

Amendments to the Capital Requirements Directive

2021/0341(COD) - 10/02/2023 - Committee report tabled for plenary, 1st reading/single reading

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 branch's 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 branch's 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 institution's 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.

