Basic information

2017/0231(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA): powers Amending Directive 2009/138/EC 2007/0143(COD) Amending Directive 2014/65/EU 2011/0298(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.05 Insurance, pension funds 2.50.10 Financial supervision 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	KARAS Othmar (PPE) BERÈS Pervenche (S&D)	05/10/2017 05/10/2017
	Shadow rapporteur SWINBURNE Kay (ECR) KLINZ Wolf (ALDE) CARTHY Matt (GUE/NGL) GIEGOLD Sven (Verts/ALE) MEUTHEN Jörg (EFDD) KAPPEL Barbara (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Justice and Home Affairs (JHA)	3735	2019-12-02

European Commission	**Commission DG**	**Commissioner**
	Economic and Financial Affairs	KATAINEN Jyrki

Key events

Date	Event	Reference	Summary
20/09/2017	Legislative proposal published	COM(2017)0537	Summary
16/11/2017	Committee referral announced in Parliament, 1st reading		
10/01/2019	Vote in committee, 1st reading		
10/01/2019	Committee decision to open interinstitutional negotiations with report adopted in committee		
14/01/2019	Committee report tabled for plenary, 1st reading	A8-0012/2019	Summary
15/01/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
17/01/2019	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
01/04/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE637.439 GEDA/A/(2019)003029	
15/04/2019	Debate in Parliament		
16/04/2019	Decision by Parliament, 1st reading	T8-0376/2019	Summary
16/04/2019	Results of vote in Parliament		
02/12/2019	Act adopted by Council after Parliament's 1st reading		
18/12/2019	Final act signed		
18/12/2019	End of procedure in Parliament		
27/12/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0231(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2009/138/EC 2007/0143(COD) Amending Directive 2014/65/EU 2011/0298(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 062

	Treaty on the Functioning of the European Union TFEU 053-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/11078

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE625.359	10/07/2018	
Amendments tabled in committee		PE627.023	11/09/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0012/2019	14/01/2019	Summary
Text agreed during interinstitutional negotiations		PE637.439	01/04/2019	
Text adopted by Parliament, 1st reading/single reading		T8-0376/2019	16/04/2019	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)003029	01/04/2019	
Draft final act	00076/2019/LEX	18/12/2019	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2017)0537	20/09/2017	Summary
Commission response to text adopted in plenary	SP(2019)440	08/08/2019	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_PARLIAMENT	COM(2017)0537	19/12/2017	
Contribution	PT_PARLIAMENT	COM(2017)0537	21/12/2017	
Contribution	FR_SENATE	COM(2017)0537	08/02/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES5295/2017	15/02/2018	
	European Central Bank: opinion,	CON/2018/0026		

ECB	guideline, report	OJ C 251 18.07.2018, p. 0002	11/05/2018	Summary

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Directive 2019/2177 OJ L 334 27.12.2019, p. 0155	Summary

European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA): powers

2017/0231(COD) - 14/01/2019 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Othmar KARAS BALZ (EPP, AT) and Pervenche BERES (S&D, FR) on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking up and pursuit of the business of insurance and reinsurance (Solvency II).

As a reminder, the proposed directive aims to improve financial market supervision by strengthening the coordination role of the European Supervisory Authorities (ESAs). The main provisions of the proposal amending Directive 2016/65/EU and Directive 2009/138/EC aim to:

- present the amendments required for the transfer of the competences currently assigned to the competent authorities to the European Securities and Markets Authority (ESMA), which would be responsible for the authorisation and supervision of companies intending to provide data reporting services;

- include amendments to the Solvency II Directive to give the European Insurance and Occupational Pensions Authority (EIOPA) a more prominent role in contributing to supervisory convergence in the area of internal model application.

The committee responsible recommended that the European Parliament's position to be adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows:

Notification and collaboration platforms

The amended text provides that when they intend to issue an authorisation in respect of an insurance or reinsurance undertaking under their supervision and the business plan provides that part of its activities is based on the principles of freedom to provide services and freedom of establishment, the supervisory authorities of the home Member State must notify both the Authority and the other supervisory authorities of the host Member State.

The supervisory authorities of the home Member State should also notify without delay the Authority and the supervisory authorities of the host Member State when they identify deteriorating financing conditions or other emerging risks posed by an insurance or reinsurance undertaking in its ongoing business, in particular when the business is conducted, for a significant part of its activity, on the basis of the freedom to provide services or the freedom of establishment, which may have a significant cross-border effect.

In such situations, the Authority could, at the request of one or more competent authorities concerned or on its own initiative, set up and coordinate a collaborative platform to facilitate the exchange of information and strengthen collaboration between the competent authorities concerned and, where appropriate, to reach a common view.

