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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions**

(Text with EEA relevance)

{SEC(2022) 697} - {SWD(2022) 697-698}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

This proposal is part of the initiative aimed at ensuring that the EU has a safe, robust and competitive central clearing ecosystem, thereby promoting the Capital Markets Union (CMU) and reinforcing the EU's open strategic autonomy. Robust and safe central counterparties (CCPs) enhance the trust of the financial system and crucially support the liquidity of key markets. A safe, robust and competitive central clearing ecosystem is a pre-condition for it to grow further. The EU central clearing ecosystem should enable EU firms to hedge their risks efficiently and safely, while at the same time safeguarding the wider financial stability. In this way, central clearing will support the EU economy. A competitive and efficient EU central clearing ecosystem will increase clearing activities, but clearing also entails risks by centralising transactions in a few CCPs being financially systemically important. Hence, those risks must be appropriately managed by CCPs and CCPs must continue to be thoroughly supervised both at the national and the wider EU level.

In addition, since 2017, concerns have been repeatedly expressed about the ongoing risks to the EU financial stability arising from the excessive concentration of clearing in some third-country CCPs, notably in a stress scenario. High-risk but low-probability events can happen, and the EU must be prepared to face them<sup>1</sup>. While EU CCPs have generally proven resilient throughout these developments, experience has shown that the EU central clearing ecosystem can be made stronger, to the benefit of financial stability. However, open strategic autonomy also means that the EU needs to safeguard itself against the financial stability risks which can arise when EU market participants are excessively reliant on third-country entities, as this can be a source of vulnerabilities. To overcome this situation, the initiative which this proposal is part of seeks to increase liquidity at EU CCPs, build up the EU's central clearing capacity and reduce the risks posed to the EU financial stability by excessive exposures to third-country CCPs. Consequently, amongst others, it requires all market participants subject to a clearing obligation to hold active accounts at EU CCPs for clearing at least a certain proportion of the services that have been identified by ESMA as of substantial systemic importance for EU financial stability.

Whereas the major part of the legislative measures to enact this package are situated in the Commission proposal for a Regulation amending Regulation (EU) No 648/2012<sup>2</sup> (EMIR), the so-called 'EMIR 3' review, the current proposal holds modifications to Directive 2013/36/EU<sup>3</sup> (Capital Requirements Directive or 'CRD'), Directive (EU) 2019/2034<sup>4</sup>

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee Of The Regions "The European economic and financial system: fostering openness, strength and Resilience", COM(2021) 32.

<sup>2</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012.

<sup>3</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013.

(Investment Firms Directive or ‘IFD’) and Directive 2009/65/EU<sup>5</sup> (Undertakings for Collective Investment in Transferable Securities Directive or ‘UCITS Directive’) which are necessary to ensure that the objectives of the EMIR 3 review are achieved as well as to assure coherence. The two proposals should therefore be read in conjunction.

- **Consistency with existing policy provisions in the policy area**

The initiative which this proposal is part of is related to, and consistent with, other EU policies and ongoing initiatives that aim to (i) promote the Capital Markets Union CMU)<sup>6</sup>, (ii) reinforce the EU’s open strategic autonomy<sup>7</sup> and (iii) enhance the efficiency and effectiveness of EU-level supervision.

This proposal introduces limited amendments to CRD and IFD 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, in particular those systemically important third-country CCPs (Tier 2 CCPs) that offer services determined by ESMA as being of substantial systemic importance, reflecting the broader policy objective of an open strategic autonomy in the macro-economic and financial fields by, in particular, but not only, further developing EU financial market infrastructures and increasing their resilience. Increased central clearing at EU CCPs will also contribute to more efficient post-trade arrangements which are the foundations stones of a robust CMU. The proposal also amends the UCITS Directive to 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, thereby establishing a level playing-field between exchange traded and over-the-counter (OTC) derivatives and better reflecting the risk reducing nature of CCPs in derivative transactions.

- **Consistency with other Union policies**

This initiative should be viewed within the context of the broader Commission agenda to make the EU markets safer, more robust, more efficient and competitive as represented by the CMU and open strategic autonomy initiatives. Safe, efficient and competitive post-trade arrangements, in particular central clearing, are an essential element of robust capital markets. A fully functioning and integrated market for capital will allow the EU’s economy to grow in a sustainable way and be more competitive, in line with the strategic priority of the Commission for an Economy that Works for People, focused on creating the right conditions for job creation, growth and investment.

