

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 135

ESRB guidance on setting countercyclical buffer rates

1 The ESRB may give, by way of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, guidance to authorities designated by Member States under Article 136(1) on setting countercyclical buffer rates, including the following:

- a principles to guide designated authorities when exercising their judgment as to the appropriate countercyclical buffer rate, ensure that authorities adopt a sound approach to relevant macro-economic cycles and promote sound and consistent decision-making across Member States;
- b general guidance on:
 - (i) the measurement and calculation of the deviation from long term trends of ratios of credit to gross domestic product (GDP);
 - (ii) the calculation of buffer guides required by Article 136(2);
- c guidance on variables that indicate the build-up of system-wide risk associated with periods of excessive credit growth in a financial system, in particular the relevant credit-to-GDP ratio and its deviation from the long-term trend, and on other relevant factors, including the treatment of economic developments within individual sectors of the economy, that should inform the decisions of designated authorities on the appropriate countercyclical buffer rate under Article 136;
- d guidance on variables, including qualitative criteria, that indicate that the buffer should be maintained, reduced or fully released.

2 Where it issues a recommendation under paragraph 1, the ESRB shall duly take into account the differences between Member States and in particular the specificities of Member States with small and open economies.

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3 Where it has issued a recommendation under paragraph 1, the ESRB shall keep it under review and update it, where necessary, in the light of experience of setting buffers under this Directive or of developments in internationally agreed practices.

Article 136

Setting countercyclical buffer rates

1 Each Member State shall designate a public authority or body (a 'designated authority') that is responsible for setting the countercyclical buffer rate for that Member State.

2 Each designated authority shall calculate for every quarter a buffer guide as a reference to guide its exercise of judgment in setting the countercyclical buffer rate in accordance with paragraph 3. The buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the Member State and shall duly take into account specificities of the national economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia:

- a an indicator of growth of levels of credit within that jurisdiction and, in particular, an indicator reflective of the changes in the ratio of credit granted in that Member State to GDP;
- b any current guidance maintained by the ESRB in accordance with Article 135(1)(b).

[^{F13} Each designated authority shall assess the intensity of cyclical systemic risk and the appropriateness of the countercyclical buffer rate for its Member State on a quarterly basis and set or adjust the countercyclical buffer rate, if necessary. In so doing, each designated authority shall take into account:]

- a the buffer guide calculated in accordance with paragraph 2;
- b any current guidance maintained by the ESRB in accordance with Article 135(1)(a), (c) and (d) and any recommendations issued by the ESRB on the setting of a buffer rate;
- c other variables that the designated authority considers relevant for addressing cyclical systemic risk.

4 The countercyclical buffer rate, 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 Member State, shall be between 0 % and 2,5 %, calibrated in steps of 0,25 percentage points or multiples of 0,25 percentage points. Where justified on the basis of the considerations set out in paragraph 3, a designated authority may set a countercyclical buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 for the purpose set out in Article 140(2) of this Directive.

5 Where a designated authority sets the countercyclical buffer rate above zero for the first time, or where, thereafter, a designated authority increases the prevailing countercyclical buffer rate setting, it shall also decide the date from which the institutions must apply that increased buffer for the purposes of calculating their institution-specific countercyclical capital buffer. That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 7. If the date is less than 12 months after the increased buffer setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

6 If a designated authority reduces the existing countercyclical buffer rate, whether or not it is reduced to zero, it shall also decide an indicative period during which no increase in the buffer is expected. However, that indicative period shall not bind the designated authority.

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[^{F17} Each designated authority shall publish quarterly at least the following information on its website:

- a the applicable countercyclical buffer rate;
- b the relevant credit-to-GDP-ratio and its deviation from the long-term trend;
- c the buffer guide calculated in accordance with paragraph 2;
- d a justification for that buffer rate;
- e where the buffer rate is increased, the date from which institutions shall apply that increased buffer rate for the purpose of calculating their institution-specific countercyclical capital buffer;
- f where the date referred to in point (e) is less than 12 months after the date of the publication under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;
- g where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

Designated authorities shall take all reasonable steps to coordinate the timing of that publication.

Designated authorities shall notify each change of the countercyclical buffer rate and the required information specified in points (a) to (g) of the first subparagraph to the ESRB. The ESRB shall publish on its website all such notified buffer rates and related information.]

