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A9-0399/ 001-001

**AMENDMENTS 001-001**

by the Committee on Economic and Monetary Affairs

**Report**

**Danuta Maria Hübner**

**A9-0399/2023**

Treatment of concentration risk towards central counterparties and of the counterparty risk in centrally cleared derivative transactions

Proposal for a directive (COM(2022)0698 – C9-0411/2022 – 2022/0404(COD))

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**Amendment 1**

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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2022/0404 (COD)

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**

(Text with EEA relevance)

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

Whereas:

- (1) To ensure consistency with Regulation (EU) No 648/2012 and to ensure the proper functioning of the internal market, it is necessary to lay down in Directive 2009/65/EU a uniform set of rules to address counterparty risk in derivative transactions performed by undertakings for collective investment in transferable securities (UCITS), where the transactions have been cleared by a CCP that is authorised or recognised under that Regulation. Directive 2009/65/EU imposes regulatory limits on counterparty risk only to OTC derivative transactions, irrespective of whether the derivatives have been centrally cleared. As central clearing arrangements mitigate counterparty risk that is inherent in derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under that Regulation and to establish a level playing-field between exchange traded and OTC derivatives, when determining the applicable counterparty risk limits. It is also necessary for regulatory and harmonisation purposes, to lift counterparty risk limits only when the counterparties use CCPs that are authorised in a Member State or recognised, in accordance with Regulation (EU) No 648/2012, to provide clearing services to clearing members and their clients.
- (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

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<sup>1</sup> OJ C 385, 15.11.2017, p. 10.

<sup>2</sup> OJ C 434, 15.12.2017, p. 63.

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 may arise from exposures of 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 offer services identified by the European Securities and Markets Authority (ESMA) as being of substantial systemic importance. Furthermore, competent authorities*** 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.

- (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 being of substantial systemic importance to be maintained in the active accounts in 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.***
- (3) Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 should therefore be amended accordingly.
- (4) Since the objectives of this Directive, namely ensuring that credit institutions, investment firms and their competent authorities adequately monitor and mitigate the concentration risk arising from exposures towards Tier 2 CCPs which offer services of substantial systemic importance and eliminating counterparty risk limits for derivative

transactions that are centrally cleared by a CCP authorised or recognised in accordance with Regulation (EU) No 648/2012 cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments to Directive 2009/65/EC**

Directive 2009/65/EC is amended as follows:

(1) in Article 2(1), the following point (u) is added:

‘(u) ‘central counterparty’ (‘CCP’) means a CCP as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>\*2</sup>.

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<sup>\*2</sup> 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) Article 52 is amended as follows:

(a) in paragraph 1, second subparagraph, the introductory wording is replaced by the following:

‘The risk exposure to a counterparty of the UCITS in a derivative transaction that is not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed either:’;

(b) paragraph 2 is amended as follows”

(i) the first subparagraph is replaced by the following:

‘Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 10 %. If they do so, however, the total value of the transferable securities and the money market instruments held by the

UCITS in the issuing bodies in each of which it invests more than 5 % of its assets shall not exceed 40 % of the value of its assets. That limitation shall not apply to deposits or derivative transactions made with financial institutions subject to prudential supervision.’;

- (ii) in the second subparagraph, point (c) is replaced by the following:  
‘(c) exposures arising from derivative transactions that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, undertaken with that body.’.

## *Article 2*

### **Amendments to Directive 2013/36/EU**

Directive 2013/36/EU is amended as follows:

- (1) in Article 74(1), [point (b)] is replaced by the following:  
“[(b)] effective processes to identify, manage, monitor and report the risks they are or might be exposed to in the short, medium and long term time horizon, including environmental, social and governance risks, as well as concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>\*1</sup>;”

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<sup>\*1</sup> 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) in Article 76(2), the following subparagraph is added:  
‘Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the proportions set out in accordance with Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.’;
- (3) in Article 81, the following paragraph is added:  
‘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';

(4) in Article 100, the following paragraph [5] is added:

'[5]. EBA, in accordance with Article 16 of Regulation (EU) No 1093/2010, in coordination with ESMA, in accordance with Article 16 of Regulation (EU) No 1095/2010, shall develop guidelines to ensure a consistent methodology for integrating the concentration risk arising from exposures towards central counterparties in the supervisory stress testing.';

(5) Article 104, (1) is amended as follows:

(a) the introductory wording is replaced by the following:

'For the purposes of Article 97, Article 98(1), point (b), Article 98(4), (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:';

(b) the following point [(n)] is added:

'[(n)] require institutions to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers there is excessive concentration risk towards that central counterparty.';

### *Article 3*

#### **Amendments to Directive (EU) 2019/2034**

Directive (EU) 2019/2034 is amended as follows:

(1) in Article 26(1), point (b) is replaced by the following:

“(b) effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others, including concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012.”

(2) Article 29 (1) is amended as follows:

(a) the following point (e) is added:

‘(e) material sources and effects of concentration risk arising from exposures

towards central counterparties and any material impact on own funds.’;

- (b) the following subparagraph is added:

‘For the purpose of the first subparagraph, point (e), Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the proportions set out in accordance with Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.’;
- (3) in Article 36(1), the following subparagraph is added:

‘For the purpose of the first subparagraph, point (a), competent authorities shall assess and monitor developments of investment firms’ practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 29(1), point (e), of this Directive as well as the progress made in adapting the investment firms’ 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.’;
- (4) Article 39(2) is amended as follows:
  - (a) the introductory wording is replaced by the following:

‘For the purposes of Article 29, point (e), Article 36, Article 37(3) and Article 39 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’;
  - (b) the following point (n) is added:

‘(n) require institutions to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers there is excessive concentration risk towards that central counterparty.’;

#### *Article 4*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [PO: please insert the date = 12 months after

*the date of entry into force of the EMIR Review Regulation]* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 5*

#### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 6*

#### **Addressees**

This Directive is addressed to Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*