

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 1

Principles of prudential supervision

Section 1

Competences and duties of home and host Member States

Article 12

Competence of the competent authorities of the home and host Member State

The prudential supervision of investment firms shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which confer responsibility on the competent authorities of the host Member State.

Article 13

Cooperation between competent authorities of different Member States

1 Competent authorities of different Member States shall cooperate closely for the purposes of their duties pursuant to this Directive and to Regulation (EU) 2019/2033, in particular by exchanging information about investment firms without delay, including the following:

- a information about the management and ownership structure of the investment firm;
- b information about compliance with own funds requirements by the investment firm;
- c information about compliance with the concentration risk requirements and liquidity requirements of the investment firm;
- d information about the administrative and accounting procedures and internal control mechanisms of the investment firm;
- e any other relevant factors that may influence the risk posed by the investment firm.

2 The competent authorities of the home Member State shall immediately provide the competent authorities of the host Member State with any information and findings about any potential problems and risks posed by an investment firm to the protection of clients or the stability of the financial system in the host Member State which they have identified when supervising the activities of an investment firm.

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3 The competent authorities of the home Member State shall act upon information provided by the competent authorities of the host Member State by taking all measures necessary to avert or remedy potential problems and risks as referred to in paragraph 2. Upon request, the competent authorities of the home Member State shall explain in detail to the competent authorities of the host Member State how they have taken into account the information and findings provided by the competent authorities of the host Member State.

4 Where, following the communication of the information and findings referred to in paragraph 2, the competent authorities of the host Member State consider that the competent authorities of the home Member State have not taken the necessary measures referred to in paragraph 3, the competent authorities of the host Member State may, after having informed the competent authorities of the home Member State, EBA and ESMA, take appropriate measures to protect clients to whom services are provided or to protect the stability of the financial system.

The competent authorities may refer to EBA cases in which a request for collaboration, in particular a request to exchange information, has been rejected or has not been acted upon within a reasonable time. With regard to such cases, EBA may, without prejudice to Article 258 TFEU, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010. EBA may also assist the competent authorities in reaching an agreement on the exchange of information under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation.

5 Competent authorities of the home Member State that disagree with the measures of the competent authorities of the host Member State may refer the matter to EBA, which shall act in accordance with the procedure laid down in Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall adopt its decision within one month.

6 For the purpose of assessing the condition in point (c) of the first subparagraph of Article 23(1) of Regulation (EU) 2019/2033, the competent authority of an investment firm's home Member State may request the competent authority of a clearing member's home Member State to provide information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firm.

7 EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify requirements for the type and nature of the information referred to in paragraphs 1 and 2 of this Article.

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

8 EBA, in consultation with ESMA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements for the purpose of facilitating the supervision of investment firms.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

9 EBA shall submit the draft technical standards referred to in paragraphs 7 and 8 to the Commission by 26 June 2021.

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Article 14

On#the#spot checking and inspection of branches established in another Member State

1 Host Member States shall provide that, where an investment firm authorised in another Member State carries out its activities through a branch, the competent authorities of the home Member State may, after having informed the competent authorities of the host Member State, carry out, themselves or through intermediaries that they appoint for that purpose, on#the#spot checks of the information referred to in Article 13(1) and inspect such branches.

2 The competent authorities of the host Member State shall, for supervisory purposes and where they consider it to be relevant for reasons of stability of the financial system in the host Member State, have the power to carry out, on a case#by#case basis, on#the#spot checks and inspections of the activities carried out by branches of investment firms on their territory and require information from a branch about its activities.

Before carrying out such checks and inspections, the competent authorities of the host Member State shall, without delay, consult the competent authorities of the home Member State.

As soon as possible following the completion of those checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the investment firm concerned.

Section 2

Professional secrecy and duty to report

Article 15

Professional secrecy and exchange of confidential information

1 Member States shall ensure that competent authorities and all persons who work or who have worked for those competent authorities, including the persons referred to in Article 76(1) of Directive 2014/65/EU, are bound by the obligation of professional secrecy for the purposes of this Directive and of Regulation (EU) 2019/2033.

Confidential information which such competent authorities and persons receive in the course of their duties may be disclosed only in summary or aggregate form, provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law.

Where the investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be disclosed in civil or commercial proceedings, where such disclosure is necessary for carrying out those proceedings.

2 Competent authorities shall use the confidential information collected, exchanged or transmitted pursuant to this Directive and to Regulation (EU) 2019/2033 only for the purpose of carrying out their duties, and in particular for the following purposes:

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- a to monitor the prudential rules set out in this Directive and in Regulation (EU) 2019/2033;
- b to impose sanctions;
- c in administrative appeals against decisions of the competent authorities;
- d in court proceedings initiated under Article 23.

3 Natural and legal persons and other bodies, other than competent authorities, that receive confidential information pursuant to this Directive and to Regulation (EU) 2019/2033 shall use that information only for the purposes for which the competent authority expressly provides or in accordance with national law.