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<sup>4</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 5.12.2019.

<sup>5</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), OJ L 302, 17.11.2009.

<sup>6</sup> Communication from the Commission, ‘A Capital Markets Union for people and businesses – New action plan’, COM(2020) 590.

<sup>7</sup> Commission Communication, ‘The European economic and financial system: fostering openness, strength and resilience’, COM(2021) 32.

The initiative in question has no direct and/or identifiable impacts leading to significant harm or affecting the consistency with the climate-neutrality objectives and the obligations arising out of the European Climate Law.<sup>8</sup>

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

CRD, IFD and the UCITS Directive set out the regulatory and supervisory framework for credit institutions, investment firms and UCITS fund respectively, which can make use of the services offered by EU and third-country CCPs. The legal basis for these Directives was Article 53(1) of the Treaty of the Functioning of the European Union (TFEU) as they aimed at coordinating the provisions concerning the taking-up and pursuit of activities of credit institutions, investment firms and UCITS. Considering that this initiative proposes further policy actions to ensure the achievement of these objectives, the related legislative proposal would be adopted under the same legal basis.

- **Subsidiarity (for non-exclusive competence)**

This proposal is part of the legislative package aimed at enhancing the attractiveness of EU CCPs by facilitating EU CCPs' ability to bring new products to market and reducing compliance costs as well as strengthening EU-level supervision of EU CCPs. EU action will also address the EU's excessive reliance on Tier 2 third-country CCPs in order to reduce the risks to EU financial stability. Safe, robust, efficient and competitive market for central clearing services contributes to deeper, more liquid markets in the EU and is essential for a well-functioning CMU.

This proposal in particular amends CRD and IFD in order 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, in particular Tier 2 CCPs, and reflect the broader policy objective of a safer, more robust and competitive central clearing ecosystem in the EU. The proposal also amends the UCITS Directive to 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, thereby establishing a level playing-field between exchange traded and OTC derivatives and better reflecting the risk reducing nature of CCPs in derivative transactions.

Member States and national supervisors cannot address on their own the systemic risks of highly integrated and interconnected CCPs that operate on a cross-border basis beyond the scope of national jurisdictions. Nor can they mitigate risks arising from diverging national supervisory practices. Member States also cannot on their own incentivise central clearing in the EU and address the inefficiencies of the framework for the cooperation of national supervisors and EU authorities. Therefore, by reason of the scale of actions, these objectives

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<sup>8</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021.

can be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

This proposal introduces limited changes to CRD, IFD and the UCITS Directive to encourage clearing at EU CCPs. The proposal takes full account of the principle of proportionality, being adequate to reach the objectives and not going beyond what is necessary in doing so. It is compatible with the proportionality principle, taking into account the right balance of public interest at stake and the cost-efficiency of the measures proposed. The proportionality of the preferred policy options is further assessed in Chapters 7 and 8 of the accompanying Impact Assessment.

- **Choice of the instrument**

CRD, IFD and the UCITS Directive are Directives and thus they need to be amended by a legal instrument of the same nature.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission services consulted extensively, engaging with a broad range of stakeholders, including EU bodies (ECB, European Systemic Risk Board (ESRB), European Supervisory Authorities (ESAs)), Member States, members of the European Parliament's Economic and Monetary Affairs Committee, the financial services sector (banks, pension funds, investment funds, insurance companies, etc.) as well as non-financial corporates to evaluate whether EMIR sufficiently ensures EU financial stability. This process showed that there are ongoing risks to EU financial stability due to the excessive concentration of clearing in a few third-country CCPs. These risks are particularly relevant in a stress scenario.

Nonetheless, considering the relatively recent entry into force of EMIR 2.2 and the fact that some requirements do not apply yet,<sup>9</sup> the Commission services did not consider it appropriate to prepare a full back-to-back evaluation of the entire framework. Instead, key areas were identified upfront based on stakeholder input and internal analysis (relevant elements are explained in detail in the impact assessment, highlighting the inefficiencies and ineffectiveness of the current rules in the problem definition section (Section 3 of the accompanying Impact Assessment on the problem definition explains in detail the inefficiencies and ineffectiveness of the current rules)).

