

Directive (EU) 2019/2034 of the European Parliament and of the Council  
of 27 November 2019 on the prudential supervision of investment  
firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU,  
2013/36/EU, 2014/59/EU and 2014/65/EU (Text with EEA relevance)

TITLE IV

**PRUDENTIAL SUPERVISION**

*CHAPTER 2*

***Review process***

*Section 2*

***Internal governance, transparency, treatment of risks and remuneration***

*Article 25*

**Scope of application of this Section**

1 This Section shall not apply where, on the basis of Article 12(1) of Regulation (EU) 2019/2033, an investment firm determines that it meets all of the conditions for qualifying as a small and non-interconnected investment firm set out therein.

2 Where an investment firm which has not met all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 subsequently meets those conditions, this Section shall cease to apply after a period of six months from the date on which those conditions are met. This section shall cease to apply to an investment firm after that period only where the investment firm continued to meet the conditions set out in Article 12(1) of Regulation (EU) 2019/2033 without interruption during that period and where it notified the competent authority accordingly.

3 Where an investment firm determines that it no longer meets all of the conditions set out in Article 12(1) of Regulation (EU) 2019/2033, it shall notify the competent authority and comply with this Section within 12 months of the date on which that assessment took place.

4 Member States shall require investment firms to apply the provisions laid down in Article 32 to remuneration awarded for services provided or performance in the financial year following the financial year in which the assessment referred to in paragraph 3 took place.

Where this Section applies and Article 8 of Regulation (EU) 2019/2033 is applied, Member States shall ensure that this Section is applied to investment firms on an individual basis.

Where this Section applies and prudential consolidation as referred to in Article 7 of Regulation (EU) 2019/2033 is applied, Member States shall ensure that this Section is applied to investment firms on an individual and consolidated basis.

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By way of derogation from the third subparagraph, this Section shall not apply to subsidiary undertakings included in a consolidated situation that are established in third countries, where the parent undertaking in the Union can demonstrate to the competent authorities that the application of this Section is unlawful under the laws of the third country where those subsidiary undertakings are established.

## Article 26

### Internal governance

1 Member States shall ensure that investment firms have robust governance arrangements, including all of the following:

- a a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- b effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others;
- c adequate internal control mechanisms, including sound administration and accounting procedures;
- d remuneration policies and practices that are consistent with and promote sound and effective risk management.

The remuneration policies and practices referred to in point (d) of the first subparagraph shall be gender neutral.

2 When establishing the arrangements referred to in paragraph 1, the criteria set out in Articles 28 to 33 shall be taken into account.

3 The arrangements referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.

4 EBA, in consultation with ESMA, shall issue guidelines on the application of the governance arrangements referred to in paragraph 1.

EBA, in consultation with ESMA, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on gender neutral remuneration policies for investment firms.

Within two years of the date of publication of those guidelines, EBA shall issue a report on the application of gender neutral remuneration policies by investment firms based on the information collected by the competent authorities.

## Article 27

### Country-by-country reporting

1 Member States shall require investment firms that have a branch or subsidiary that is a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013 in a Member State or in a third country other than that in which the authorisation of the investment firm was granted to disclose the following information by Member State and third country on an annual basis:

- a the name, nature of activities and location of any subsidiaries and branches;
- b turnover;

- c the number of employees on a full time equivalent basis;
- d profit or loss before tax;
- e tax on profit or loss;
- f the public subsidies received.

2 The information referred to in paragraph 1 of this Article shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of that investment firm.

### *Article 28*

#### **Role of the management body in risk management**

1 Member States shall ensure that the management body of the investment firm approves and periodically reviews the strategies and policies on the risk appetite of the investment firm, and on managing, monitoring and mitigating the risks the investment firm is or may be exposed to, taking into account the macroeconomic environment and the business cycle of the investment firm.

2 Member States shall ensure that the management body devotes sufficient time to ensure proper consideration of the matters referred to in paragraph 1 and that it allocates adequate resources to the management of all material risks to which the investment firm is exposed.

3 Member States shall ensure that investment firms establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.

4 Member States shall require all investment firms that do not meet the criteria set out in point (a) of Article 32(4) to establish a risk committee composed of members of the management body who do not perform any executive function in the investment firm concerned.

Members of the risk committee referred to in the first subparagraph shall have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the investment firm. They shall ensure that the risk committee advises the management body on the investment firm's overall current and future risk appetite and strategy and assists the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for the investment firm's risk strategies and policies.

