

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 3

Supervision of investment firm groups

Section 1

*Supervision of investment firm groups on a consolidated basis
and supervision of compliance with the group capital test*

Article 46

Determination of the group supervisor

1 Member States shall ensure that, where an investment firm group is headed by a Union parent investment firm, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of that Union parent investment firm.

2 Member States shall ensure that, where the parent undertaking of an investment firm is a Union parent investment holding company or a Union parent mixed financial holding company, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of that investment firm.

3 Member States shall ensure that, where two or more investment firms authorised in two or more Member States have the same Union parent investment holding company or the same Union parent mixed financial holding company, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of the investment firm authorised in the Member State in which the investment holding company or mixed financial holding company is established.

4 Member States shall ensure that, where the parent undertakings of two or more investment firms authorised in two or more Member States comprise more than one investment holding company or mixed financial holding company with head offices in different Member States and where there is an investment firm in each of those Member States, supervision on a consolidated basis or supervision of compliance with the group capital test shall be exercised by the competent authority of the investment firm with the largest balance sheet total.

5 Member States shall ensure that, where two or more investment firms authorised in the Union have as their parent the same Union investment holding company or Union mixed financial holding company and none of those investment firms has been authorised in the

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Member State in which the investment holding company or mixed financial holding company was set up, supervision on a consolidated basis or supervision of compliance with the group capital test is exercised by the competent authority of the investment firm with the largest balance sheet total.

6 Competent authorities may, by common agreement, waive the criteria referred to in paragraphs 3, 4 and 5 where their application would not be appropriate for the effective supervision on a consolidated basis or supervision of compliance with the group capital test, taking into account the investment firms concerned and the importance of their activities in the relevant Member States, and designate a different competent authority to exercise supervision on a consolidated basis or supervision of compliance with the group capital test. In those cases, competent authorities shall, before adopting any such decision, give the Union parent investment holding company or Union parent mixed financial holding company or investment firm with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that intended decision. Competent authorities shall notify the Commission and EBA of any such decision.

Article 47

Information requirements in emergency situations

Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of an investment firm group have been authorised, the group supervisor determined pursuant to Article 46 of this Directive shall, subject to Section 2 of Chapter 1 of this Title, alert, as soon as practicable, EBA, ESRB and any relevant competent authorities and shall communicate all information essential for the performance of their tasks.

Article 48

Colleges of supervisors

1 Member States shall ensure that the group supervisor determined pursuant to Article 46 of this Directive may, if appropriate, establish colleges of supervisors to facilitate the exercise of the tasks referred to in this Article and to ensure coordination and cooperation with relevant third-country supervisory authorities in particular where this is needed for the purpose of applying point (c) of the first subparagraph of Article 23(1) and Article 23(2) of Regulation (EU) 2019/2033 to exchange and update relevant information on the margin model with the supervisory authorities of the qualifying central counterparties (QCCPs).

2 Colleges of supervisors shall provide a framework for the group supervisor, EBA and the other competent authorities to carry out the following tasks:

- a the tasks referred to in Article 47;
- b the coordination of information requests where this is necessary for facilitating supervision on a consolidated basis, in accordance with Article 7 of Regulation (EU) 2019/2033;
- c the coordination of information requests, in cases where several competent authorities of investment firms that are part of the same group need to request either from the competent authority of a clearing member's home Member State or from the competent authority of the QCCP information relating to the margin model and parameters used for the calculation of the margin requirement of the relevant investment firms;

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- d the exchange of information between all competent authorities and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010 and with ESMA in accordance with Article 21 of Regulation (EU) No 1095/2010;
- e reaching an agreement on the voluntary delegation between competent authorities of tasks and responsibilities, where appropriate;
- f increasing the efficiency of supervision by seeking to avoid the unnecessary duplication of supervisory requirements.

3 Where appropriate, colleges of supervisors may also be established where subsidiaries of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company are located in a third country.

4 EBA shall, in accordance with Article 21 of Regulation (EU) No 1093/2010, participate in the meetings of the colleges of supervisors.

5 The following authorities shall be members in the college of supervisors:

- a the competent authorities responsible for the supervision of subsidiaries of an investment firm group headed by an Union investment firm, Union parent investment holding company or Union parent mixed financial holding company;
- b where appropriate, third#country supervisory authorities, subject to confidentiality requirements that are equivalent in the opinion of all competent authorities to the requirements laid down in Section 2 of Chapter I of this Title.

6 The group supervisor determined pursuant to Article 46 shall chair the meetings of the college of supervisors and adopt decisions. That group supervisor shall keep all members of the college of supervisors fully informed in advance of the organisation of those meetings, of the main issues to be discussed and of the activities to be considered. The group supervisor shall also keep all the members of the college of supervisors fully informed, in a timely manner, of the decisions adopted in those meetings or the measures carried out.

The group supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated by the authorities referred to in paragraph 5 when adopting decisions.

The establishment and functioning of the colleges of supervisors shall be formalised by means of written arrangements.

7 In the event of disagreement with a decision adopted by the group supervisor on the functioning of colleges of supervisors, any of the competent authorities concerned may refer the matter to EBA and request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

EBA may also assist the competent authorities in the event of a disagreement concerning the functioning of colleges of supervisors under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010.

8 EBA shall, in consultation with ESMA, develop draft regulatory technical standards to further specify the conditions under which the colleges of supervisors exercise their tasks referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 26 June 2021.

