

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 97

Supervisory review and evaluation

- 1 Taking into account the technical criteria set out in Article 98, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation (EU) No 575/2013 and evaluate:
 - a risks to which the institutions are or might be exposed;
 - b risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010, or recommendations of the ESRB, where appropriate; and
 - c risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.
- 2 The scope of the review and evaluation referred to in paragraph 1 shall cover all requirements of this Directive and of Regulation (EU) No 575/2013.
- 3 On the basis of the review and evaluation referred to in paragraph 1, the competent authorities shall determine whether the arrangements, strategies, processes and mechanisms implemented by institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks.
- 4 Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 99(2).

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5 Member States shall ensure that where a review shows that an institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 the competent authorities inform EBA without delay about the results of the review.

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;
- 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.

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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.

Article 99

Supervisory examination programme

1 The competent authorities shall, at least annually, adopt a supervisory examination programme for the institutions they supervise. Such programme shall take into account the supervisory review and evaluation process under Article 97. It shall contain the following:

- a an indication of how competent authorities intend to carry out their tasks and allocate their resources;
- b an identification of which institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3;
- c a plan for inspections at the premises used by an institution, including its branches and subsidiaries established in other Member States in accordance with Articles 52, 119 and 122.

2 Supervisory examination programmes shall include the following institutions:

- a institutions for which the results of the stress tests referred to in points (a) and (g) of Article 98(1) and Article 100, or the outcome of the supervisory review and evaluation process under Article 97, indicate significant risks to their ongoing financial soundness or indicate breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013;
- b institutions that pose systemic risk to the financial system;
- c any other institution for which the competent authorities deem it to be necessary.

3 Where appropriate under Article 97 the following measures shall, in particular, be taken if necessary:

- a an increase in the number or frequency of on-site inspections of the institution;
- b a permanent presence of the competent authority at the institution;
- c additional or more frequent reporting by the institution;
- d additional or more frequent review of the operational, strategic or business plans of the institution;

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e thematic examinations monitoring specific risks that are likely to materialise.

4 Adoption of a supervisory examination programme by the competent authority of the home Member State shall not prevent the competent authorities of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions on their territory in accordance with Article 52(3).

Article 100

Supervisory stress testing

1 The competent authorities shall carry out as appropriate but at least annually supervisory stress tests on institutions they supervise, to facilitate the review and evaluation process under Article 97.

2 EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to ensure that common methodologies are used by the competent authorities when conducting annual supervisory stress tests.

Article 101

Ongoing review of the permission to use internal approaches

1 Competent authorities shall review on a regular basis, and at least every 3 years, institutions' compliance with the requirements regarding approaches that require permission by the competent authorities before using such approaches for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013. They shall have particular regard to changes in an institution's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by an institution's internal approach, competent authorities shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

2 The competent authorities shall in particular review and assess whether the institution uses well developed and up-to-date techniques and practices for those approaches.

3 If for an internal market risk model numerous overshootings referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the model is not or is no longer sufficiently accurate, the competent authorities shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

4 If an institution has received permission to apply an approach that requires permission by the competent authorities before using such an approach for the calculation of own funds requirements in accordance with Part Three of Regulation (EU) No 575/2013 but does not meet the requirements for applying that approach anymore, the competent authorities shall require the institution to either demonstrate to the satisfaction of the competent authorities that the effect of non-compliance is immaterial where applicable in accordance with Regulation (EU) No 575/2013 or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authorities shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial,

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the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

5 In order to promote consistent soundness of internal approaches in the Union, EBA shall analyse internal approaches across institutions, including the consistency of implementation of the definition of default and how those institutions treat similar risks or exposures.

EBA shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, which contain benchmarks on the basis of that analysis.

Competent authorities shall take into account that analysis and those benchmarks for the review of the permissions they grant to institutions to use internal approaches.