

Amendments to the Capital Requirements Directive

2021/0341(COD) - 28/10/2021 - Legislative proposal

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.