

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 1

Principles of prudential supervision

Section IV

Supervisory powers, powers to impose penalties and right of appeal

Article 64

Supervisory powers and powers to impose penalties

[^{F1} Competent authorities shall be given all supervisory powers to intervene in the activity of institutions, financial holding companies and mixed financial holding companies that are necessary for the exercise of their function, including in particular the right to withdraw an authorisation in accordance with Article 18, the powers referred to in Articles 18, 102, 104 and 105, and the powers to take the measures referred to in Article 21a(6).]

2 Competent authorities shall exercise their supervisory powers and their powers to impose penalties in accordance with this Directive and with national law, in any of the following ways:

- a directly;
- b in collaboration with other authorities;
- c under their responsibility by delegation to such authorities;
- d by application to the competent judicial authorities.

[^{F23} The decisions taken by competent authorities in the exercise of their supervisory powers and powers to impose penalties shall state the reasons on which they are based.]

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](#)

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financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (Text with EEA relevance).

Article 65

Administrative penalties and other administrative measures

1 Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2 Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, penalties may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach.

3 Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013 those powers shall include:

- a the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:
 - (i) institutions established in the Member State concerned;
 - (ii) financial holding companies established in the Member State concerned;
 - (iii) mixed financial holding companies established in the Member State concerned;
 - (iv) mixed-activity holding companies established in the Member State concerned;
 - (v) persons belonging to the entities referred to in points (i) to (iv);
 - (vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities;
- b the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including:
 - (i) the right to require the submission of documents;
 - (ii) to examine the books and records of the persons referred to in points(a)(i) to (vi) and take copies or extracts from such books and records;

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- (iii) to obtain written or oral explanations from any person referred to in points (a) (i) to (vi) or their representatives or staff; and
 - (iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
 - c the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a) (i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.

Article 66

Administrative penalties and other administrative measures for breaches of authorisation requirements and requirements for acquisitions of qualifying holdings

1 Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties and other administrative measures at least in respect of:

- a carrying out the business of taking deposits or other repayable funds from the public without being a credit institution in breach of Article 9;
- b commencing activities as a credit institution without obtaining authorisation in breach of Article 9;
- c acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or so that the credit institution would become its subsidiary, without notifying in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of Article 22(1);
- d disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25 or so that the credit institution would cease to be a subsidiary, without notifying in writing the competent authorities^{[F1];}
- ^[F2]e failing to apply for approval in breach of Article 21a or any other breach of the requirements set out in that Article.]

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 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;

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- d 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;
- e administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined;
- f suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.

Where the undertaking referred to in point (c) 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.

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

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;

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- 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;
 - 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 [^{X1}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 [^{F1};
 - [^{F2}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;

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- 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;
- 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.

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 \(Official Journal of the European Union L 176 of 27 June 2013\)](#).

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

Article 68

Publication of administrative penalties

1 Member States shall ensure that the competent authorities publish on their official website at least any administrative penalties against which there is no appeal and which are imposed for breach of the national provisions transposing this Directive or of Regulation (EU) No 575/2013, including information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed, without undue delay after that person is informed of those penalties.

Where Member States permit publication of penalties against which there is an appeal, competent authorities shall, without undue delay, also publish on their official website information on the appeal status and outcome thereof.

2 Competent authorities shall publish the penalties on an anonymous basis, in a manner in accordance with national law, in any of the following circumstances:

- a where the penalty is imposed on a natural person and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- b where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- c where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or natural persons involved.

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Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication under paragraph 1 may be postponed for such a period of time.

3 Competent authorities shall ensure that information published under paragraphs 1 or 2 remains on their official website at least five years. Personal data shall be retained on the official website of the competent authority only for the period necessary, in accordance with the applicable data protection rules.

4 By 18 July 2015 EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2, in particular where there have been significant divergences between Member States in this respect. In addition, EBA shall submit a report to the Commission on any significant divergences in the duration of publication of penalties under national law.

Article 69

Exchange of information on penalties and maintenance of a central database by EBA

1 Subject to the professional secrecy requirements referred to in Article 53(1), the competent authorities shall inform EBA of all administrative penalties, including all permanent prohibitions, imposed under Articles 65, 66 and 67 including any appeal in relation thereto and the outcome thereof. EBA shall maintain a central database of administrative penalties communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by competent authorities.

2 Where a competent authority assesses good repute for the purposes of Article 13(1), Article 16(3), Article 91(1) and Article 121, it shall consult the EBA database of administrative penalties. In the event of a change of status or a successful appeal, EBA shall delete or update relevant entries in the database on request by the competent authorities.

3 The competent authorities shall check, in accordance with national law, the existence of a relevant conviction in the criminal record of the person concerned. For those purposes, information shall be exchanged in accordance with Decision 2009/316/JHA and Framework Decision 2009/315/JHA as implemented in national law.

4 EBA shall maintain a website with links to each competent authority's publication of administrative penalties under Article 68 and shall show the time period for which each Member State publishes administrative penalties.

Article 70

Effective application of penalties and exercise of powers to impose penalties by competent authorities

Member States shall ensure that when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, the competent authorities shall take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the natural or legal person responsible for the breach;

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- (c) the financial strength of the natural or legal person responsible for the breach, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;
- (e) the losses for third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority;
- (g) previous breaches by the natural or legal person responsible for the breach;
- (h) any potential systemic consequences of the breach.

Article 71

Reporting of breaches

1 Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 to competent authorities.

- 2 The mechanisms referred to in paragraph 1 shall include at least:
- a specific procedures for the receipt of reports on breaches and their follow-up;
 - b appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
 - c protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC;
 - d clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the institution, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

3 Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

Such a channel may also be provided through arrangements provided for by social partners. The same protection as referred to in points (b), (c) and (d) of paragraph 2 shall apply.

Article 72

Right of appeal

Member States shall ensure that decisions and measures taken pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive or to Regulation (EU) No 575/2013 are subject to a right of appeal. Member States shall also ensure that failure to take a decision within six months of submission of

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an application for authorisation which contains all the information required under the national provisions transposing this Directive, is subject to a right of appeal.