5 Member States shall ensure that the management body in its supervisory function and the risk committee of that management body, where a risk committee has been established, have access to information on the risks to which the investment firm is or may be exposed.

### *Article 29*

#### **Treatment of risks**

1 Competent authorities shall ensure that investment firms have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of the following:

- a material sources and effects of risk to clients and any material impact on own funds;
- b material sources and effects of risk to market and any material impact on own funds;

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- c material sources and effects of risk to the investment firm, in particular those which can deplete the level of own funds available;
- d liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that the investment firm maintains adequate levels of liquid resources, including in respect of addressing material sources of risks under points (a), (b) and (c).

The strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, and scope of operation of the investment firm and risk tolerance set by the management body, and shall reflect the investment firm's importance in each Member State in which it carries out business.

For the purposes of point (a) of the first subparagraph and of the second subparagraph, competent authorities shall consider national law governing segregation applicable to client money.

For the purposes of point (a) of the first subparagraph, investment firms shall consider holding professional indemnity insurance as an effective tool in their management of risks.

For the purposes of point (c) of the first subparagraph, material sources of risk to the investment firm itself shall include, if relevant, material changes in the book value of assets, including any claims on tied agents, the failure of clients or counterparties, positions in financial instruments, foreign currencies and commodities, and obligations to defined benefit pension schemes.

Investment firms shall give due consideration to any material impact on own funds where such risks are not appropriately captured by the own funds requirements calculated under Article 11 of Regulation (EU) 2019/2033.

2 Where investment firms need to wind down or cease their activities, competent authorities shall require that investment firms, by taking into account the viability and sustainability of their business models and strategies, give due consideration to requirements and necessary resources which are realistic, in terms of timescale and maintenance of own funds and liquid resources, throughout the process of exiting the market.

3 By way of derogation from Article 25, points (a), (c) and (d) of paragraph 1 of this Article shall apply to investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033.

4 The Commission is empowered to adopt delegated acts in accordance with Article 58 to supplement this Directive to ensure that the strategies, policies, processes and systems of investment firms are robust. The Commission shall thereby take into account developments in financial markets, and in particular the emergence of new financial products, developments in accounting standards and developments that facilitate the convergence of supervisory practices.

### *Article 30*

#### **Remuneration policies**

1 Member States shall ensure that investment firms, when establishing and applying their remuneration policies for categories of staff, including senior management, risk takers, staff engaged in control functions and any employees receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers, whose professional activities have a material impact on the risk profile of the investment firm or of the assets that it manages, comply with the following principles:

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- a the remuneration policy is clearly documented and proportionate to the size, internal organisation and nature, as well as to the scope and complexity of the activities of the investment firm;
- b the remuneration policy is a gender#neutral remuneration policy;
- c the remuneration policy is consistent with and promotes sound and effective risk management;
- d the remuneration policy is in line with the business strategy and objectives of the investment firm, and also takes into account long term effects of the investment decisions taken;
- e the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;
- f the investment firm's management body in its supervisory function adopts and periodically reviews the remuneration policy and has overall responsibility for overseeing its implementation;
- g the implementation of the remuneration policy is subject to a central and independent internal review by control functions at least annually;
- h staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, regardless of the performance of the business areas they control;
- i the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 33 or, where such a committee has not been established, by the management body in its supervisory function;
- j the remuneration policy, taking into account national rules on wage setting, makes a clear distinction between the criteria applied to determine the following:
  - (i) basic fixed remuneration, which primarily reflects relevant professional experience and organisational responsibility as set out in an employee's job description as part of his or her terms of employment;
  - (ii) variable remuneration, which reflects a sustainable and risk adjusted performance of the employee, as well as performance in excess of the employee's job description;
- k the fixed component represents a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility of paying no variable remuneration component.

2 For the purposes of point (k) of paragraph 1, Member States shall ensure that investment firms set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the investment firm and associated risks, as well as the impact that different categories of staff referred to in paragraph 1 have on the risk profile of the investment firm.

3 Member States shall ensure that investment firms establish and apply the principles referred to in paragraph 1 in a manner that is appropriate to their size and internal organisation and to the nature, scope and complexity of their activities.

