

Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) 2022/0404(COD) Directive</p>	Awaiting Parliament's position in 1st reading
<p>Treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions</p> <p>Amending Directive 2009/65 2008/0153(COD) Amending Directive 2013/36 2011/0203(COD) Amending Directive 2019/2034 2017/0358(COD)</p> <p>Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision</p> <p>Legislative priorities Joint Declaration 2022 Joint Declaration 2023-24</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<p> Economic and Monetary Affairs</p>	<p> HÜBNER Danuta Maria</p> <p>Shadow rapporteur</p> <p> LALUCQ Aurore</p> <p> POULSEN Erik</p> <p> GRUFFAT Claude</p> <p> ROOKMAKER Dorien</p> <p> GUSMÃO José</p>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<p> Legal Affairs</p>	The committee decided not to give an opinion.	
Council of the European Union	Commission DG	Commissioner	
European Commission	<p>Financial Stability, Financial Services and Capital Markets Union</p>	MCGUINNESS Mairead	

Key events			
07/12/2022	Legislative proposal published	COM(2022)0698	Summary
01/02/2023	Committee referral announced in Parliament, 1st reading		
28/11/2023	Vote in committee, 1st reading		
28/11/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
05/12/2023	Committee report tabled for plenary, 1st reading	A9-0399/2023	Summary
11/12/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
13/12/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		

Forecasts	
22/04/2024	Indicative plenary sitting date

Technical information	
Procedure reference	2022/0404(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2009/65 2008/0153(COD) Amending Directive 2013/36 2011/0203(COD) Amending Directive 2019/2034 2017/0358(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Awaiting Parliament's position in 1st reading
Committee dossier	ECON/9/10899

Documentation gateway					
Legislative proposal		COM(2022)0698	07/12/2022	EC	Summary
Document attached to the procedure		SWD(2022)0697	08/12/2022	EC	
Document attached to the procedure		SWD(2022)0698	08/12/2022	EC	
European Central Bank: opinion, guideline, report		CON/2023/0011 OJ C 204 12.06.2023, p. 0003	26/04/2023	ECB	
Committee draft report		PE749.905	09/06/2023	EP	
Amendments tabled in committee		PE751.572	05/07/2023	EP	
Committee report tabled for plenary, 1st		A9-0399/2023	05/12/2023	EP	Summary

reading/single reading				
Coreper letter confirming interinstitutional agreement		GEDA/A/(2024)001022	15/02/2024	CSL

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

PURPOSE: to amend Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties (CCPs) and the counterparty risk on centrally cleared derivative transactions.

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: 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.

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.

CONTENT: this proposal aims to amend Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 accordingly. Overall, it aims to encourage institutions and investment firms, respectively, as well as their competent authorities, to systematically address any excessive concentration risk that may arise from their exposures towards CCPs and reflect the broader policy objective of a safer, more robust, efficient and competitive market for EU central clearing services.

The amendments aims to:

- align the proposal with Regulation (EU) No 648/2012 in order to establish a level playing-field between exchange traded and OTC derivatives and to better reflect the risk reducing nature of CCPs in derivative transactions;
- eliminate counterparty risk limits for all derivative transactions that are centrally cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012;
- introduce the notion of CCP in the UCITS Directive.
- improve the management of exposures towards CCPs, thus supporting the transition to a safer, more robust, efficient and competitive market for EU central clearing services;
- review the alignment of credit institutions and investment firms with the relevant Union policy objectives or broader transition trends relating to the use of active account structure under EMIR over the short, medium and long term, thereby enabling competent authorities to address financial stability concerns that could arise from the excessive reliance on certain systemically important third-country CCPs (Tier 2 CCPs);
- require institutions to include concentration risk arising from exposures towards CCPs, in particular those offering services of substantial systemic importance for the Union or one or more of its Member States, in institutions strategies and processes for evaluating internal capital needs as well as adequate internal governance;
- introduce a requirement for competent authorities to specifically assess and monitor institutions practices concerning the management of their concentration risk arising from exposures towards central counterparties as well as the progress made by institutions in adapting to the relevant policy objectives of the Union;
- mandate the EBA to issue guidelines on the uniform inclusion of concentration risk arising from exposures towards central counterparties in the supervisory stress testing;
- facilitate the possibility for competent authorities to address specifically the concentration risk arising from institutions exposures towards CCPs, by adding a concrete supervisory power to address such risk.

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

The Committee on Economic and Monetary Affairs adopted the report by Danuta Maria HÜBNER (EPP, PL) 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.

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:

The report stressed that Directives 2013/36/EU and (EU) 2019/2034 should 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.

Members also considered that 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 in Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

Transparency				
LALUCQ Aurore	Shadow rapporteur	ECON	06/11/2023	Deutsche Börse AG
LALUCQ Aurore	Shadow rapporteur	ECON	29/06/2023	Banque de France
LALUCQ Aurore	Shadow rapporteur	ECON	28/06/2023	EACH
LALUCQ Aurore	Shadow rapporteur	ECON	26/06/2023	Deutsche Börse AG
LALUCQ Aurore	Shadow rapporteur	ECON	15/06/2023	Eurelectric
HÜBNER Danuta Maria	Rapporteur	ECON	25/05/2023	KDPW_CCP Spółka Akcyjna
HÜBNER Danuta Maria	Rapporteur	ECON	23/05/2023	FIA European Principal Traders Association, part of FIA, Inc.
HÜBNER Danuta Maria	Rapporteur	ECON	17/05/2023	European Association of Central Counterparty Clearing Houses
LALUCQ Aurore	Shadow rapporteur	ECON	04/05/2023	Afore Consulting The Bank of New York Mellon
LALUCQ Aurore	Shadow rapporteur	ECON	03/05/2023	Bundesverband deutscher Banken
FERBER Markus	Member	23/01/2024	Deutsche Unternehmensverband Vermögensberatung	