










Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) 2021/0341(COD) Directive</p>	Procedure completed
<p>Amendments to the Capital Requirements Directive</p> <p>Amending Directive Directive 2013/36/EU 2011/0203(COD) Amending Directive Directive 2014/59/EU 2012/0150(COD)</p> <p>Subject</p> <p>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision</p> <p>Legislative priorities</p> <p>Joint Declaration 2022 Joint Declaration 2021 Joint Declaration 2023-24</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs		25/10/2021
		 FERNÁNDEZ Jonás Shadow rapporteur	
		 KARAS Othmar	
		 POULSEN Erik	
		 NIINISTÖ Ville	
		 VAN OVERTVELDT Johan	
		 ZANNI Marco	
		 PAPADIMOULIS Dimitrios	
Council of the European Union European Commission	Commission DG Financial Stability, Financial Services and Capital Markets Union	Commissioner MCGUINNESS Mairead	

Key events			
28/10/2021	Legislative proposal published	COM(2021)0663	Summary
17/01/2022	Committee referral announced in Parliament, 1st reading		
24/01/2023	Vote in committee, 1st reading		
24/01/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
10/02/2023	Committee report tabled for plenary, 1st reading	A9-0029/2023	Summary
13/02/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
15/02/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
11/12/2023	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE757.234 GEDA/A/(2023)006587	
24/04/2024	Debate in Parliament		
24/04/2024	Decision by Parliament, 1st reading	T9-0362/2024	Summary
30/05/2024	Act adopted by Council after Parliament's 1st reading		
31/05/2024	Final act signed		
19/06/2024	Final act published in Official Journal		

Technical information	
Procedure reference	2021/0341(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive Directive 2013/36/EU 2011/0203(COD) Amending Directive Directive 2014/59/EU 2012/0150(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Central Bank
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/07545

Documentation gateway				
Document attached to the procedure		SEC(2021)0380	28/10/2021	EC
Document attached to the procedure		SWD(2021)0320	28/10/2021	EC

Document attached to the procedure		SWD(2021)0321	28/10/2021	EC	
Legislative proposal		COM(2021)0663	28/10/2021	EC	Summary
Committee draft report		PE731.819	01/06/2022	EP	
European Central Bank: opinion, guideline, report		CON/2022/0016 OJ C 248 30.06.2022, p. 0087	30/06/2022	ECB	
Amendments tabled in committee		PE734.261	22/08/2022	EP	
Amendments tabled in committee		PE735.693	22/08/2022	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0029/2023	10/02/2023	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2023)006587	06/12/2023	CSL	
Text agreed during interinstitutional negotiations		PE757.234	06/12/2023	EP	
Text adopted by Parliament, 1st reading/single reading		T9-0362/2024	24/04/2024	EP	Summary
Draft final act		00079/2023/LEX	31/05/2024	CSL	

Additional information

Research document	Briefing	08/07/2024
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Final act

Directive 2024/1619 OJ OJ L 19.06.2024

Amendments to the Capital Requirements Directive

PURPOSE: to amend Directive 2013/36/EU (the Capital Requirements Directive or CRD) as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks with a view to making the EU banking sector more resilient to potential future economic shocks.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: following the major financial crisis of 2008-2009, the EU and its G20 partners in the Basel Committee on Banking Supervision reached the Basel III agreement to make banks more resilient to potential economic shocks. Thanks to the reforms already implemented, the EU banking sector entered the COVID-19 crisis on a much more resilient footing. However, while the overall level of capital in EU banks is now satisfactory on average, some of the problems that were identified in the wake of the financial crisis have not yet been addressed.

The proposed amendment to Directive 2013/36/EU (the Capital Requirements Directive or CRD) is part of a legislative package that includes amendments to [Regulation \(EU\) No 575/2013](#) (the Capital Requirements Regulation or CRR) and a separate legislative proposal to amend the Capital Requirements Regulation in the area of resolution (the so-called daisy chain proposal).

This package of proposals marks the final step in this reform of banking rules and faithfully implements the international Basel III agreement, while taking into account the specific features of the EU's banking sector.

CONTENT this proposal amending Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms aims to contribute to financial stability and to the steady financing of the economy in the context of the post-COVID-19 crisis recovery.

The proposal includes provisions on the following issues:

Implementation of the Basel III reform

The proposal ensures proportionality and seeks to further reduce compliance costs, particularly for smaller banks, without relaxing prudential standards.

The proposal aims to ensure that the internal models used by banks to calculate their capital requirements do not underestimate risks, thereby

ensuring that the capital needed to cover these risks is sufficient. This will make it easier to compare risk-based capital ratios between banks, restoring confidence in these ratios and in the soundness of the sector in general.

