



2022/0404(COD)

9.6.2023

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (COM(2022)0698 – C9-0411/2022 – 2022/0404(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Danuta Maria Hübner

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions
(COM(2022)0698 – C9-0411/2022 – 2022/0404(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0698),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0411/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) To contribute to the objectives of the Capital Markets Union it is necessary, for the efficient use of CCPs, to address certain impediments to the use of central clearing in Directive 2009/65/EU and to provide clarifications in Directives

Amendment

(2) To contribute to the objectives of the Capital Markets Union it is necessary, for the efficient use of CCPs, to address certain impediments to the use of central clearing in Directive 2009/65/EU and to provide clarifications in Directives

2013/36/EU, and (EU) 2019/2034. The excessive reliance of the Union financial system on systemically important third-country CCPs (Tier 2 CCPs) could pose financial stability concerns that needs to be addressed appropriately. To ensure the financial stability in the Union and adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification, management and monitoring of concentration risk arising from exposures towards CCPs. In that context, Directives 2013/36/EU and (EU) 2019/2034 should be amended to encourage institutions and investment firms to take the necessary steps to adapt their business model to ensure the consistency with the new requirements for clearing introduced by the revision of Regulation (EU) No 648/2012 and to overall enhance their risk management practices, also considering the nature, scope and complexity of their market activities. *Whilst competent authorities can already impose additional own funds requirements for risks that are not or not adequately covered by the existing capital requirements, they should be better equipped with additional, more granular, tools and powers under the Pillar 2 to enable them to take suitable and decisive actions based on the conclusions of their supervisory assessments.*

2013/36/EU, and (EU) 2019/2034. The excessive reliance of the Union financial system on systemically important third-country CCPs (Tier 2 CCPs) could pose financial stability concerns that needs to be addressed appropriately. To ensure the financial stability in the Union and adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification, management and monitoring of concentration risk arising from exposures towards CCPs. In that context, Directives 2013/36/EU and (EU) 2019/2034 should be amended to encourage institutions and investment firms to take the necessary steps to adapt their business model to ensure the consistency with the new requirements for clearing introduced by the revision of Regulation (EU) No 648/2012 and to overall enhance their risk management practices, also considering the nature, scope and complexity of their market activities. *Directives 2013/36/EU and (EU) 2019/2034 should also be amended to further clarify the role of competent authorities in addressing any excessive concentration risk that might arise from the exposures of the credit institutions and investment firms under their supervision towards CCPs, in particular third-country CCPs that are of substantial systemic importance to the Union or one or more of its Member States and that offer services identified as being of substantial systemic importance by the European Supervisory Authority (European Securities and Markets Authority)(ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council^{1a}. Furthermore, competent authorities should be better equipped with additional, more granular, tools and powers under the Pillar 2 to enable them to take suitable actions based on the conclusions*

of their supervisory assessments.

1^a Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Or. en

Justification

Article 104 of Directive 2013/36/EU provides a supervisory toolbox to competent authorities that is not limited to the imposition of additional capital requirements. The reference to the Pillar 2 tools and powers in this recital should remain broad, as it is not suitable to determine ex ante which of these tools and powers would be appropriate to address excessive concentration risk in this context

Amendment 2

**Proposal for a directive
Recital 2 a (new)**

Text proposed by the Commission

Amendment

(2a) Competent authorities should be empowered to review the plans which credit institutions and investment firms are required to develop, taking into account the methodology for the calibration of the active account requirement. To appropriately review such plans, competent authorities should have at their disposal the details of the level of clearing services identified as of substantial systemic importance to be maintained in the active accounts in the Union CCPs by financial and non-financial counterparties subject to the clearing obligation specified pursuant to Article 7a(5) of Regulation (EU) No 648/2012.

Or. en

Justification

The application of the proposed Pillar 2 framework is conditioned on the active account requirement. On that basis, competent authorities can only implement the proposed supervisory powers regarding the supervised entities' plans where full transparency on the calibration of the active account is achieved via the publication and endorsement of ESMA's draft regulatory technical standards (under the proposed Article 7a(5) of EMIR).

Amendment 3

Proposal for a directive

Article 2 – paragraph 1 – point 3

Directive 2013/36/EU

Article 81

Text proposed by the Commission

Competent authorities shall assess and monitor developments of institutions' practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, ***as well as the progress made in adapting the institutions' business models to the relevant policy objectives of the Union***, taking into account the requirements set out in Article 7a of Regulation (EU) No 648/2012;

Amendment

Competent authorities shall assess and monitor developments of institutions' practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, taking into account the requirements set out in Article 7a ***and any relevant information provided by the joint monitoring mechanism referred to in Article 23c*** of Regulation (EU) No 648/2012.

Or. en

Justification

Taking the results of the JMM's monitoring into account would enhance the assessment of competent authorities regarding the concentration risk institutions under their supervision may face towards services of substantial systemic importance provided by third-country CCPs. Furthermore, while the assessment of concentration risk potentially impacting the safety and soundness of an individual institution is within the competent authority's remit, the adaptation of business plans to adjust to wider Union policy objectives is not.