

Amendments to the Capital Requirements Directive

2021/0341(COD) - 24/04/2024 - Text adopted by Parliament, 1st reading/single reading

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 Parliament's 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 authority's governance body remains in office for more than 14 years. Member States should ensure that members of a competent authority's 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 authority's 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 branch's 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 branch's 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.