If the competent authorities concerned fail to reach a common view through the collaborative platform, the Authority could issue a recommendation to the competent authority concerned, including a deadline by which the competent authority should implement the recommended changes. Where the competent authority does not follow the recommendation of the Authority, it should explain the reasons for not doing so.

Approval of the supervisory authorities with regard to internal models

At the request of one or more supervisory authorities or insurance or reinsurance undertakings, EIOPA may issue advice to the supervisory authorities concerned. If such advice is issued, the supervisory authorities concerned should take their decision or joint decision or, where the joint decision or decision does not follow the advice, provide reasons in writing to EIOPA and the applicant.

European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA): powers

2017/0231(COD) - 20/09/2017 - Legislative proposal

PURPOSE: to create a stronger and more integrated European financial supervision through reinforcing the coordination role for all ESAs and new direct supervisory powers for ESMA.

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: this proposal forms part of a package of measures with the purpose of enhancing the supervision of EU financial markets by improving the operation of the system of European Supervisory Authorities (ESAs) and accelerating and completing the Capital Markets Union.

The Markets in Financial Instruments Directive 2014/65/EU (MiFID II) introduces a new type of services that are subject to authorisation and supervision: **Data Reporting Services** (DRSs) operated by Data Reporting Services Providers (DRSPs). The effective circulation, monitoring and reconstruction of trading data was not addressed in Directive 2004/39/EC on markets in financial instruments (MiFID I). This led to EU trading data that was neither consistent nor of adequate quality to monitor whether the objectives of MiFID were being properly achieved.

Since inconsistencies in quality, formatting and reliability have a **detrimental effect** on data transparency, investor protection and market efficiency, MIFID II intends to improve the quality and accessibility of trading data by setting a **standard format** for trading data that is easy to consolidate, readily understood and available at a reasonable cost, and by imposing formal organisational requirements on data reporting services providers (DRSPs) and requiring them to be authorised by their national authority.

Given the **cross-border dimension** of data handling, the benefits of pooling data-related competences and the adverse impact of potential divergences in supervisory practices on both the quality of trading data and on the tasks of data reporting service providers, it is appropriate to **transfer the authorisation of, and the supervision on, data reporting service providers from national authorities to ESMA**.

In addition, this proposal also concerns the **role of the European Insurance and Occupational Pensions Authority (EIOPA)** in the approval processes for internal models that some large insurance companies use to calculate requirements on solvency capital.

The Solvency II Directive (Directive 2009/138/EC) provides that in accordance with the risk oriented approach to the Solvency Capital Requirement (SCR), it is possible for insurance and reinsurance undertakings and groups, at the level of either individual undertakings or groups, to use internal models for the SCR calculation, rather than the standard formula. These internal models are subject to supervisory approval.

Despite the valuable work carried out by EIOPA on supervisory convergence as regards internal models, **major inconsistencies remain** with regard to the requirements of competent authorities for internal models, and difficulties exist in reaching joint agreements on group internal models within colleges of supervisors.

Divergence in the supervision and approval of internal models leads to inconsistencies and creates an uneven level playing field amongst market participants.

With a view to strengthening supervisory convergence, the Commission proposes to **define in detail the role of EIOPA** in the internal risk models adopted by insurance companies.

CONTENT: the main provisions of the proposal amending Directive 2016/65/EU and Directive 2009/138/EC seek to:

- set out amendments that are required for the **transfer of current powers and competences** vested in the competent authorities to ESMA, which will be responsible for the authorisation and supervision of firms that intend to carry out **data reporting services;**

- include the amendments to the Solvency II-Directive to give **EIOPA a greater role** to contribute to supervisory convergence in the area of **internal model application**, and comprises changes with respect to information sharing regarding such model applications, the possibility for **EIOPA to issue Opinions** in relation to that matter, as well as for EIOPA to assist in the settlement of disputes between supervisory authorities, either at their request, on its **own initiative** or, in certain circumstances, at the request of concerned undertakings;
- provide that EIOPA should prepare **annual reports** on this matter. This will allow close monitoring of the situation regarding internal model applications, including bringing to light any outstanding concerns with regard to supervisory convergence in this area. In addition, the proposal applies the necessary amendments to the Solvency II on binding mediation, removing references to a previous dispute settlement procedure with CEIOPS (the Committee of European Insurance and Occupational Pensions Supervisors), which has been superseded by EIOPA.

