

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 II

COMPETENT AUTHORITIES

*Article 5*

**Discretion of competent authorities to subject certain investment  
firms to the requirements of Regulation (EU) No 575/2013**

1 Competent authorities may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to point (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, where the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, calculated as an average of the previous 12 months, and one or more of the following criteria apply:

- a the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk;
- b the investment firm is a clearing member as defined in point (3) of Article 4(1) of Regulation (EU) 2019/2033;
- c the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors:
  - (i) the importance of the investment firm for the economy of the Union or of the relevant Member State;
  - (ii) the significance of the investment firm's cross-border activities;
  - (iii) the interconnectedness of the investment firm with the financial system.

2 Paragraph 1 shall not apply to commodity and emission allowance dealers, collective investment undertakings or insurance undertakings.

3 Where a competent authority decides to apply the requirements of Regulation (EU) No 575/2013 to an investment firm in accordance with paragraph 1, that investment firm shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU.

4 Where a competent authority decides to revoke a decision taken in accordance with paragraph 1, it shall inform the investment firm without delay.

Any decision taken by a competent authority under paragraph 1 shall cease to apply where an investment firm no longer meets the threshold referred to in that paragraph, calculated over a period of 12 consecutive months.

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*Status: This is the original version (as it was originally adopted).*

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5 Competent authorities shall inform EBA without delay of any decision taken pursuant to paragraphs 1, 3 and 4.

6 EBA, in consultation with ESMA, shall develop draft regulatory technical standards to further specify the criteria set out in points (a) and (b) of paragraph 1, and shall ensure their consistent application.

EBA shall submit those draft regulatory technical standards to the Commission by 26 December 2020.

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.