Independence of competent authorities

The proposal clarifies how Member States should ensure that the independence of competent authorities, including their staff and governance bodies, is preserved. Minimum requirements are introduced to prevent conflicts of interest, while supervisors would be in a better position to check the good repute and competence of bank managers.

Strengthened supervisory powers

For an efficient Banking Union, the convergence of supervisory practices and a sufficient degree of harmonisation of the various national rules framing the supervisory action are needed. The supervisory authorities would be better able to verify the soundness of transactions. Moreover, this proposal expands the list of supervisory powers available in the CRD to competent authorities to cover operations such as acquisitions by a credit institution of a material holding in a financial or non-financial entity, the material transfer of assets or liabilities and merger or divisions. These supervisory powers will ensure that competent authorities are notified in advance, have at their disposal all the necessary information to perform a prudential assessment of these operations, and can ultimately oppose the completion of operations detrimental to the prudential profile of the supervised entities undertaking them.

Review of the administrative sanctioning regime

To ensure a level playing field in the field of sanctioning powers, Member States are required to provide for administrative penalties, periodic penalty payments and other administrative measures in relation to breaches of national provisions transposing the CRD and the CRR. The proposal requires Member States to lay down rules on the cooperation between competent authorities and judicial authorities in cases of duplication of criminal and administrative proceedings and penalties on the same breach.

Environmental, social and governance (ESG) risks

New provisions are introduced to address the significant risks that credit institutions will face due to climate change and the profound economic transformations that are needed to manage this and other ESG risks.

To this end, the proposal sets out clear requirements for the identification, measurement, management and monitoring of sustainability risks within ESG risk management frameworks. Supervisors would have the power to assess these risks as part of their regular supervisory reviews, including through climate stress tests carried out by themselves and by banks.

Third country branches (TCBs)

As of 31 December 2020, there were 106 TCBs in the EU distributed across 17 Member States. At present, these branches are mainly subject to national legislation, harmonised only to a very limited extent. The proposal seeks to harmonise EU rules in this area, which will allow supervisors to better manage risks related to these entities, which have significantly increased their activity in the EU over recent years.

Reducing banks administrative costs

The proposal aims to centralise disclosures of prudential information with a view to increased access to prudential data and comparability across industry. The centralisation of disclosures in a single access point established by the EBA is also aimed at reducing the administrative burden for institutions, especially small and non-complex ones.

Amendments to the Capital Requirements Directive

The Committee on Economic and Monetary Affairs adopted a report by Jonás FERNÁNDEZ (S&D, ES) on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU.

As a reminder, the Commission's proposal of the capital requirements directive aimed at strengthening the regulatory and supervisory landscape for banks operating in the EU by closing loopholes for third country branches, by enhancing and harmonising supervisory tools and powers in important areas and by ensuring that supervisors are sufficiently independent from economical and political influence and by incorporating environmental, social and governance related risks.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Proportionality

The amendment of Directive 2013/36/EU as regards supervisory powers, sanctions, third country branches and environmental, social and governance risks, and the amendment of Directive 2014/59/EU should be coherent with the logic of the banking union and lead to further harmonisation of the single banking market. It should always ensure proportionality of rules and aim at further reducing compliance and reporting costs, in particular for small and non-complex institutions.

Conditions for the authorisation of third country branches

Member States should require that third country undertakings establish a branch in their territory before commencing or continuing activities. New third country branches should not commence their activities in a Member State until the EBA and the third country competent authority have concluded a Memorandum of Understanding (MoU). The MoU should provide a clear cooperation framework between the competent authorities, including exchange of information in on-going supervision, crisis management and resolution.

Classification of third country branches

The report stated that Member States may apply a stricter regulatory regime to all third country branches or branches from specific third countries.

Capital endowment requirement

Member States should require that third country branches maintain at all times a minimum capital endowment that is at least equal to:

(a) for class 1 third country branches, 3% of the branches average liabilities as reported for the three immediately preceding annual reporting periods, subject to a minimum of EUR 10 million;

(b) for class 2 third country branches, 0.5% of the branches average liabilities as reported for the three immediately preceding annual reporting periods, subject to a minimum of EUR 5 million.

Joint assessment of systemic third country branches

The report stipulates that joint assessments should be performed on the third country branches of the same third country group where they are established in two or more Member States and hold assets in an aggregate amount.

