

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 4

Designation and powers of the competent authorities

1 Member States shall designate one or more competent authorities to carry out the functions and duties provided for in this Directive and in Regulation (EU) 2019/2033. The Member States shall inform the Commission, EBA and ESMA of that designation, and, where there is more than one competent authority, of the functions and duties of each competent authority.

2 Member States shall ensure that the competent authorities supervise the activities of investment firms, and, where applicable, of investment holding companies and mixed financial holding companies, to assess compliance with the requirements of this Directive and of Regulation (EU) 2019/2033.

3 Member States shall ensure that the competent authorities have all necessary powers, including the power to conduct on#the#spot checks in accordance with Article 14, to obtain the information needed to assess the compliance of investment firms and, where applicable, of investment holding companies and mixed financial holding companies, with the requirements of this Directive and of Regulation (EU) 2019/2033, and to investigate possible breaches of those requirements.

4 Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to the prudential supervision, investigations and sanctions set out in this Directive.

5 Member States shall require investment firms to provide their competent authorities with all the information necessary for the assessment of the compliance of investment firms with the national provisions transposing this Directive and compliance with Regulation (EU) 2019/2033. Internal control mechanisms and administrative and accounting procedures of the investment firms shall enable the competent authorities to check their compliance with those provisions at all times.

6 Member States shall ensure that investment firms record all their transactions and document the systems and processes which are subject to this Directive and to Regulation (EU) 2019/2033 in such a manner that the competent authorities are able to assess compliance with the national provisions transposing this Directive and compliance with Regulation (EU) 2019/2033 at all times.

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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.

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.

Article 6

Cooperation within a Member State

1 Competent authorities shall cooperate closely with the public authorities or bodies responsible in their Member State for the supervision of credit institutions and financial institutions. Member States shall require that those competent authorities and those public authorities or bodies exchange, without delay, any information which is essential or relevant to the exercise of their functions and duties.

2 Competent authorities that are different from those designated in accordance with Article 67 of Directive 2014/65/EU shall establish a mechanism for cooperation with those authorities and for the exchange of all information that is relevant for the exercise of their respective functions and duties.

Article 7

Cooperation within the European System of Financial Supervision

1 In the exercise of their duties, competent authorities shall take into account the convergence of supervisory tools and supervisory practices in the application of the legal provisions adopted pursuant to this Directive and to Regulation (EU) 2019/2033.

- 2 Member States shall ensure that:
- a competent authorities, as parties to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the exchange of appropriate, reliable and exhaustive information between them and other parties to the ESFS;
 - b competent authorities participate in the activities of EBA, and, as appropriate, in the colleges of supervisors referred to in Article 48 of this Directive and in Article 116 of Directive 2013/36/EU;
 - c competent authorities make every effort to ensure compliance with the guidelines and recommendations issued by EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the European Systemic Risk Board (ESRB) pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council⁽¹⁾;
 - d competent authorities cooperate closely with the ESRB;
 - e tasks and powers conferred on the competent authorities do not inhibit the performance of the duties of those competent authorities as members of EBA or of the ESRB, or under this Directive and under Regulation (EU) 2019/2033.

Article 8

Union dimension of supervision

Competent authorities in each Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in other Member States concerned as well as in the Union as a whole and, in particular, in emergency situations, based on the information available at the relevant time.

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- (1) Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board ([OJ L 331, 15.12.2010, p. 1](#)).