4 EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify appropriate criteria to identify the categories of staff whose professional activities have a material impact on the risk profile of the investment firm as referred to in paragraph 1 of this Article. EBA and ESMA shall take due account of Commission Recommendation 2009/384/

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EC<sup>(1)</sup> as well as existing remuneration guidelines pursuant to Directives 2009/65/EC, 2011/61/EU and 2014/65/EU, and shall aim to minimise divergence from existing provisions.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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

### *Article 31*

#### **Investment firms that benefit from extraordinary public financial support**

Member States shall ensure that where an investment firm benefits from extraordinary public financial support as defined in point (28) of Article 2(1) of Directive 2014/59/EU:

- (a) that investment firm does not pay any variable remuneration to members of the management body;
- (b) where variable remuneration paid to staff other than members of the management body would be inconsistent with the maintenance of a sound capital base of an investment firm and its timely exit from extraordinary public financial support, variable remuneration shall be limited to a portion of net revenue.

### *Article 32*

#### **Variable remuneration**

1 Member States shall ensure that any variable remuneration awarded and paid by an investment firm to categories of staff referred to in Article 30(1) complies with all of the following requirements under the same conditions as those set out in Article 30(3):

- a where variable remuneration is performance related, the total amount of variable remuneration is based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;
- b when assessing the performance of the individual, both financial and non-financial criteria are taken into account;
- c the assessment of the performance referred to in point (a) is based on a multi-year period, taking into account the business cycle of the investment firm and its business risks;
- d the variable remuneration does not affect the investment firm's ability to ensure a sound capital base;
- e there is no guaranteed variable remuneration other than for new staff only for the first year of employment of new staff and where the investment firm has a strong capital base;
- f payments relating to the early termination of an employment contract reflect performance achieved over time by the individual and shall not reward failure or misconduct;
- g remuneration packages relating to compensation or buy out from contracts in previous employment are aligned with the long-term interests of the investment firm;

- h the measurement of performance used as a basis to calculate pools of variable remuneration takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) 2019/2033;
  - i the allocation of the variable remuneration components within the investment firm takes into account all types of current and future risks;
  - j at least 50 % of the variable remuneration consists of any of the following instruments:
    - (i) shares or equivalent ownership interests, subject to the legal structure of the investment firm concerned;
    - (ii) share#linked instruments or equivalent non#cash instruments, subject to the legal structure of the investment firm concerned;
    - (iii) Additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;
    - (iv) non#cash instruments which reflect the instruments of the portfolios managed;
  - k by way of derogation from point (j), where an investment firm does not issue any of the instruments referred to in that point, competent authorities may approve the use of alternative arrangements fulfilling the same objectives;
  - l at least 40 % of the variable remuneration is deferred over a three# to five#year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least 60 %;
  - m up to 100 % of the variable remuneration is contracted where the financial performance of the investment firm is subdued or negative, including through *malus* or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question:
    - (i) participated in or was responsible for conduct which resulted in significant losses for the investment firm;
    - (ii) is no longer considered fit and proper;
  - n discretionary pension benefits are in line with the business strategy, objectives, values and long#term interests of the investment firm.
- 2 For the purposes of paragraph 1, Member States shall ensure the following:
- a individuals referred to in Article 30(1) do not use personal hedging strategies or remuneration and liability#related insurances to undermine the principles referred to in paragraph 1;
  - b variable remuneration is not paid through financial vehicles or methods that facilitate non#compliance with this Directive or with Regulation (EU) 2019/2033.
- 3 For the purposes of point (j) of paragraph 1, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer#term interests of the investment firm, its creditors and clients. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.
- For the purposes of point (l) of paragraph 1, the deferral of the variable remuneration shall vest no faster than on a pro#rata basis.

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For the purposes of point (n) of paragraph 1, where an employee leaves the investment firm before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in point (j). Where an employee reaches retirement age and retires, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j), subject to a five-year retention period.

4 Points (j) and (l) of paragraph 1 and the third subparagraph of paragraph 3 shall not apply to:

- a an investment firm, where the value of its on and off-balance sheet assets is on average equal to or less than EUR 100 million over the four-year period immediately preceding the given financial year;
- b an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of that individual's total annual remuneration.

