

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 I

#### *Principles of prudential supervision*

#### *Section IV*

#### *Supervisory powers, powers to impose penalties and right of appeal*

#### *Article 67*

#### **Other provisions**

- 1 This Article shall apply at least in any of the following circumstances:
  - a an institution has obtained an authorisation through false statements or any other irregular means;
  - b an institution, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 22(1) or Article 25, fails to inform the competent authorities of those acquisitions or disposals in breach of the first subparagraph of Article 26(1);
  - c an institution listed on a regulated market as referred to in the list to be published by ESMA in accordance with Article 47 of Directive 2004/39/EC does not, at least annually, inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of the second subparagraph of Article 26(1) of this Directive;
  - d an institution fails to have in place governance arrangements required by the competent authorities in accordance with the national provisions transposing Article 74;
  - e an institution fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the competent authorities in breach of Article 99(1) of that Regulation;
  - f an institution fails to report or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in Article 101 of Regulation (EU) No 575/2013;
  - g an institution fails to report information or provides incomplete or inaccurate information about a large exposure to the competent authorities in breach of Article 394(1) of Regulation (EU) No 575/2013;

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- h an institution fails to report information or provides incomplete or inaccurate information on liquidity to the competent authorities in breach of Article 415(1) and (2) of Regulation (EU) No 575/2013;
- i an institution fails to report information or provides incomplete or inaccurate information on the leverage ratio to the competent authorities in breach of Article 430(1) of Regulation (EU) No 575/2013;
- j an institution repeatedly or persistently fails to hold liquid assets in breach of Article 412 of Regulation (EU) No 575/2013;
- k an institution incurs an exposure in excess of the limits set out in Article 395 of Regulation (EU) No 575/2013;
- l an institution is exposed to the credit risk of a securitisation position without satisfying the conditions set out in Article 405 of Regulation (EU) No 575/2013;
- m an institution fails to disclose information or provides incomplete or inaccurate information in breach of Article 431(1), (2) and (3) or Article 451(1) of Regulation (EU) No 575/2013;
- n an institution makes payments to holders of instruments included in the own funds of the institution in breach of Article 141 of this Directive [<sup>x1</sup>or in cases where Article 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;]
- o an institution is found liable for a serious breach of the national provisions adopted pursuant to Directive 2005/60/EC;
- p an institution allows one or more persons not complying with Article 91 to become or remain a member of the management body [<sup>F1</sup>;
- [<sup>F2</sup>q a parent institution, a parent financial holding company or a parent mixed financial holding company fails to take any action that may be required to ensure compliance with the prudential requirements set out in Part Three, Four, Six or Seven of Regulation (EU) No 575/2013 or imposed under point (a) of Article 104(1) or Article 105 of this Directive on a consolidated or sub-consolidated basis.;

2 Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

- a a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;
- b an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- c in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;
- d subject to Article 65(2), a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions;
- e in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year;
- f in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

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- g administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

Where an undertaking referred to in point (e) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

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#### **Editorial Information**

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

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#### **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 \(Text with EEA relevance\)](#).
- F2** 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 \(Text with EEA relevance\)](#).