

Following the feedback provided by delegations, the Portuguese Presidency is hereby submitting its first compromise proposal on the Proposal for a Directive amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341.

The changes introduced by the Portuguese Presidency are presented in **blue bold underline (additions)** and **blue strikethrough (deletions)**. Further detailed explanations are also included in the column "PCY Comment".

Delegations are kindly invited to send their written comments by **7 May 2021 c.o.b.**. The Presidency encourages delegations **to concentrate on the changes introduced in this compromise proposal (blue)**, which cover Articles 1, 3, 4, 5, 6, 7 and 9.

Important:

*In order to guarantee that your comments appear accurately, please do not modify the table format by adding/removing/adjusting/merging/splitting cells and rows. This would hinder the consolidation of your comments.*

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Article 1 Amendments to Directive 2006/43/EC	Article 1 <del>Amendments to Directive 2006/43/EC</del>	The whole article is deleted, following the preference expressed by MS not to include auditors in the scope of DORA.	
In Article 24a(1) of Directive 2006/43/EC, point (b) is replaced by the following:	<del>In Article 24a(1) of Directive 2006/43/EC, point (b) is replaced by the following:</del>		
‘(b) a statutory auditor or an audit firm shall have sound administrative and accounting procedures, internal quality	‘(b) <del>a statutory auditor or an audit firm shall have sound administrative and accounting procedures, internal quality</del>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements in order to manage its ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.	<del>control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements in order to manage its ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.</del>		
* [full title] (OJ L [...], [...], p. [...]).’.	<del>* [full title] (OJ L [...], [...], p. [...]).’.</del>		
Article 2 Amendments to Directive 2009/65/EC	Article 2 Amendments to Directive 2009/65/EC		
Article 12 of Directive 2009/65/EC is amended as follows:	Article 12 of Directive 2009/65/EC is amended as follows:		
(1) In the second paragraph of paragraph 1, point (a) is replaced by the following:	(1) In the second paragraph of paragraph 1, point (a) is replaced by the following:		
‘(a) has sound administrative and accounting procedures and control and safeguard arrangements for electronic data processing, including information and	‘(a) has sound administrative and accounting procedures and control and safeguard arrangements for electronic data processing, including information and		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
communication technology systems that are set up and managed in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], as well as adequate internal control mechanisms including rules for personal transactions by its employees or for the holding and management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;	communication technology systems that are set up and managed in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], as well as adequate internal control mechanisms including rules for personal transactions by its employees or for the holding and management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;	PUBLIC	
* [full title] (OJ L [...], [...], p. [...]).’;	* [full title] (OJ L [...], [...], p. [...]).’;		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(2) paragraph 3 is replaced by the following:	(2) paragraph 3 is replaced by the following:		
‘3. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying:	‘3. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying:		
(a) the procedures and arrangements referred to in point (a) of the second subparagraph of paragraph 1, other than those related to information and communication technology risk management;	(a) the procedures and arrangements referred to in point (a) of the second subparagraph of paragraph 1, other than those related to information and communication technology risk management;		
(b) the structures and organisational requirements to minimise conflicts of interests referred to in point (b) of the second subparagraph of paragraph 1. ’;	(b) the structures and organisational requirements to minimise conflicts of interests referred to in point (b) of the second subparagraph of paragraph 1. ’;		
Article 3 Amendment to Directive 2009/138/EC	Article 3 Amendment to Directive 2009/138/EC		
Directive 2009/138/EC is amended as follows:	Directive 2009/138/EC is amended as follows:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(1) in Article 41, paragraph 4 is replaced by the following:	(1) in Article 41, paragraph 4 is replaced by the following:		
‘4. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures and shall set up information communication technology systems and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA].’;	‘4. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures and shall set up information <b>and</b> communication technology systems and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA].’;	Alignment with the terminology of DORA.	
* [full title] (OJ L [...], [...], p. [...]).	* [full title] (OJ L [...], [...], p. [...]).		
(2) in Article 50(1), points (a) and (b) are replaced by the following:	(2) in Article 50(1), points (a) and (b) are replaced by the following:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
‘(a) the elements of the systems referred to in Articles 41, 44, 46 and 47, other than the elements concerning the management of information communication technology risk, and the areas listed in Article 44(2);’;	‘(a) the elements of the systems referred to in Articles 41, 44, 46 and 47, other than the elements concerning the management of information <b>and</b> communication technology risk, and the areas listed in Article 44(2);’;	Alignment with the terminology of DORA.	
(b) the functions referred to in Articles 44, 46, 47 and 48, other than functions related to information communication technology risk management.’.	(b) the functions referred to in Articles 44, 46, 47 and 48, other than functions related to information <b>and</b> communication technology risk management.’.	Alignment with the terminology of DORA.	
Article 4 Amendments to Directive 2011/61/EC	Article 4 Amendments to Directive 2011/61/EC		
Article 18 of Directive 2011/61/EC is replaced by the following:	Article 18 of Directive 2011/61/EC is replaced by the following:		
“Article 18 General principles	“Article 18 General principles		
1. Member States shall require that AIFMs use, at all times, adequate and appropriate human and technical resources that are	1. Member States shall require that AIFMs use, at all times, adequate and appropriate human and technical resources that are		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
necessary for the proper management of AIFs.	necessary for the proper management of AIFs.		
In particular, the competent authorities of the home Member State of the AIFM, having regard also to the nature of the AIFs managed by the AIFM, shall require that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for managing the information communication technology systems required by Article 6 of [Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA]], as well as adequate internal control mechanisms, including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance	In particular, the competent authorities of the home Member State of the AIFM, having regard also to the nature of the AIFs managed by the AIFM, shall require that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for managing the information <b>and</b> communication technology systems required by Article 6 of [Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA]], as well as adequate internal control mechanisms, including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance	Alignment with the terminology of DORA.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
with the AIF rules or instruments of incorporation and the legal provisions in force.	with the AIF rules or instruments of incorporation and the legal provisions in force.		
2. The Commission shall, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, adopt measures specifying the procedures and arrangements referred to in paragraph 1, other than for information communication technology systems.	2. The Commission shall, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, adopt measures specifying the procedures and arrangements referred to in paragraph 1, other than for information <b>and</b> communication technology systems.	Alignment with the terminology of DORA.	
* [full title] (OJ L [...], [...], p. [...]).’.	* [full title] (OJ L [...], [...], p. [...]).’.		
Article 5 Amendment to Directive 2013/36/EU	Article 5 Amendment to Directive 2013/36/EU		
	<b><u>(NEW) In article 65 of Directive 2013/36/EU, paragraph 3 a) vi) is replaced by the following :</u></b>		
	<b><u>(NEW) ‘vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced</u></b>	Introduced to link the power from Directive 2013/36/EU to require	



