an institution is subject to a systemic risk buffer, set in accordance with Article 133, that buffer shall be cumulative with the O-SII buffer or the G-SII buffer that is applied in accordance with this Article.

Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraph 10, 11 or 12 of Article 133 and the O-SII buffer rate or the G-SII buffer rate to which the same institution is subject to would be higher than 5 %, the procedure set out in paragraph 5a of this Article shall apply.]

F³16

F³17

[F²18 EBA shall develop draft regulatory technical standards to specify, for the purposes of this Article, the methodologies in accordance with which the competent authority or the designated authority shall identify an institution or a group headed by an EU parent institution, an EU parent financial holding company or by an EU parent mixed financial holding company as a G-SII and to specify the methodology for the definition of the sub-categories and the allocation of G-SIIs in the sub-categories based on their systemic significance, taking into account any internationally agreed standards.

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EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.]

Textual Amendments

- F1** 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).
- 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** 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).

^{F3}Article 132

[^{F3}Reporting]

Textual Amendments

- F3** 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}Article 133

Requirement to maintain a systemic risk buffer

1 Each Member State may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector on all or a subset of exposures as referred to in paragraph 5 of this Article, in order to prevent and mitigate macroprudential or systemic risks not covered by Regulation (EU) No 575/2013 and by Articles 130 and 131 of this Directive, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State.

2 Institutions shall calculate the systemic risk buffer as follows:

$$B_{SR} = r_T \times E_T + \sum_i r_i \times E_i$$

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where:

B_{SR}	=	the systemic risk buffer;
r_T	=	the buffer rate applicable to the total risk exposure amount of an institution;
E_T	=	the total risk exposure amount of an institution calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;
i	=	the index denoting the subset of exposures as referred to in paragraph 5;
r_i	=	the buffer rate applicable to the risk exposure amount of the subset of exposures i ; and
E_i	=	the risk exposure amount of an institution for the subset of exposures i calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

3 For the purposes of paragraph 1, Member States shall designate an authority to be responsible for setting the systemic risk buffer and for identifying the exposures and subsets of institutions to which it applies. That authority shall be either the competent authority or the designated authority.

4 For the purposes of paragraph 1 of this Article, the relevant competent or designated authority, as applicable, may require institutions to maintain a systemic risk buffer of Common Equity Tier 1 capital calculated in accordance with paragraph 2 of this Article, on an individual, consolidated, or sub-consolidated basis, as applicable in accordance with Title II of Part One of Regulation (EU) No 575/2013.

- 5 A systemic risk buffer may apply to:
- a all exposures located in the Member State that sets that buffer;
 - b the following sectoral exposures located in the Member State that sets that buffer:
 - (i) all retail exposures to natural persons which are secured by residential property;
 - (ii) all exposures to legal persons which are secured by mortgages on commercial immovable property;
 - (iii) all exposures to legal persons excluding those specified in point (ii);
 - (iv) all exposures to natural persons excluding those specified in point (i);
 - c all exposures located in other Member States, subject to paragraphs 12 and 15;
 - d sectoral exposures, as identified in point (b) of this paragraph, located in other Member States only to enable recognition of a buffer rate set by another Member State in accordance with Article 134;
 - e exposures located in third countries;
 - f subsets of any of the exposure categories identified in point (b).

6 EBA shall, after consulting the ESRB, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, by 30 June 2020 on the appropriate subsets of exposures to which the competent authority or the designated authority may apply a systemic risk buffer in accordance with point (f) of paragraph 5 of this Article.

7 A systemic risk buffer shall apply to all exposures, or a subset of exposures as referred to in paragraph 5 of this Article, of all institutions, or one or more subsets of those institutions, for which the authorities of the Member State concerned are competent in accordance with this Directive and shall be set in steps of adjustment of 0,5 percentage points or multiples thereof. Different requirements may be introduced for different subsets of institutions and of

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exposures. The systemic risk buffer shall not address risks that are covered by Articles 130 and 131.

8 When requiring a systemic risk buffer to be maintained the competent authority or the designated authority shall comply with the following:

- a the systemic risk buffer does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market;
- b the systemic risk buffer is to be reviewed by the competent authority or the designated authority at least every second year;
- c the systemic risk buffer is not to be used to address risks that are covered by Articles 130 and 131.

9 The competent authority or the designated authority, as applicable, shall notify the ESRB before the publication of the decision referred to in paragraph 13. The ESRB shall forward such notifications to the Commission, to EBA and to the competent and designated authorities of the Member States concerned without delay.

Where the institution to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State, the competent authority or the designated authority shall also notify the authorities of that Member State.

Where a systemic risk buffer rate applies to exposures located in third countries, the competent authority or the designated authority, as applicable, shall also notify the ESRB. The ESRB shall forward such notifications without delay to the supervisory authorities of those third countries.