4 Competent authorities may exchange confidential information for the purposes of paragraph 2, may expressly state how that information is to be treated and may expressly restrict any further transmission of that information.

5 The obligation referred to in paragraph 1 shall not prevent competent authorities from transmitting confidential information to the Commission when that information is necessary for the exercise of the powers of the Commission.

6 Competent authorities may provide EBA, ESMA, the ESRB, central banks of the Member States, the European System of Central Banks (ESCB) and the European Central Bank in their capacity as monetary authorities, and, where appropriate, public authorities responsible for overseeing payment and settlement systems, with confidential information where that information is necessary for the performance of their tasks.

Article 16

Cooperation arrangements with third countries for the exchange of information

For the purpose of performing their supervisory tasks pursuant to this Directive or to Regulation (EU) 2019/2033, and for the purpose of exchanging information, competent authorities, EBA and ESMA in accordance with Article 33 of Regulation (EU) No 1093/2010 or Article 33 of Regulation (EU) No 1095/2010, as applicable, may conclude cooperation arrangements with third#country supervisory authorities as well as with third#country authorities or bodies responsible for the following tasks, provided that the information disclosed is subject to guarantees of professional secrecy that are at least equivalent to those laid down in Article 15 of this Directive:

- (a) the supervision of financial institutions and financial markets, including the supervision of financial entities licensed to operate as central counterparties, where central counterparties have been recognised under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council⁽¹⁾;
- (b) the liquidation and bankruptcy of investment firms and similar procedures;
- (c) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and similar procedures;
- (d) the carrying out of statutory audits of financial institutions or institutions which administer compensation schemes;
- (e) oversight of persons charged with carrying out statutory audits of the accounts of financial institutions;

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- (f) oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets;
- (g) oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

Article 17

Duties of persons responsible for the control of annual and consolidated accounts

Member States shall provide that any person who is authorised in accordance with Directive 2006/43/EC of the European Parliament and of the Council⁽²⁾ and who performs in an investment firm the tasks described in Article 73 of Directive 2009/65/EC or in Article 34 of Directive 2013/34/EU, or any other statutory task, has a duty to report promptly to the competent authorities any fact or decision concerning that investment firm, or concerning an undertaking that has close links with that investment firm which:

- (a) constitutes a material breach of the laws, regulations or administrative provisions laid down pursuant to this Directive;
- (b) may affect the continuous functioning of the investment firm; or
- (c) may lead to a refusal to certify the accounts or can lead to the expression of reservations.

Section 3

Sanctions, investigatory powers and right of appeal

Article 18

Administrative sanctions and other administrative measures

1 Without prejudice to the supervisory powers referred to in Section 4 of Chapter 2 of Title IV of this Directive, including investigatory powers and powers of competent authorities to impose remedies, and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures and ensure that their competent authorities have the power to impose such sanctions and measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) 2019/2033, including where an investment firm:

- a fails to have in place internal governance arrangements as set out in Article 26;
- b fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements set out in Article 11 of Regulation (EU) 2019/2033 to the competent authorities, in breach of point (b) of Article 54(1) of that Regulation;
- c fails to report to the competent authorities, in breach of point (e) of Article 54(1) of Regulation (EU) 2019/2033, information about concentration risk or provides incomplete or inaccurate information;
- d incurs a concentration risk in excess of the limits set out in Article 37 of Regulation (EU) 2019/2033, without prejudice to Articles 38 and 39 of that Regulation;

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- e repeatedly or persistently fails to hold liquid assets in breach of Article 43 of Regulation (EU) 2019/2033, without prejudice to Article 44 of that Regulation;
- f fails to disclose information, or provides incomplete or inaccurate information, in breach of the provisions set out in Part Six of Regulation (EU) 2019/2033;
- g makes payments to holders of instruments included in the own funds of the investment firm where Article 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;
- h is found liable for a serious breach of national provisions adopted pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council⁽³⁾;
- i allows one or more persons that do not comply with Article 91 of Directive 2013/36/EU to become or remain a member of the management body.

Member States that do not lay down rules on administrative sanctions for breaches which are subject to national criminal law shall communicate to the Commission the relevant criminal law provisions.

The administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

2 The administrative sanctions and other administrative measures referred to in the first subparagraph of paragraph 1 shall include the following:

- a a public statement which identifies the natural or legal person, investment firm, investment 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 repeating that conduct;
- c a temporary ban for members of the investment firm's management body or any other natural persons who are held responsible on exercising functions in investment firms;
- d in case of a legal person, administrative pecuniary sanctions 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 of the undertaking in the preceding business year;
- e in the case of a legal person, administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided due to the breach where those profits or losses can be determined;
- f in the case of a natural person, administrative pecuniary sanctions 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 25 December 2019.