Commission proposal	PCY amendment	PCY comment	MS comment/drafting
	<u>operational functions or activities, including ICT-third party service provider consistently with article 27 (2) (i) of Regulation (EU) 2021/xx of the European Parliament and of the Council [DORA] *;</u>	ICT TPPs to provide all information that is necessary in order to carry out the tasks of the competent authorities, and the contractual obligations required of ICT TPPs in DORA.	
In Article 85 of Directive 2013/36/EU, paragraph 2 is replaced by the following:	In Article 85 of Directive 2013/36/EU, paragraph 2 is replaced by the following:		
‘2. Competent authorities shall ensure that institutions have adequate contingency and business continuity plans, including business continuity and disaster recovery plans for the technology they use for the communication of information (“information communication technology”) established in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council [DORA] of the European Parliament and of the Council * , for them to keep operating in the event of severe business disruption and limit losses	‘2. Competent authorities shall ensure that institutions have adequate contingency and business continuity plans, including business continuity and disaster recovery plans for the technology they use for the communication of information (“information <u>and</u> communication technology”) established in accordance with Article <u>106</u> of Regulation (EU) 2021/xx of the European Parliament and of the Council [DORA] <u>of the European Parliament and of the Council</u> * , for them to keep operating in the event of severe business disruption and limit losses	Amended as Article 10 of DORA relates to "Response and recovery", and specifies the requirements for business continuity policies and disaster recovery plans which is the objective of Article 85 of Directive 2013/36/EU, paragraph 2, hence is better suited than the reference to Article 6. Moreover, amended to remove duplicate reference to the European Parliament and the Council. Alignment with the terminology of DORA.	