European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA): powers

2017/0231(COD) - 11/05/2018 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and related legal acts; and on a **proposal for a directive** of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

The regulation and the proposed directive form part of a comprehensive package of proposals to reform the European System of Financial Supervision, consisting of the three European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB).

The ECB restricted its comments to those parts of the Commission's proposal which are relevant for the implementation of monetary policy, the promotion of the smooth operation of payment systems, and for the specific tasks conferred on the ECB concerning the prudential supervision of credit institutions.

The ECB recalled that **safe and efficient financial market infrastructures**, in particular clearing systems for financial instruments, are essential for the fulfilment of the basic tasks of the European System of Central Banks (ESCB) and the pursuit of its primary objective of maintaining price stability. Consideration may also be given to the role of the ECB as supervisor of credit institutions.

To attain the long-term goal of deepening and integrating EU capital markets, the ECB considered that single supervision of, at least, specific market segments needs to be envisaged. Single supervision could also be warranted for data reporting service providers as well as administrators of critical benchmarks under a fully-fledged CMU.

The ECB made specific observations on the role of the central bank of issue with regard to central counterparties (CCPs). **It supported the need to revise the European Securities and Markets Authority's structure (ESMA).** It also considered it vital to **include one representative of the ECB**, under the monetary policy mandate, as a permanent non-voting member of the Board of Supervisors. This would ensure effective cooperation, coordination and exchange of information between supervisory authorities and the ECB as central bank of issue responsible for the euro, which is of key importance considering the proposed enhancements to the role of the central bank of issue under the EMIR II proposal.

The ECB welcomed the proposed amendments set out in the EMIR II proposal, which clarify the tasks conferred on the CCP Executive Session, of which the relevant central bank of issue is a permanent, non-voting member.

Given the ECB's representation in the CCP Executive Session as the central bank of issue, the ECB considered that this clarification will enable the ESCB members to have meaningful and effective involvement in decision-making and information-sharing on matters of direct relevance to the fulfilment of the ESCB's basic tasks, and the achievement of its primary objective of maintaining price stability.

European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA): powers

2017/0231(COD) - 27/12/2019 - Final act

PURPOSE: to improve financial market supervision by strengthening the coordinating role of the European Supervisory Authorities (ESAs).

LEGISLATIVE ACT: Directive (EU) 2019/2177 of the European Parliament and of the Council amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015 /849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing.

CONTENT: the Directive forms part of a package of measures with the purpose of enhancing the supervision of EU financial markets by improving the operation of the system of European Supervisory Authorities (ESAs) and accelerating and completing the Capital Markets Union.

Increasing transparency and accessibility of data

Directive 2014/65/EU of the European Parliament and of the Council creates a regulatory framework for data reporting services providers (DRSPs) and requires a post-trade data reporting services provider to be authorised as an approved publication arrangement (APA). In addition, a consolidated tape provider (CTP) is required to offer consolidated trading data covering all trades in both equity and non-equity instruments throughout the Union.

Directive 2014/65/EU also formalises transaction reporting channels to the competent authorities by requiring a third party that reports on behalf of investment firms to be authorised as an approved reporting mechanism (ARM).

In view of the cross-border dimension of data handling and the benefits of pooling data-related competences with a view to increasing transparency on financial markets, this Directive introduces the amendments required for the transfer of the competences currently attributed to competent authorities to the European Securities and Markets Authority (ESMA), which would be responsible for the authorisation and supervision of undertakings that intend to provide data communication services.

The transfer of the authorisation and supervision of DRSPs to ESMA is of key importance for tasks other than ESMA, such as the exercise of market surveillance, temporary intervention powers and position management powers, and will ensure uniform compliance with pre- and post-trade transparency requirements.

Strengthening the convergent application of Union law in the case of cross-border insurance activity

In view of the increase in cross-border insurance activities, this Directive includes amendments to Directive 2009/138/EC (Solvency II) in order to give the European Insurance and Occupational Pensions Authority (EIOPA) a greater role in contributing to supervisory convergence in the area of application of internal models.

In concrete terms, this Directive aims at strengthening the exchange of information and cooperation between supervisory authorities and the EIOPA by providing in particular for notification requirements in the case of significant cross-border insurance activity or in crisis situations, as well as for the conditions for the establishment of cooperation platforms where the envisaged cross-border insurance activity is significant.

Cooperation platforms shall allow for stronger cooperation between supervisory authorities at an early stage and thus enhance consumer protection. However, decisions on authorisation, supervision and enforcement shall remain the responsibility of the home Member State supervisory authority.

