



Plenary sitting

A9-0399/2023

5.12.2023

*****I**

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
ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT	13
PROCEDURE – COMMITTEE RESPONSIBLE	15
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE	16

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 (A9-0399/2023),
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

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2022/0404 (COD)

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

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)

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 Bank¹,

Acting in accordance with the ordinary legislative procedure²,

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 adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification,

¹ OJ C 385, 15.11.2017, p. 10.

² OJ C 434, 15.12.2017, p. 63.

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^{*2}.

^{*2} 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^{*1},”

^{*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) 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 Commission
The President
Ursula VON DER LEYEN

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
ABN AMRO Clearing Bank
Alternative Investment Management Association (AIMA)
Association Française Des Marchés Financiers (AMAFI)
Assonime, the Association of Italian Joint-Stock Companies
Bank of America
Banque de France
Blackrock
BNP Paribas
BNY Mellon
Bundesverband deutscher Banken (BdB)
BVI Bundesverband Investment und. Asset Management
Cboe Clear Europe
Citigroup
Commodity Markets Council Europe (CMCE)
Crédit Agricole
Depository Trust and Clearing Corporation (DTCC)
Deutsche Bank AG
Deutsche Börse AG
Deutsches Aktieninstitut
DG FISMA
Euronext Clearing
European Association of Central Counterparty Clearing Houses (EACH)
European Association of Corporate Treasurers (EACT)
European Banking Federation (EBF)
European Central Bank (ECB)
European Economic and Social Committee (EESC)
European Federation of Energy Traders (EFET)
European Fund and Asset Management Association (EFAMA)
European Securities and Markets Authority (ESMA)
European Systemic Risk Board (ESRB)
FIA European Principal Traders Association
FleishmanHillard
French Tresor
FTI Consulting
Goldman Sachs
Hanbury Strategy

HM Treasury
Intercontinental Exchange (ICE)
International Swaps and Derivatives Association (ISDA)
Intesa Sanpaolo
Joint Energy Associations Group (JEAG)
JPMorgan Chase & Co
KDPW CCP Spółka Akcyjna
Kreab
LCH
LCH SA
NASDAQ
Nordic Securities Association
Permanent Representation of Belgium
Permanent Representation of France
Permanent Representation of Germany
Permanent Representation of Spain
Permanent Representation of the Netherlands
Société Générale
UK Mission to the European Union
UniCredit

The list above is drawn up under the exclusive responsibility of the rapporteur.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	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		
References	COM(2022)0698 – C9-0411/2022 – 2022/0404(COD)		
Date submitted to Parliament	8.12.2022		
Committee responsible Date announced in plenary	ECON 1.2.2023		
Committees asked for opinions Date announced in plenary	JURI 1.2.2023		
Not delivering opinions Date of decision	JURI 31.1.2023		
Rapporteurs Date appointed	Danuta Maria Hübner 25.1.2023		
Discussed in committee	5.6.2023	28.6.2023	30.8.2023
Date adopted	28.11.2023		
Result of final vote	+: 47 -: 3 0: 3		
Members present for the final vote	Rasmus Andresen, Anna-Michelle Asimakopoulou, Gunnar Beck, Marek Belka, Isabel Benjumea Benjumea, Stefan Berger, Engin Eroglu, Markus Ferber, Jonás Fernández, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Claude Gruffat, José Gusmão, Enikő Győri, Eero Heinäluoma, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtos, Aurore Lalucq, Philippe Lamberts, Pedro Marques, Denis Nesci, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Kira Marie Peter-Hansen, Eva Maria Poptcheva, Antonio Maria Rinaldi, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Inese Vaidere, Johan Van Overtveldt, Roberts Zīle		
Substitutes present for the final vote	Ivars Ijabs, Janusz Lewandowski, Andželika Anna Mozdżanowska, Erik Poulsen, René Repasi		
Substitutes under Rule 209(7) present for the final vote	Barry Andrews, Alessandra Basso, Theresa Bielowski, Carlos Coelho, Francisco Guerreiro, Fabienne Keller, Liudas Mažylis		
Date tabled	5.12.2023		

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

47	+
ECR	Andželika Anna Mozdżanowska, Dorien Rookmaker, Johan Van Overtveldt, Roberts Zile
ID	France Jamet
NI	Enikő Győri
PPE	Anna-Michelle Asimakopoulou, Isabel Benjumea Benjumea, Stefan Berger, Carlos Coelho, Markus Ferber, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Othmar Karas, Janusz Lewandowski, Liudas Mažylis, Luděk Niedermayer, Ralf Seekatz, Inese Vaidere
Renew	Barry Andrews, Engin Eroglu, Ivars Ijabs, Billy Kelleher, Fabienne Keller, Ondřej Kovařík, Georgios Kyrtos, Eva Maria Poptcheva, Erik Poulsen
S&D	Marek Belka, Theresa Bielowski, Jonás Fernández, Eero Heinäluoma, Aurore Lalucq, Pedro Marques, René Repasi, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli
Verts/ALE	Rasmus Andresen, Claude Gruffat, Francisco Guerreiro, Stasys Jakeliūnas, Philippe Lamberts, Kira Marie Peter-Hansen

3	-
ID	Gunnar Beck
NI	Lefteris Nikolaou-Alavanos
The Left	José Gusmão

3	0
ECR	Denis Nesci
ID	Alessandra Basso, Antonio Maria Rinaldi

Key to symbols:

+ : in favour

- : against

0 : abstention