Power to require establishing a subsidiary

The committee proposed that Member States should ensure that competent authorities have the power to require third country branches to apply for authorisation where: (i) the third country branch has engaged in the past or is currently engaged in the performance of certain activities with customers or counterparties in other Member States or with other third country branches or subsidiary institutions of the same group; or (ii) the third country branch meets the systemic importance indicators or poses significant financial stability risks, or the aggregate amount of assets that a third country branch or branches in the Union that belong to the same group hold on their books in the Union as reported in accordance with Sub-section 4 is equal or higher to EUR 40 billion.

Designation and powers of the competent authorities

A more proportionate and targeted framework for cooling-off periods has been imposed for staff and members of governance bodies of competent authorities, before they can take up positions in supervised institutions. More specifically, the EBA should issue guidelines by 31 December 2024 on conditions which allow competent authorities to waive, increase or decrease the cooling off periods for specific members of the management governance bodies and staff.

Regulatory technical standards on cooperation with authorities responsible for supervision of anti-money laundering

EBA should, after consulting the European Data Protection Board, issue regulatory technical standards on the mechanisms for cooperation and information exchange between competent authorities and:

(a) the authorities responsible for supervision of anti-money laundering in the Member State;

(b) the authorities, in the context of identifying serious breaches of anti-money laundering rules.

The EBA should issue those regulatory technical standards by 12 months from date of entry into force of this amending Directive.

Environmental, social and governance risk

The report stated that institutions exposures to environmental, social and governance risks should be assessed also on the basis of institutions plans. Institutions governance and risk management processes with regard to environmental, social and governance risks should be brought into line with the objectives set out in those plans.

The review and evaluation performed by competent authorities should include the assessment of the institutions plans and targets, as well as the progress made towards addressing the environmental, social and governance risks arising from the process of adjustment towards climate neutrality by 2050, as well as towards other relevant Union policy objectives in relation to environmental, social and governance factors.

Amendments to the Capital Requirements Directive

The European Parliament adopted by 486 votes to 56, with 26 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

Subject matter

The purpose of the amendments to Directive 2013/36/EU in connection with supervisory powers, sanctions, third-country branches, and environmental, social and governance (ESG) risks is to further the harmonisation of the banking supervisory framework and, ultimately, deepen the internal market for banking. Competent authorities should seek to ensure that the supervisory framework is applied to institutions, as defined in that Directive, in a proportionate manner and, in particular, they should aim to reduce compliance and reporting costs for small and non-complex institutions, with a view to an average reduction in reporting costs of 10% to 20%.

Supervisory independence of competent authorities

Member States should provide for the necessary arrangements to ensure that competent authorities, including their members of staff and the members of their governance bodies, can exercise their supervisory powers independently and objectively, without seeking or taking instructions from supervised institutions, from any body of the Union or any government of a Member State or from any other public or private body. The governance bodies of competent authorities should be functionally independent of other public and private bodies.

Member States should ensure that no member of a competent authoritys governance body remains in office for more than 14 years. Member States should ensure that members of a competent authoritys governance body are appointed on the basis of published criteria that are objective and transparent and that those members can be dismissed if they no longer meet the criteria of appointment or have been convicted of a serious criminal offence. The reasons for dismissal should be made public unless the member of the competent authoritys governance body concerned objects to the publication.

The cooling-off period should start from the date on which direct involvement in the supervision of the entities ceased. Members of their staff and members of their governance bodies should not have access to confidential or sensitive information relating to these entities during the

cooling-off period. In addition, they should be required to submit a declaration of interest.

Where a member of staff or a member of a competent authority's governance body owns, at the time of being hired or appointed or at any time thereafter, financial instruments that may give rise to conflicts of interest, the competent authority should have the power to require on a case-by-case basis that those instruments be sold or disposed of within a reasonable timeframe.

Branches in the EU

The requirement to establish a branch in the EU should not apply to cases of reverse solicitation, i.e. where a client or counterparty approaches an undertaking established in a third country on its own exclusive initiative for the provision of banking services, including their continuation, or banking services closely related to those initially solicited. The requirement to establish a branch in the EU should also not apply to interbank transactions or interdealer transactions.

Authorisation

Competent authorities should have the necessary power to withdraw the authorisation granted to a credit institution where such a credit institution has been determined as failing or likely to fail, there is no reasonable prospect that any alternative private sector measures or supervisory action would prevent a failure of such a credit institution within a reasonable timeframe and a resolution action is not necessary in the public interest.

Financial holding companies and mixed financial holding companies

Financial holding companies and mixed financial holding companies that are parent undertakings of banking groups should remain subject to the identification and approval mechanism introduced by Directive (EU) 2019/878 of the European Parliament and of the Council. That mechanism enables competent authorities to bring certain financial holding companies and mixed financial holding companies under the direct scope of their supervision and of their supervisory powers to ensure compliance on a consolidated basis.