- **Stakeholder consultations**

The Commission has consulted stakeholders throughout the process of preparing the initiative for the EMIR review, which this proposal accompanies. In particular through:

- a Commission targeted consultation between 8 February and 22 March 2022.<sup>10</sup> It was decided that the consultation should be targeted as the questions focused on a very

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<sup>9</sup> For example, the regulatory technical standards (RTS) on the procedures for the approval of an extension of services or the approval of changes to risk models under Articles 15 and 49 of EMIR respectively have not been adopted yet.

<sup>10</sup> [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/consultations-banking-and-finance/targeted-consultation-review-central-clearing-framework-eu\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/consultations-banking-and-finance/targeted-consultation-review-central-clearing-framework-eu_en)

specific and rather technical area. 71 stakeholders responded to the targeted consultation via the online form while some confidential responses were also submitted via email;

- a Commission Call for Evidence between 8 February and 8 March 2022<sup>11</sup>;
- consultations of stakeholders through the Working Group on the opportunities and challenges of transferring derivatives from the United Kingdom to the EU, in the first half of 2021 including several stakeholder outreach meetings in February, March and June 2021;
- meeting with Members of the European Parliament on 4 May as well as bilateral meetings subsequently;
- meeting with Member States' experts on 30 March 2022, 16 June 2022 and 8 November 2022;
- meetings of the Financial Services Committee on 2 February and 16 March 2022;
- meetings of the Economic and Financial Committee on 18 February and 29 March 2022;
- bilateral meetings with stakeholders as well as confidential information received from a wide range of stakeholders.

The main messages of this consultative process were:

- Work starting in 2021 showed that improving the attractiveness of central clearing, encouraging the development of EU infrastructures, and the supervisory arrangements in the EU will take time.
- A variety of measures was identified that could help improve the attractiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised.
- These measures are not only in the remit of the Commission and co-legislators, but also could potentially require actions from the ECB, national central banks, ESAs, national supervisory authorities, CCPs and banks.
- The consultation showed that market participants generally prefer a market driven approach to regulatory measures, to minimise costs and for EU market participants to remain competitive internationally.
- Nevertheless, regulatory measures were supported to a certain extent, especially when allowing for a faster approval process for CCPs' new products and services<sup>12</sup>.
- Measures deemed useful to enhance EU CCP's attractiveness were: maintaining an active account with an EU CCP, measures to facilitate expanding services by EU CCPs, broadening the scope of clearing participants, amending hedge accounting rules and enhancing funding and liquidity management conditions for EU CCPs.

The initiative comprises of two legislative proposals that take this stakeholder feedback into account, as well as the feedback received through meetings with a broad range of

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<sup>11</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13378-Derivatives-clearing-Review-of-the-European-Market-Infrastructure-Regulation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13378-Derivatives-clearing-Review-of-the-European-Market-Infrastructure-Regulation_en)

<sup>12</sup> Rather no/limited support regarding higher capital requirements in the CRR for exposures to Tier 2 non-EU CCPs, exposure reduction targets toward specific Tier 2 non-EU CCPs, an obligation to clear in the EU and macroprudential tools.



stakeholders, EU authorities and institutions. It introduces targeted amendments to EMIR, the Capital Requirements Regulation, the Money Market Funds Regulation, CRD, IFD and the UCITS Directive aimed at:

- (a) Improving the attractiveness of EU CCPs by simplifying the procedures for launching products and changing models and parameters and introducing a non-objections approval/ex-post approval/review for certain changes. This allows EU CCPs to introduce new products and model changes more quickly while ensuring adequate risk considerations are upheld and without endangering financial stability and therefore making EU CCPs more competitive;
- (b) Encouraging central clearing in the EU to safeguard financial stability by requiring clearing members and clients to hold, directly or indirectly, an active account at EU CCPs, and facilitating clearing by clients will help to reduce the exposure to, and with it excessive reliance on, Tier 2 third-country CCPs which is a risk to the financial stability of the EU;
- (c) Enhancing the assessment and management of cross-border risk: ensuring that authorities in the EU have adequate powers and information to monitor risks in relation to both EU and third-country CCPs, including by enhancing their supervisory cooperation within the EU.

- **Collection and use of expertise**

In preparing this proposal, the Commission relied on the following external expertise and data, including from ESMA, the ESRB and financial market participants, as presented in detail in the EMIR 3 review proposal which this proposal accompanies.

