

Directive (EU) 2019/2034 of the European Parliament and of the Council  
of 27 November 2019 on the prudential supervision of investment  
firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU,  
2013/36/EU, 2014/59/EU and 2014/65/EU (Text with EEA relevance)

TITLE IV

**PRUDENTIAL SUPERVISION**

*CHAPTER 2*

*Review process*

*Section 4*

*Supervisory measures and powers*

*Article 39*

**Supervisory powers**

- 1 Member States shall ensure that competent authorities have the necessary supervisory powers to intervene in the exercise of their functions into the activity of investment firms in an effective and proportionate way.
- 2 For the purposes of Article 36, Article 37(3) and Article 38 and of the application of Regulation (EU) 2019/2033, competent authorities shall have the following powers:
  - a to require investment firms to have own funds in excess of the requirements set out in Article 11 of Regulation (EU) 2019/2033, under the conditions laid down in Article 40 of this Directive, or to adjust the own funds and liquid assets required in case of material changes in the business of those investment firms;
  - b to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 24 and 26;
  - c to require investment firms to present, within one year, a plan to restore compliance with supervisory requirements pursuant to this Directive and to Regulation (EU) 2019/2033, to set a deadline for the implementation of that plan and require improvements to that plan regarding scope and deadline;
  - d to require investment firms to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
  - e to restrict or limit the business, operations or network of investment firms or to request the divestment of activities that pose excessive risks to the financial soundness of an investment firm;
  - f to require the reduction of the risk inherent in the activities, products and systems of investment firms, including outsourced activities;

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- g to require investment firms to limit variable remuneration as a percentage of net revenues where that remuneration is inconsistent with the maintenance of a sound capital base;
- h to require investment firms to use net profits to strengthen own funds;
- i to restrict or prohibit distributions or interest payments by an investment firm to shareholders, members or holders of Additional Tier 1 instruments where that restriction or prohibition does not constitute an event of default of the investment firm;
- j to impose additional or more frequent reporting requirements to those set out in this Directive and Regulation (EU) 2019/2033, including reporting on capital and liquidity positions;
- k to impose specific liquidity requirements in accordance with Article 42;
- l to require additional disclosures;
- m to require investment firms to reduce the risks posed to the security of investment firms' network and information systems to ensure confidentiality, integrity and availability of their processes, data and assets;

3 For the purposes of point (j) of paragraph 2, competent authorities may only impose additional or more frequent reporting requirements on investment firms where the information to be reported is not duplicative and one of the following conditions is met:

- a one of the cases referred to in points (a) and (b) of Article 38 applies;
- b the competent authority considers it to be necessary to gather the evidence referred to in point (b) of Article 38;
- c the additional information is required for the purpose of the supervisory review and evaluation process referred to in Article 36.

Information shall be deemed to be duplicative where the competent authority already has the same or substantially the same information, where that information is capable of being produced by the competent authority or of being obtained by the same competent authority through other means than a requirement on the investment firm to report it. A competent authority shall not require additional information where the information is available to the competent authority in a different format or level of granularity than the additional information to be reported and that different format or granularity does not prevent it from producing substantially similar information.