Money laundering and terrorist financing

Following amendments to Regulation (EU) No 1093/2010 of the European Parliament and of the Council, the European Banking Authority (EBA) shall take on a new role in preventing the use of the financial system for the purpose of money laundering or terrorist financing. Accordingly, amendments have been made to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

Under this Directive, the Commission shall make available a report to Member States and obliged entities to assist them in identifying, managing and mitigating the risks of money laundering and terrorist financing, and to enable other stakeholders, including national legislators, the European Parliament, the EBA and representatives of financial intelligence units, to better understand the risks. The reports shall be made public no later than six months after they have been made available to the Member States, with the exception of those parts of the reports which contain classified information.

Member States shall make the results of their risk assessments, including updates of those assessments, available to the Commission, the EBA and other Member States.

By 26 June 2017 at the latest, the ESAs shall publish guidance for competent authorities and credit institutions on the risk factors to be taken into account and the measures to be taken in situations where simplified customer due diligence measures are appropriate. From 1 January 2020, the EBA shall publish, where appropriate, such guidance.

ENTRY INTO FORCE: 30.12.2019.

TRANSPOSITION: no later than 30.6.2021.

European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA): powers

2017/0231(COD) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 519 votes to 77, with 56 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking up and pursuit of the business of insurance and reinsurance (Solvency II).

As a reminder, the proposed directive aims to improve financial market supervision by strengthening the coordination role of the European Supervisory Authorities (ESAs). The main provisions of the proposal amending Directive 2016/65/EU and Directive 2009/138/EC aim to:

- present the amendments required for the transfer of the competences currently assigned to the competent authorities to the European Securities and Markets Authority (ESMA), which would be responsible for the authorisation and supervision of companies intending to provide data reporting services;

- include amendments to the Solvency II Directive to give the European Insurance and Occupational Pensions Authority (EIOPA) a more prominent role in contributing to supervisory convergence in the area of internal model application.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows:

Notification and collaboration platforms

The amended text stressed that it is necessary to enhance information exchange and cooperation between supervisory authorities and EIOPA in view of increased cross-border activities with a view to strengthening the convergent application of EU legislation in the event of cross-border activity, in particular at an early stage.

Notification

The amending Directive provides that where the supervisory authority of the home Member State intends to authorise an insurance or reinsurance undertaking whose scheme of operations indicates that a part of its activities will be based on the freedom to provide services or the freedom of establishment in another Member State and where the scheme of operations also indicates that these activities are likely to be of relevance with respect to the host Member State’s market, the supervisory authority of the home Member State shall notify EIOPA and the supervisory Authority of the relevant host Member State.

The supervisory authority of the home Member State shall also notify EIOPA and the supervisory authority of the relevant host Member State:

- where it identifies deteriorating financial conditions or other emerging risks posed by an insurance or reinsurance undertaking carrying out activities based on the freedom to provide services or the freedom of establishment that may have a cross-border effect;

- where it has serious and reasoned concerns with regard to consumer protection. The supervisory authorities may refer the matter to EIOPA and request its assistance in case no bilateral solution could be found.

These notifications should be sufficiently detailed to allow for a proper assessment.

Collaboration platforms

Where an insurance or reinsurance undertaking carries out or intends to carry out activities which are based on the freedom to provide services or the freedom of establishment and which are of relevance with respect to the market of a host Member State, the Authority may, in case of justified concerns about negative effects on policyholders, on its own initiative or at the request of one or more of the relevant supervisory authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and an enhanced collaboration between the relevant supervisory authorities.

The requirement does not prejudice the right of the relevant supervisory authorities to set up a collaboration platform where they all agree on its establishment.

Money laundering and terrorist financing

Following changes to Regulation (EU) No 1093/2010 of the European Parliament and of the Council, the European Banking Authority will have a new role in the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing. As a result, amendments have been made to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

Under the amended text, the Commission shall make a report available to Member States and obliged entities in order to assist them to identify, understand, manage and mitigate the risk of money-laundering and terrorist financing, and to allow other stakeholders, including national legislators, the European Parliament, the European Banking Authority (EBA), and representatives from Financial Intelligence Units, to better understand the risks. Reports shall be made public at the latest six months after having been made available to Member States, except for the elements of the reports which contain classified information.

Member States shall make the results of their risk assessments, including their updates, available to the Commission, EBA and the other Member States.

The ESAs, and thereafter EBA shall issue guidelines addressed to competent authorities and the credit institutions and financial institutions on the risk factors to be taken into consideration and the measures to be taken in situations where simplified customer due diligence measures are appropriate.

Member States and the EBA shall also inform each other of cases where the law of a third country does not permit the required policies and procedures to be implemented.