

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

2022/0404(COD) - 07/12/2022 - Legislative proposal

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.