

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Text with EEA relevance)

TITLE VII

PRUDENTIAL SUPERVISION

CHAPTER 2

Review Processes

Section IV

Supervisory measures and powers

[^{F1}Article 104b

Guidance on additional own funds

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

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

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

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

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

4 Competent authorities' guidance on additional own funds pursuant to paragraph 3 of this Article shall be institution-specific. The guidance may cover risks addressed by the

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additional own funds requirement imposed pursuant to point (a) of Article 104(1) only to the extent that it covers aspects of those risks that are not already covered under that requirement.

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

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

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

6 Failure to meet the guidance referred to in paragraph 3 of this Article where an institution meets the relevant own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, the relevant additional own funds requirement referred to in point (a) of Article 104(1) of this Directive and, as relevant, the combined buffer requirement or the leverage ratio buffer requirement referred to in Article 92(1a) of Regulation (EU) No 575/2013 shall not trigger the restrictions referred to in Article 141 or 141b of this Directive.]

Textual Amendments

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