- **Impact assessment**

The Regulatory Scrutiny Board reviewed the impact assessment for the legislative package this proposal is part of. The impact assessment report, which is described in detail in the EMIR 3 review proposal, which this proposal accompanies, received a positive opinion with reservations from the Regulatory Scrutiny Board on 14 September 2022.

- **Regulatory fitness and simplification**

The initiative aims to enhance the attractiveness of EU CCPs, reduce the excessive reliance of EU market participants on Tier 2 CCPs, safeguard EU financial stability and enhance the EU's open strategic autonomy. As such, and in particular the proposal for this Directive amending CRD, IFD and the UCITS Directive, does not aim at reducing costs per se.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal respects these rights, in particular the economic rights, as listed in the main United Nations conventions on human rights, the Charter of Fundamental Rights of the European Union which is an integral part of the EU Treaties, and the European Convention on Human Rights.

#### 4. BUDGETARY IMPLICATIONS

The proposal for a Directive amending CRD, IFD and the UCITS Directive will not have any impact on the budget of the EU neither does the proposal reviewing EMIR that this proposal complements, as explained in Section 8.2.5. of the impact assessment.

#### 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amendments are tightly interlinked with the EMIR 3 review. Arrangements should therefore be considered in conjunction with those envisaged under that proposal. The Joint Monitoring Mechanism will collect the necessary data for the monitoring of the key metrics (use of active accounts, number of active accounts, proportion of transactions cleared through active accounts, volume and excessive concentration of exposures towards different types of CCPs). This will allow for the future evaluation of the new policy tools. Regular Supervisory Review and Evaluation Process (SREP) and stress testing exercises will also help monitoring the impact of the new proposed measures on affected institutions and investment firms. In particular, this will allow the assessment of the adequacy and proportionality of such measures in the case of smaller institutions and investment firms.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents in relation to its transposition.

- **Detailed explanation of the specific provisions of the proposal**

While UCITS are allowed to invest in both OTC and exchange traded derivatives, the provisions of Article 52 of the UCITS Directive imposed regulatory limits on counterparty risk only to OTC derivative transactions, irrespective of whether the derivatives were centrally cleared. To ensure alignment with Regulation (EU) No 648/2012, 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, Article 3(2) of this Directive amends Article 52 of the UCITS Directive to 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. To introduce the notion of CCP in the UCITS Directive, Article 3(1) of this Directive amends Article 2(1) of the UCITS Directive to include the definition of CCP by cross-referring to its definition in Regulation (EU) No 648/2012.

This Directive introduces new provisions and proposes amendments to several articles in Directive 2013/36/EU (the Capital Requirements Directive or CRD) and in Directive (EU) 2019/2034 (the Investment Firms Directive or IFD) in order 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.



Article 81 of the CRD, in conjunction with Article 104 of the CRD, could already be used under the current framework to address excessive concentration of exposures towards CCPs.

However, the proposed amendments introduce more focus under the CRD on an adequate management of exposures towards CCPs, thus supporting the transition to a safer, more robust, efficient and competitive market for EU central clearing services. They also create the necessary framework in the context of the IFD. In this context, competent authorities are encouraged to 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).

Article 1(1) and (2) of this Directive amend Articles 74 and 76 of the CRD to 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. A request for the management body to develop concrete plans to address such concentration risks is also introduced in Article 76 of the CRD. Article 2(1) and (2) propose similar amendments to Articles 26 and 29 of the IFD for investment firms.

To support the supervisory review and evaluation process (SREP), Article 1(3) of this Directive amends Article 81 of the CRD to 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. A similar requirement is introduced in Article 36 of the IFD for investment firms via Article 2(3) of this Directive.

Article 1(4) of this Directive amends Article 100 of the CRD mandating the EBA to issue guidelines on the uniform inclusion of concentration risk arising from exposures towards central counterparties in the supervisory stress testing.

Article 1(5) of this Directive amends Article 104 of the CRD to 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. Similar provisions are added in the context of Article 39 of the IFD for investment firms via Article 2(4) of this Directive.

Proposal for a

## DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) 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.
- (2) 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. Whilst competent authorities can already impose additional own funds requirements for risks that are not or not adequately covered by the existing capital requirements, they should be better equipped with additional, more granular, tools and powers under the Pillar 2 to enable them to take suitable and decisive actions based on the conclusions of their supervisory assessments.