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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.

Article 49

Cooperation requirements

1 Member States shall ensure that the group supervisor and the competent authorities referred to in Article 48(5) shall provide each other with all relevant information as required, including the following:

- a identification of the investment firm group's legal and governance structure, including its organisational structure, covering all regulated and non-regulated entities, non-regulated subsidiaries and the parent undertakings, and of the competent authorities of the regulated entities in the investment firm group;
- b procedures for the collection of information from the investment firms in an investment firm group, and the procedures for the verification of that information;
- c any adverse developments in investment firms or in other entities of an investment firm group, which could seriously affect those investment firms;
- d any significant sanctions and exceptional measures taken by competent authorities in accordance with national provisions transposing this Directive;
- e the imposition of a specific own funds requirement under Article 39 of this Directive.

2 Competent authorities and the group supervisor may refer to EBA, in accordance with Article 19(1) of Regulation (EU) No 1093/2010, where relevant information has not been communicated pursuant to paragraph 1 without undue delay or where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable period of time.

EBA may, in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010 and on its own initiative assist competent authorities in developing consistent cooperation practices.

3 Member States shall ensure that competent authorities, before adopting a decision that may be important for other competent authorities' supervisory tasks, consult each other on the following:

- a changes in the shareholder, organisational or management structure of investment firms in the investment firm group, which require the approval or authorisation of competent authorities;
- b significant sanctions imposed on investment firms by competent authorities or any other exceptional measures taken by those authorities; and
- c specific own funds requirements imposed in accordance with Article 39.

4 The group supervisor shall be consulted where significant sanctions are to be imposed or any other exceptional measures are to be taken by competent authorities as referred to in point (b) of paragraph 3.

5 By way of derogation from paragraph 3, a competent authority is not obliged to consult other competent authorities in cases of urgency or where such consultation could jeopardise the effectiveness of its decision, in which case the competent authority shall inform the other competent authorities concerned of that decision not to consult without delay.

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Article 50

Verification of information concerning entities located in other Member States

1 Member States shall ensure that where a competent authority in one Member State needs to verify information about investment firms, investment holding companies, mixed financial holding companies, financial institutions, ancillary services undertakings, mixed# activity holding companies or subsidiaries that are located in another Member State, including subsidiaries which are insurance companies, and makes a request to that effect, the relevant competent authorities of that other Member State carry out that verification in accordance with paragraph 2.

2 Competent authorities that have received a request pursuant to paragraph 1 shall do any of the following:

- a carry out the verification themselves within the framework of their competence;
- b allow the competent authorities who made that request to carry out the verification;
- c request an auditor or expert to carry out the verification impartially and to report the results promptly.

For the purposes of points (a) and (c), the competent authorities that made the request shall be allowed to participate in the verification.

Section 2

Investment holding companies, mixed financial holding companies and mixed#activity holding companies

Article 51

Inclusion of holding companies in supervision of compliance with the group capital test

Member States shall ensure that investment holding companies and mixed financial holding companies are included in the supervision of compliance with the group capital test.

Article 52

Qualifications of directors

Member States shall require that the members of the management body of an investment holding company or mixed financial holding company are of sufficiently good repute and possess sufficient knowledge, skills and experience to effectively perform their duties, taking into account the specific role of an investment holding company or mixed financial holding company.

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Article 53

Mixed#activity holding companies

1 Member States shall provide that, where the parent undertaking of an investment firm is a mixed#activity holding company, the competent authorities responsible for the supervision of the investment firm may:

- a require that the mixed#activity holding company supply them with any information that may be relevant for the supervision of that investment firm;
- b supervise transactions between the investment firm and the mixed#activity holding company and the subsidiaries of the latter, and require the investment firm to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control those transactions.

2 Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on#the#spot inspections to verify the information received from mixed#activity holding companies and their subsidiaries.

Article 54

Sanctions

[^{X1}In accordance with Section 3 of Chapter 1 of this Title,] Member States shall ensure that administrative sanctions or other administrative measures aiming to end or mitigate breaches of the laws, regulations or administrative provisions transposing this Chapter or to address the causes of such breaches may be imposed on investment holding companies, mixed financial holding companies and mixed#activity holding companies, or their effective managers.

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 314 of 5 December 2019\)](#).

Article 55

Assessment of third#country supervision and other supervisory techniques

1 Member States shall ensure that, where two or more investment firms that are subsidiaries of the same parent undertaking, the head office of which is in a third country, are not subject to effective supervision at group level, the competent authority assesses whether the investment firms are subject to supervision by the third#country supervisory authority which is equivalent to the supervision set out in this Directive and in Part One of Regulation (EU) 2019/2033.

2 Where the assessment referred to in paragraph 1 of this Article concludes that no such equivalent supervision applies, Member States shall allow for appropriate supervisory

techniques which achieve the objectives of supervision in accordance with Article 7 or 8 of Regulation (EU) 2019/2033. Those supervisory techniques shall be decided by the competent authority which would be the group supervisor had the parent undertaking been established in the Union, after consulting the other competent authorities involved. Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to EBA and to the Commission.

3 The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company.

Article 56

Cooperation with third#country supervisory authorities

The Commission may submit recommendations to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of supervising compliance with the group capital test by the following investment firms:

- (a) investment firms the parent undertaking of which has its head office in a third country;
- (b) investment firms located in third countries, the parent undertaking of which has its head office in the Union.