

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 III*

#### *Supervisory review and evaluation process*

#### *Article 98*

#### **Technical criteria for the supervisory review and evaluation**

- 1 In addition to credit, market and operational risks, the review and evaluation performed by competent authorities pursuant to Article 97 shall include at least:
- a the results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by institutions applying an internal ratings based approach;
  - b the exposure to and management of concentration risk by institutions, including their compliance with the requirements set out in Part Four of Regulation (EU) No 575/2013 and Article 81 of this Directive;
  - c the robustness, suitability and manner of application of the policies and procedures implemented by institutions for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
  - d the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;
  - e the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;
  - f the impact of diversification effects and how such effects are factored into the risk measurement system;
  - g the results of stress tests carried out by institutions using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;
  - h the geographical location of institutions' exposures;
  - i the business model of the institution;

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j the assessment of systemic risk, in accordance with the criteria set out in Article 97.

2 For the purposes of point (e) of paragraph 1, the competent authorities shall regularly carry out a comprehensive assessment of the overall liquidity risk management by institutions and promote the development of sound internal methodologies. While conducting those reviews, the competent authorities shall have regard to the role played by institutions in the financial markets. The competent authorities in one Member State shall duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

3 Competent authorities shall monitor whether an institution has provided implicit support to a securitisation. If an institution is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

4 For the purposes of the determination to be made under Article 97(3) of this Directive, competent authorities shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of Regulation (EU) No 575/2013, enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

5 The review and evaluation performed by competent authorities shall include the exposure of institutions to the interest rate risk arising from non-trading activities. Measures shall be required at least in the case of institutions whose economic value declines by more than 20 % of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

6 The review and evaluation performed by competent authorities shall include the exposure of institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, competent authorities shall take into account the business model of those institutions.

7 The review and evaluation conducted by competent authorities shall include governance arrangements of institutions, their corporate culture and values, and the ability of members of the management body to perform their duties. In conducting that review and evaluation, competent authorities shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

[<sup>F18</sup> EBA shall assess the potential inclusion in the review and evaluation performed by competent authorities of environmental, social and governance risks (ESG risks).

For the purposes of the first subparagraph, EBA's assessment shall comprise at least the following:

- a the development of a uniform definition of ESG risks, including physical risks and transition risks; the latter shall comprise the risks related to the depreciation of assets due to regulatory changes;
- b the development of appropriate qualitative and quantitative criteria for the assessment of the impact of ESG risks on the financial stability of institutions in the short, medium and long term; such criteria shall include stress testing processes and scenario analyses to assess the impact of ESG risks under scenarios with different severities;

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- c the arrangements, processes, mechanisms and strategies to be implemented by the institutions to identify, assess and manage ESG risks;
- d the analysis methods and tools to assess the impact of ESG risks on lending and financial intermediation activities of institutions.

EBA shall submit a report on its findings to the Commission, the European Parliament and to the Council by 28 June 2021.

On the basis of the outcome of its report, EBA may, if appropriate, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, regarding the uniform inclusion of ESG risks in the supervisory review and evaluation process performed by competent authorities.]

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