Such notifications shall set out in detail:

- a the macroprudential or systemic risks in the Member State;
- b the reasons why the dimension of the macroprudential or systemic risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;
- c the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
- d an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information which is available to the Member State;
- e the systemic risk buffer rate or rates that the competent authority or the designated authority, as applicable, intends to impose and the exposures to which such rates shall apply and the institutions which shall be subject to such rates;
- f where the systemic risk buffer rate applies to all exposures, a justification of why the authority considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided for in Article 131.

Where the decision to set the systemic risk buffer rate results in a decrease or no change from the previously set buffer rate, the competent authority or the designated authority, as applicable, shall only comply with this paragraph.

10 Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers does not result in a combined systemic risk buffer rate higher than 3 % for any of those exposures, the competent authority or the designated authority, as applicable, shall notify the ESRB in accordance with paragraph 9 one month before the publication of the decision referred to in paragraph 13.

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For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the 3 % threshold.

11 Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3 % and up to 5 % for any of those exposures, the competent authority or the designated authority of the Member State that sets that buffer shall request in the notification submitted in accordance with paragraph 9 the Commission's opinion. The Commission shall provide its opinion within one month of receipt of the notification.

Where the opinion of the Commission is negative, the competent authority or the designated authority, as applicable, of the Member State that sets that systemic risk buffer shall comply with that opinion or give reasons for not doing so.

Where an institution to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State, the competent authority or the designated authority shall request in the notification submitted in accordance with paragraph 9 a recommendation by the Commission and the ESRB.

The Commission and the ESRB shall each provide its recommendation within six weeks of receipt of the notification.

Where the authorities of the subsidiary and of the parent disagree on the systemic risk buffer rate or rates applicable to that institution and in the case of a negative recommendation of both the Commission and the ESRB, the competent authority or the designated authority, as applicable, may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the systemic risk buffer rate or rates for those exposures shall be suspended until EBA has taken a decision.

12 Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate higher than 5 % for any of those exposures, the competent authority or the designated authority, as applicable, shall seek the authorisation of the Commission before implementing a systemic risk buffer.

Within six weeks of receipt of the notification referred to in paragraph 9 of this Article, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer is deemed appropriate. EBA may also provide the Commission with its opinion on that systemic risk buffer in accordance with Article 34(1) of Regulation (EU) No 1093/2010.

Within three months of receipt of the notification referred to in paragraph 9, the Commission, taking into account the assessment of the ESRB and EBA, where relevant, and where it is satisfied that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an act authorising the competent authority or the designated authority, as applicable, to adopt the proposed measure.

13 Each competent authority, or the designated authority, as applicable, shall announce the setting or resetting of one or more systemic risk buffer rates by publication on an appropriate website. That publication shall include at least the following information:

- a the systemic risk buffer rate or rates;

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- b the institutions to which the systemic risk buffer applies;
- c the exposures to which the systemic risk buffer rate or rates apply;
- d a justification for setting or resetting the systemic risk buffer rate or rates;
- e the date from which the institutions shall apply the setting or resetting of the systemic risk buffer; and
- f the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

Where the publication of the information referred to in point (d) of the first subparagraph could jeopardise the stability of the financial system, that information shall not be included in the publication.

14 Where an institution fails to fully meet the requirement set out in paragraph 1 of this Article, it shall be subject to the restrictions on distributions set out in Article 141(2) and (3).

Where the application of the restrictions on distributions leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the institution in light of the relevant systemic risk, the competent authorities may take additional measures in accordance with Article 64.

15 Where the competent authority or the designated authority, as applicable, decides to set the systemic risk buffer on the basis of exposures located in other Member States, the buffer shall be set equally on all exposures located within the Union, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State in accordance with Article 134.

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

Article 134

Recognition of a systemic risk buffer rate

1 Other Member States may recognise a systemic risk buffer rate set in accordance with Article 133 and may apply that rate to domestically authorised institutions for exposures located in the Member State that sets that rate.

2 Where Member States recognise a systemic risk buffer rate for domestically authorised institutions in accordance with paragraph 1, they shall notify the ESRB. The ESRB shall forward such notifications to the Commission, to EBA and to the Member State that sets that rate without delay.

3 When deciding whether to recognise a systemic risk buffer rate in accordance with paragraph 1, a Member State shall take into consideration the information presented by the Member State that sets that rate in accordance with Article 133(9) and (13).

4 Where Member States recognise a systemic risk buffer rate for domestically authorised institutions, that systemic risk buffer may be cumulative with the systemic risk buffer applied in accordance with Article 133, provided that the buffers address different risks. Where the buffers address the same risks, only the higher buffer shall apply.

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5 A Member State that sets a systemic risk buffer rate in accordance with Article 133 of this Directive may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States which may recognise the systemic risk buffer rate.]

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

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- (1) [^{F2}Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).]
- (2) [^{F1}Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).]

Textual Amendments

- F1** 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).
- 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).