Amendments to the Capital Requirements Directive

2021/0341(COD) - 19/06/2024 - Final act

PURPOSE: to strengthen the regulatory and supervisory landscape for banks operating in the EU.

LEGISLATIVE ACT: Directive (EU) 2024/1619 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.

CONTENT: this directive is part of a package of new rules to update the capital requirements directive and the capital requirements regulation, which transpose the Basel III standards into EU law. The Basel III standards were agreed by the Basel Committee on Banking Supervision (BCBS) to strengthen prudential regulation, supervision and risk management of banks in response to the global financial crisis of 2007-2008.

The new rules aim to make banks operating in the EU more resilient to potential economic shocks. The changes aim to strengthen banks' resilience, supervision and risk management. In addition, these rules will strengthen supervision and sustainability in the banking sector.

Subject matter

The amendments made 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.

Supervisory independence of competent authorities

For the purpose of preserving the independence of competent authorities in the exercise of their powers, Member States will 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.

Members of the governing body of a competent authority must be appointed on the basis of **published, objective and transparent criteria**, and must be able to be dismissed if they no longer meet the criteria for appointment or have been convicted of a serious criminal offence. No member of the governing body of a competent authority who is appointed after 11 January 2026 should remain in office for more than fourteen years.

Competent authorities will be required to put in place all necessary arrangements to prevent **conflicts of interest** for their staff and members of their governance bodies. Similarly, a more proportionate and targeted framework is imposed with regard to the **cooling-off periods** that competent authority staff and members of their governance bodies must meet before they can take up a position with a supervised institution.

Framework for assessing competence and good repute

The Directive lays down a set of rules at EU level to establish a more consistent and predictable 'fit and proper framework' for assessing the suitability of the members of the management bodies and the key function holders in institutions.

Having the primary responsibility for assessing the suitability of each member of the management body, institutions, and financial holding companies and mixed financial holding companies will carry out the **initial suitability assessment** before a new member takes up the position, subject to certain exceptions, followed by a verification by the competent authorities. Those entities will ensure that information about the suitability of the members of the management body remains up-to-date. They will communicate that information to the competent authority. The competent authorities will have the power to take the necessary measures if they conclude that the fit and proper requirements are not met.

Supervising third country branches

The new rules harmonise the minimum requirements for authorising third-country branches and supervising their activities in the EU.

Third-country branches will therefore have to be classified either in class 1, where they are deemed to be riskier, or, on the contrary, in class 2, where they are considered to be small and non-complex and do not present a significant risk to financial stability.

Competent authorities will 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**.

Crypto-asset technology

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 will take the necessary supervisory actions where the institutions' risk management practices are deemed insufficient.

Environmental, social and governance (ESG) risks

Competent authorities will be required to 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 over the short, medium and long term.

ENTRY INTO FORCE: 9.7.2024.

TRANSPOSITION: no later than 10.1.2026.