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

Article 137

Recognition of countercyclical buffer rates in excess of 2,5 %

1 Where a designated authority, in accordance with Article 136(4), or a relevant third-country authority has set a countercyclical buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the other designated authorities may recognise that buffer rate for the purposes of the calculation by domestically authorised institutions of their institution-specific countercyclical capital buffers.

2 Where a designated authority in accordance with paragraph 1 of this Article recognises a buffer rate in excess of 2,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, it shall announce that recognition by publication on its website. The announcement shall include at least the following information:

- a the applicable countercyclical buffer rate;
- b the Member State or third countries to which it applies;
- c where the buffer rate is increased, the date from which the institutions authorised in the Member State of the designated authority must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

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- d where the date referred to in point (c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Article 138

ESRB recommendation on third country countercyclical buffer rates

The ESRB may, in accordance with Article 16 of Regulation (EU) No 1092/2010, issue a recommendation to designated authorities on the appropriate countercyclical buffer rate for exposures to that third country where:

- (a) a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country ('relevant third-country authority') to which one or more Union institutions have credit exposures;
- (b) the ESRB considers that a countercyclical buffer rate which has been set and published by the relevant third-country authority for a third country is not sufficient to protect Union institutions appropriately from the risks of excessive credit growth in that country, or a designated authority notifies the ESRB that it considers that buffer rate to be insufficient for that purpose.

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.

Article 140

Calculation of institution-specific countercyclical capital buffer rates

1 The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the institution are located or are applied for the purposes of this Article by virtue of Article 139(2) or (3).

Member States shall require institutions, in order to calculate the weighted average referred to in the first subparagraph, to apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

2 If, in accordance with Article 136(4), a designated authority sets a countercyclical buffer rate in excess of 2,5 % of total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, Member States shall ensure that the following buffer rates apply to relevant credit exposures located in the Member State of that designated authority ('Member State A') for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- a domestically authorised institutions shall apply that buffer rate in excess of 2,5 % of total risk exposure amount;
- b institutions that are authorised in another Member State shall apply a countercyclical buffer rate of 2,5 % of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2,5 % in accordance with Article 137(1);
- c institutions that are authorised in another Member State shall apply the countercyclical buffer rate set by the designated authority of Member State A if the designated authority in the Member State in which they have been authorised has recognised the buffer rate in accordance with Article 137.

3 If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2,5 % of total risk exposure amount calculated in accordance with Article 92(3)

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of Regulation (EU) No 575/2013, Member States shall ensure that the following buffer rates apply to relevant credit exposures located in that third country for the purposes of the calculation required under paragraph 1 including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the institution in question:

- a institutions shall apply a countercyclical buffer rate of 2,5 % of total risk exposure amount if the designated authority in the Member State in which they have been authorised has not recognised the buffer rate in excess of 2,5 % in accordance with Article 137(1);
- b institutions shall apply the countercyclical buffer rate set by the relevant third-country authority if the designated authority in the Member State in which they have been authorised has recognised the buffer rate in accordance with Article 137.

4 Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of Regulation (EU) No 575/2013, that are subject to:

- a the own funds requirements for credit risk under Part Three, Title II of that Regulation;
- b where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;
- c where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

5 Institutions shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted in accordance with paragraph 7.

6 For the purposes of the calculation required under paragraph 1:

- a a countercyclical buffer rate for a Member State shall apply from the date specified in the information published in accordance with Article 136(7)(e) or Article 137(2)(c) if the effect of that decision is to increase the buffer rate;
- b subject to point (c), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;
- c where the designated authority of the home Member State of the institution sets the countercyclical buffer rate for a third country pursuant to Article 139(2) or (3), or recognises the countercyclical buffer rate for a third country pursuant to Article 137, that buffer rate shall apply from the date specified in the information published in accordance with Article 139(5)(c) or Article 137(2)(c), if the effect of that decision is to increase the buffer rate;
- d a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

For the purposes of point (b), a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

7 EBA shall develop draft regulatory technical standards to specify the method for the identification of the geographical location of the relevant credit exposures referred to in paragraph 5.

EBA shall submit those draft regulatory standards to the Commission by 1 January 2014.

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