Under specific circumstances, competent authorities should have the discretion to exempt from approval a financial holding company or mixed financial holding company set up for the purpose of holding participations in undertakings.

Supervising third country branches

When authorising and supervising third-country branches, competent authorities should be able to exercise their supervisory functions effectively. To that end they need to have access to all the necessary information on the third-country branches head undertaking from the supervisory authorities of the relevant third country and be able to effectively coordinate their supervisory activities with those of the third country's supervisory authorities. Before a third-country branch commences its activities in a Member State, competent authorities should endeavour to conclude an agreement with the supervisory authority of the third country concerned to enable cooperation and information exchange.

Competent authorities should have an explicit power to require, on a case-by-case basis, that third-country branches apply for authorisation, at a minimum where those branches engage in activities with clients or counterparties in other Member States in breach of the internal market rules, where they pose a significant risk to the financial stability of the Union or of the Member State where they are established or where the aggregate amount of the assets of all third-country branches in the Union which belong to the same third-country group is equal to or greater than EUR 40 billion or the amount of the third-country branches assets in the Member State where it is established is equal to or greater than EUR 10 billion.

Management body and suitability assessment

Institutions, and financial holding companies and mixed financial holding companies that have been granted approval, should have the primary responsibility for ensuring that members of the management body are at all times of sufficiently good repute, act with honesty, integrity and independence of mind and possess sufficient knowledge, skills and experience to perform their duties. The entities should ensure that members of the management body fulfil at all times the criteria and requirements and should assess the suitability of members of the management body taking into account supervisory expectations, before they take up their position and periodically, as laid down in applicable laws and regulations, guidelines and internal suitability policies.

Crypto-asset technologies

In particular, in their risk management activities, institutions should consider the crypto-asset technology risks, general information and communication technology (ICT) and cyber risks, legal risks, money laundering and terrorist financing risks and valuation risks. Competent authorities should be able to take the necessary supervisory actions where the institutions risk management practices are deemed insufficient.

Environmental, social and governance (ESG) risks

Competent authorities should ensure that institutions have robust strategies, policies, processes and systems in place as part of their governance arrangements to identify, measure, manage and monitor ESG risks in the short, medium and long term.

Transparency				
POULSEN Erik	Shadow rapporteur	ECON	17/01/2023	Finans Danmark
POULSEN Erik	Shadow rapporteur	ECON	20/12/2022	Finans Danmark
NIINISTÖ Ville	Shadow rapporteur	ECON	16/08/2022	Finance Watch
NIINISTÖ Ville	Shadow rapporteur	ECON	30/06/2022	Finanssialary - Finance Finland

NIINISTÖ Ville	Shadow rapporteur	ECON	23/06/2022	Nederlandse Vereniging van Banken / Dutch Banking Association
NIINISTÖ Ville	Shadow rapporteur	ECON	15/06/2022	Deutsche Bank AG
NIINISTÖ Ville	Shadow rapporteur	ECON	09/06/2022	The Club of Rome Triodos Bank
NIINISTÖ Ville	Shadow rapporteur	ECON	03/06/2022	European Association of Public Banks and Funding agencies AISBL
NIINISTÖ Ville	Shadow rapporteur	ECON	25/05/2022	EURALIA French Association for Specialised Finance companies (ASF)
NIINISTÖ Ville	Shadow rapporteur	ECON	28/04/2022	Finanssiala ry - Finance Finland
FITZGERALD Frances	Member	28/10/2022	The Luxembourg Bankers' Association	
FITZGERALD Frances	Member	05/10/2022	The Bank of New York Mellon	
FITZGERALD Frances	Member	03/10/2022	Stripe, Inc.	
FITZGERALD Frances	Member	23/09/2022	Stripe, Inc.	
FITZGERALD Frances	Member	01/09/2022	Banking & Payments Federation Ireland	
ANDRESEN Rasmus	Member	14/07/2022	Die Deutsche Kreditwirtschaft (DK) Identification number: 52646912360-95	
ANDRESEN Rasmus	Member	12/07/2022	Bundesverband deutscher Banken e.V. (Bankenverband) Identification number: 0764199368-97	
ANGEL Marc	Member	05/07/2022	Kreab Mizuho Financial Group, Inc.	
ANGEL Marc	Member	21/06/2022	European Savings and Retail Banking Group	
ANGEL Marc	Member	16/06/2022	Association Luxembourgeoise des Fonds d'Investissement Association des Banques et Banquiers, Luxembourg	