- (3) Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 should therefore be amended accordingly.
- (4) Since the objectives of this Directive, namely ensuring that credit institutions, investment firms and their competent authorities adequately monitor and mitigate the concentration risk arising from exposures towards Tier 2 CCPs which offer services of substantial systemic importance and eliminating counterparty risk limits for derivative transactions that are centrally cleared by a CCP authorised or recognised in accordance with Regulation (EU) No 648/2012 cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Amendments to Directive 2009/65/EC**

Directive 2009/65/EC is amended as follows:

- (1) in Article 2(1), the following point (u) is added:  
  
‘(u) ‘central counterparty’ (‘CCP’) means a CCP as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>\*2</sup>.

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<sup>\*2</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).’;

- (2) Article 52 is amended as follows:
  - (a) in paragraph 1, second subparagraph, the introductory wording is replaced by the following:  
  
‘The risk exposure to a counterparty of the UCITS in a derivative transaction that is not centrally cleared through a CCP authorised in accordance with Article 14 of

Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed either.’;

(b) paragraph 2 is amended as follows”

(i) the first subparagraph is replaced by the following:

‘Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 10 %. If they do so, however, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets shall not exceed 40 % of the value of its assets. That limitation shall not apply to deposits or derivative transactions made with financial institutions subject to prudential supervision.’;

(ii) in the second subparagraph, point (c) is replaced by the following:

‘(c) exposures arising from derivative transactions that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, undertaken with that body.’.

## *Article 2*

### **Amendments to Directive 2013/36/EU**

Directive 2013/36/EU is amended as follows:

(1) in Article 74(1), [point (b)] is replaced by the following:

“[(b)] effective processes to identify, manage, monitor and report the risks they are or might be exposed to in the short, medium and long term time horizon, including environmental, social and governance risks, as well as concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>\*1</sup>,”

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<sup>\*1</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).’;

(2) in Article 76(2), the following subparagraph is added:

‘Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the proportions set out in accordance with Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.’;

(3) in Article 81, the following paragraph is added:

‘Competent authorities shall assess and monitor developments of institutions’ practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, as well as the progress made in adapting the institutions’ business models

to the relevant policy objectives of the Union, taking into account the requirements set out in Article 7a of Regulation (EU) No 648/2012’;

- (4) in Article 100, the following paragraph [5] is added:

‘[5]. EBA, in accordance with Article 16 of Regulation (EU) No 1093/2010, in coordination with ESMA, in accordance with Article 16 of Regulation (EU) No 1095/2010, shall develop guidelines to ensure a consistent methodology for integrating the concentration risk arising from exposures towards central counterparties in the supervisory stress testing.’;

- (5) Article 104, (1) is amended as follows:

- (a) the introductory wording is replaced by the following:

‘For the purposes of Article 97, Article 98(1), point (b), Article 98(4), (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’;

- (b) the following point [(n)] is added:

‘[(n)] require institutions to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers there is excessive concentration risk towards that central counterparty.’;

### *Article 3*

#### **Amendments to Directive (EU) 2019/2034**

Directive (EU) 2019/2034 is amended as follows:

- (1) in Article 26(1), point (b) is replaced by the following:

“(b) effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others, including concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012.”

- (2) Article 29 (1) is amended as follows:

- (a) the following point (e) is added:

‘(e) material sources and effects of concentration risk arising from exposures towards central counterparties and any material impact on own funds.’;

- (b) the following subparagraph is added:

‘For the purpose of the first subparagraph, point (e), Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the proportions set out in accordance with Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.’;

- (3) in Article 36(1), the following subparagraph is added:

‘For the purpose of the first subparagraph, point (a), competent authorities shall assess and monitor developments of investment firms’ practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 29(1), point (e), of this Directive as well as the progress made in adapting the investment firms’ business models to the relevant policy objectives of the Union, taking into account the requirements set out in Article 7a of Regulation (EU) No 648/2012.’;

(4) Article 39(2) is amended as follows:

(a) the introductory wording is replaced by the following:

‘For the purposes of Article 29, point (e), Article 36, Article 37(3) and Article 39 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’;

(b) the following point (n) is added:

‘(n) require institutions to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers there is excessive concentration risk towards that central counterparty.’;

#### *Article 4*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [*PO: please insert the date = 12 months after the date of entry into force of the EMIR Review Regulation*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 5*

#### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.



*Article 6*

**Addressees**

This Directive is addressed to Member States.

Done at Brussels,

*For the Commission*

*The President*

*Ursula VON DER LEYEN*