Where an undertaking referred to in point (d) of the first subparagraph is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Member States shall ensure that where an investment firm is in breach of national provisions transposing this Directive or in breach of the provisions of Regulation (EU) 2019/2033, administrative sanctions may be applied by the competent authority to the members of the management body and to other natural persons who under national law are responsible for the breach.

3 Member States shall ensure that, when determining the type of administrative sanctions or other administrative measures referred to in paragraph 1 and the level of administrative pecuniary sanctions, 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 persons responsible for the breach;
- c the financial strength of the natural or legal persons responsible for the breach, including the total turnover of legal persons or the annual income of natural persons;
- d the importance of profits gained or losses avoided by the legal persons responsible for the breach;
- e any losses incurred by third parties as a result of the breach;
- f the level of cooperation with the relevant competent authorities;
- g previous breaches by the natural or legal persons responsible for the breach;
- h any potential systemic consequences of the breach.

Article 19

Investigatory powers

Member States shall ensure that competent authorities have all information#gathering and investigatory powers that are necessary for the exercise of their functions, including:

- (a) the power to require information from the following natural or legal persons:
 - (i) investment firms established in the Member State concerned;
 - (ii) investment 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 point (a) that is established or located in the Member State concerned, including the right:
 - (i) to require the submission of documents by the persons referred to in point (a);
 - (ii) to examine the books and records of the persons referred to in point (a) and to make copies or extracts from those books and records;
 - (iii) to obtain written or oral explanations from the persons referred to in point (a) or from their representatives or staff;
 - (iv) to interview any other relevant person for the purpose of collecting information on the subject matter of an investigation;
- (c) the power to conduct all necessary inspections at the business premises of the legal persons referred to in point (a) and any other undertakings included in the supervision of compliance with the group capital test, where the competent authority is the group supervisor, subject to the prior notification of other competent authorities concerned.

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Article 20

Publication of administrative sanctions and other administrative measures

1 Member States shall ensure that competent authorities publish on their official website without undue delay any administrative sanctions and other administrative measures imposed in accordance with Article 18 and which have not been appealed or can no longer be appealed. That publication shall include information on the type and nature of the breach and the identity of the natural or legal person on whom the sanction is imposed or against whom the measure is taken. The information shall only be published after that person has been informed of those sanctions or measures and to the extent that the publication is necessary and proportionate.

2 Where Member States permit the publication of administrative sanctions or other administrative measures imposed in accordance with Article 18 against which there has been an appeal, competent authorities shall also publish on their official website information on the appeal status and on the outcome of the appeal.

3 Competent authorities shall publish the administrative sanctions or other administrative measures imposed in accordance with Article 18 on an anonymous basis in any of the following circumstances:

- a the sanction or measure has been imposed on a natural person and publication of that person's personal data is found to be disproportionate;
- b the publication would jeopardise an ongoing criminal investigation or the stability of financial markets;
- c the publication would cause disproportionate damage to the investment firms or natural persons involved.

4 Competent authorities shall ensure that information published pursuant to this Article remains on their official website for at least five years. Personal data may only be retained on the official website of the competent authority where permitted by the applicable data protection rules.

Article 21

Reporting sanctions to EBA

Competent authorities shall inform EBA of administrative sanctions and other administrative measures imposed pursuant to Article 18, of any appeal against those sanctions and other administrative measures and of the outcome thereof. EBA shall maintain a central database of administrative sanctions and other administrative measures communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible only to competent authorities and ESMA and it shall be updated regularly, and at least annually.

EBA shall maintain a website with links to each competent authority's publication of administrative sanctions and other administrative measures imposed in accordance with Article 18 and shall state the period for which each Member State publishes administrative sanctions and other administrative measures.

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Article 22

Reporting of breaches

1 Member States shall ensure that competent authorities establish effective and reliable mechanisms to enable prompt reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) 2019/2033 to competent authorities.

Those mechanisms shall include the following:

- a specific procedures for the reception, treatment and following up of such reports, including the establishment of secure communication channels;
- b appropriate protection against retaliation, discrimination or other types of unfair treatment by the investment firm for employees of investment firms who report breaches committed within the investment firm;
- c protection of personal data concerning both the person who reports the breach and the natural person who is allegedly responsible for that breach, in accordance with Regulation (EU) 2016/679;
- d clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the investment firm, unless disclosure is required by national law in the context of further investigations or subsequent administrative or judicial proceedings.

2 Member States shall require investment firms to have in place appropriate procedures for their employees to report breaches internally through a specific independent channel. Those procedures may be provided for by the social partners provided that those procedures offer the same protection as the protection referred to in points (b), (c) and (d) of paragraph 1.

Article 23

Right of appeal

Member States shall ensure that decisions and measures taken pursuant to Regulation (EU) 2019/2033 or pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to a right of appeal.

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- (1) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([OJ L 201, 27.7.2012, p. 1](#)).
- (2) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC ([OJ L 157, 9.6.2006, p. 87](#)).
- (3) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ([OJ L 141, 5.6.2015, p. 73](#)).