



2015/0295(COD)

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers

(COM(2015)0648 – C8-0403/2015 – 2015/0295(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Sander Loones

(Simplified procedure – Rule 50(1) of the Rules of Procedure)

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.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers (COM(2015)0648 – C8-0403/2015 – 2015/0295(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0648),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0403/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union, having regard to the opinion of the European Economic and Social Committee of ..;¹
 - having regard to Rule 59 and 50(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2016),
1. Adopts its position at first reading, taking over the Commission proposal;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C , , p.

EXPLANATORY STATEMENT

The requirements laid down in Regulation (EU) No 575/2013 (the 'Capital Requirements Regulation' or 'CRR') and in Directive 2013/36/EU (the 'Capital Requirements Directive' or 'CRD') apply to both credit institutions and investment firms. The prudential regime applicable to investment firms is derived from that imposed on credit institutions, adapted as a function of the investment services that they provide.

Articles 493(1) and 498(1) of the CRR exempt commodity dealers ("investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC and to whom Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field did not apply on 31 December 2006") from large exposures requirements and from own funds requirements respectively.

Both exemptions expire on 31 December 2017. This 'sunset clause' was originally included in the CRR in order to allow time for regulators to determine a prudential regulation adapted to the risk profile of commodity dealers. The term 'commodity dealer' covers a wide spectrum of actors in energy and commodity markets: some trade exclusively in commodity derivative contracts and resemble investment firms in terms of functions and risks, whereas others trade commodity derivatives purely as an ancillary activity to commodities production.

The Commission decided to undertake a single review on an appropriate regime for commodity dealers as well as for the prudential supervision of investment firms in general (henceforth 'investment firms review') and prepare a single report on the above topics. This was deemed necessary in order to ensure the development of a coherent prudential framework for all types of investment firms. The work on the investment firms review is already underway: the Commission asked the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) to provide technical advice on the matter (EBA/Op/2015/20). However, the investment firms review is a complex project which will not be completed by the end of this year. It is therefore highly improbable that any legislation that may result from this review can be prepared, adopted and applied before the current exemptions expire (i.e. before the end of 2017). This has implications for commodity dealers: if no specific prudential framework that may result from the investment firm review would be in place by then, they would be subject to the full CRR/CRD requirements starting from 1 January 2018.

There are two problems related to this scenario. First, commodity dealers would become subject to the full CRR/CRD requirements without a conscious (and informed) decision that such treatment is indeed the most appropriate one for them. Second, assuming that the investment firm review would result in a tailor-made prudential framework for commodity dealers, they would be deprived of a stable regulatory framework. They would move from the current treatment where they are exempted from large exposures and own funds requirements, to a temporary treatment comprising the full CRR/CRD requirements, and eventually to the aforementioned tailor-made framework within a very short period of time (one to two years). To prevent that this situation arises it is therefore opportune to extend the existing exemptions laid down in the CRR. The extension should take into account the amount of time that will be necessary to conclude the investment firms review and to prepare, adopt and apply any legislation that may result from that review.