5 By way of derogation from point (a) of paragraph 4, a Member State may increase the threshold referred to in that point, provided that the investment firm meets the following criteria:

- a the investment firm is not, in the Member State in which it is established, one of the three largest investment firms in terms of total value of assets;
- b the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;
- c the size of the investment firm's on and off-balance sheet trading-book business is equal to or less than EUR 150 million;
- d the size of the investment firm's on and off-balance sheet derivative business is equal to or less than EUR 100 million;
- e the threshold does not exceed EUR 300 million; and
- f it is appropriate to increase the threshold, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

6 By way of derogation from point (a) of paragraph 4, a Member State may lower the threshold referred to in that point, provided that it is appropriate to do so, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.

7 By way of derogation from point (b) of paragraph 4, a Member State may decide that staff members who are entitled to annual variable remuneration below the threshold and share referred to in that point shall not be subject to the exemption set out therein because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those staff members.

8 EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in point (j)(iii) of paragraph 1 and to specify possible alternative arrangements set out in point (k) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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



9 EBA, in consultation with ESMA, shall adopt guidelines facilitating the implementation of paragraphs 4, 5 and 6 and ensuring their consistent application.

### *Article 33*

#### **Remuneration committee**

1 Member States shall ensure that investment firms which do not meet the criteria set out in point (a) of Article 32(4) establish a remuneration committee. That remuneration committee shall be gender balanced and shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. The remuneration committee may be established at group level.

2 Member States shall ensure that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the investment firm concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm concerned. Where employee representation in the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.

3 When preparing the decisions referred to in paragraph 2, the remuneration committee shall take into account the public interest and the long#term interests of shareholders, investors and other stakeholders in the investment firm.

### *Article 34*

#### **Oversight of remuneration policies**

1 Member States shall ensure that competent authorities collect the information disclosed in accordance with points (c) and (d) of the first subparagraph of Article 51 of Regulation (EU) 2019/2033 as well as the information provided by investment firms on the gender pay gap and use that information to benchmark remuneration trends and practices.

Competent authorities shall provide that information to EBA.

2 EBA shall use information received from the competent authorities in accordance with paragraphs 1 and 4 to benchmark remuneration trends and practices at Union level.

3 EBA, in consultation with ESMA, shall issue guidelines on the application of sound remuneration policies. Those guidelines shall take into account at least the requirements referred to in Articles 30 to 33 and principles on sound remuneration policies set out in Recommendation 2009/384/EC.

4 Member States shall ensure that investment firms provide competent authorities with information on the number of natural persons per investment firm that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including information on their job responsibilities, the business area involved and the main elements of salary, bonus, long#term award and pension contribution.

Member States shall ensure that investment firms provide competent authorities, upon demand, the total remuneration figures for each member of the management body or senior management.

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Competent authorities shall forward the information referred to in the first and second subparagraphs to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA, in consultation with ESMA, may issue guidelines to facilitate the implementation of this paragraph and to ensure the consistency of the information collected.

#### *Article 35*

#### **EBA report on environmental, social, and governance risks**

EBA shall prepare a report on the introduction of technical criteria related to exposures to activities associated substantially with environmental, social, and governance (ESG) objectives for the supervisory review and evaluation process, with a view to assessing the possible sources and effects of risks on investment firms, taking into account applicable Union legal acts in the field of ESG taxonomy.

The EBA report referred to in the first paragraph shall comprise at least the following:

- (a) a definition of ESG risks, including physical risks and transition risks related to the transition to a more sustainable economy, and, with regard to transition risks, including risks related to the depreciation of assets due to regulatory change, qualitative and quantitative criteria and metrics relevant for assessing such risks, as well as a methodology for assessing the possibility of such risks arising in the short, medium, or long term and the possibility of such risks having a material financial impact on an investment firm;
- (b) an assessment of the possibility of significant concentrations of specific assets increasing ESG risks, including physical risks and transition risks for an investment firm;
- (c) a description of the processes by means of which an investment firm can identify, assess, and manage ESG risks, including physical risks and transition risks;
- (d) the criteria, parameters and metrics by means of which supervisors and investment firms can assess the impact of short#, medium# and long#term ESG risks for the purposes of the supervisory review and evaluation process.

EBA shall submit the report on its findings to the European Parliament, to the Council, and to the Commission, by 26 December 2021.

On the basis of that report, EBA may, if appropriate, adopt guidelines to introduce criteria related to ESG risks for the supervisory review and evaluation process that take into account the findings of the EBA report referred to in this Article.

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- (1) Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector ([OJ L 120, 15.5.2009, p. 22](#)).