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incurred as a consequence of such a disruption..	incurred as a consequence of such a disruption..		
* [full title] (OJ L [...], [...], p. [...]).’	* [full title] (OJ L [...], [...], p. [...]).’		
Article 6 Amendments to Directive 2014/65/EU	Article 6 Amendments to Directive 2014/65/EU		
Directive 2014/65/EU is amended as follows:	Directive 2014/65/EU is amended as follows:		
(1) in Article 4(1), point 15 is replaced by the following:	(1) in Article 4(1), point 15 is replaced by the following:	As this article is related to overall discussion of MiCA and the DLT Pilot Regime it will be analysed at the Working Party on Crypto-assets.	
‘financial instrument’ means those instruments specified in Section C of Annex I, including such instruments issued by means of distributed ledger technology;’;	‘financial instrument’ means those instruments specified in Section C of Annex I, including such instruments issued by means of distributed ledger technology;’;		
(2) Article 16 is amended as follows:	(2) Article 16 is amended as follows:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(a) paragraph 4 is replaced by the following:	(a) paragraph 4 is replaced by the following:		
‘4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To that end the investment firm shall employ appropriate and proportionate systems, including information communication technology (“ICT”) systems set up and managed in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], as well as appropriate and proportionate resources and procedures.’;	‘4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To that end the investment firm shall employ appropriate and proportionate systems, including information <b>and</b> communication technology (“ICT”) systems set up and managed in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], as well as appropriate and proportionate resources and procedures.’;	Alignment with the terminology of DORA.	
(b) in paragraph 5, the second and third subparagraphs are replaced by the following:	(b) in paragraph 5, the second and third subparagraphs are replaced by the following:		
‘ An investment firm shall have sound administrative and accounting procedures, internal	‘ An investment firm shall have sound administrative and accounting procedures, internal		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
control mechanisms and effective procedures for risk assessment.	control mechanisms and effective procedures for risk assessment.		
Without prejudice to the ability of competent authorities to require access to communications in accordance with this Directive and Regulation (EU) No 600/2014, an investment firm shall have sound security mechanisms in place to guarantee, in accordance with the requirements laid down in Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times.’;	Without prejudice to the ability of competent authorities to require access to communications in accordance with this Directive and Regulation (EU) No 600/2014, an investment firm shall have sound security mechanisms in place to <u>ensure</u> <del>guarantee</del> , in accordance with the requirements laid down in Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], the security and authentication of the means of transfer of information, <u>to</u> minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times.’;	The word “guarantee” implies a very deep (formal written) commitment between two parties, therefore, the wording ‘ensure’ might be more suitable for this provision.	
(3) Article 17 is amended as follows:	(3) Article 17 is amended as follows:		
(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
‘1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity in accordance with the requirements laid down in Chapter II of Regulation (EU) 2021/xx [DORA], are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market.	‘1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity in accordance with the requirements laid down in Chapter II of Regulation (EU) 2021/xx [DORA], are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market.		
Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No 596/2014 or to the rules of a trading venue to which it is connected.	Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No 596/2014 or to the rules of a trading venue to which it is connected.		
The investment firm shall have in place effective business continuity arrangements to deal with any failure of its trading systems,	The investment firm shall have in place effective business continuity arrangements to deal with any failure of its trading systems,	Alignment with the terminology of DORA.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
including business continuity and disaster recovery plans for information communication technology established in accordance Article 6 of Regulation (EU) 2021/xx [DORA], and shall ensure its systems are fully tested and properly monitored to ensure that they meet the general requirements laid down in this paragraph and any specific requirements laid down in Chapters II and IV of Regulation (EU) 2021/xx [DORA].’;	including business continuity and disaster recovery plans for information <b>and</b> communication technology established in accordance Article 6 of Regulation (EU) 2021/xx [DORA], and shall ensure its systems are fully tested and properly monitored to ensure that they meet the general requirements laid down in this paragraph and any specific requirements laid down in Chapters II and IV of Regulation (EU) 2021/xx [DORA].’;	PUBLIC	
(b) in paragraph 7, point (a) is replaced by the following:	(b) in paragraph 7, point (a) is replaced by the following:		
‘(a) the details of organisational requirements laid down in paragraphs 1 to 6, other than those related to ICT risk management, which are to be imposed on investment firms providing different investment services, investment activities, ancillary services or combinations thereof, whereby the specifications in relation to the organisational requirements laid down in	‘(a) the details of organisational requirements laid down in paragraphs 1 to 6, other than those related to ICT risk management, which are to be imposed on investment firms providing different investment services, investment activities, ancillary services or combinations thereof, whereby the specifications in relation to the organisational requirements laid down in		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
paragraph 5 shall set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;’;	paragraph 5 shall set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;’;		
(4) in Article 19, the following paragraph is added:	(4) in Article 19, the following paragraph is added:	As this article is related to the DLT Pilot Regime any amendments will be discussed at the Working Party on Crypto-assets were the DLT Pilot is being negotiated.	
“3. However, where the investment firm or market operator operates a distributed ledger technology multilateral trading facility (“DLT multilateral trading facility”) as defined in Article 2(3) of Regulation xx/20xx [proposal for a regulation on a pilot regime for DLT market infrastructure], the competent authority may permit that, under its rules governing access as	“3. However, where the investment firm or market operator operates a distributed ledger technology multilateral trading facility (“DLT multilateral trading facility”) as defined in Article 2(3) of Regulation xx/20xx [proposal for a regulation on a pilot regime for DLT market infrastructure], the competent authority may permit that, under its rules governing access as		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
referred to in Article 18(3) and for a maximum of four years, the investment firm or market operator admits natural persons to the DLT multilateral trading facility as members or participants, provided that those persons fulfil the following requirements:	referred to in Article 18(3) and for a maximum of four years, the investment firm or market operator admits natural persons to the DLT multilateral trading facility as members or participants, provided that those persons fulfil the following requirements:		
(a) they must be of sufficient good repute and fit and proper; and	(a) they must be of sufficient good repute and fit and proper; and		
(b) they must have sufficient level of trading ability, competence and experience, including knowledge of trading and the functioning of distributed ledger technology (“DLT”).	(b) they must have sufficient level of trading ability, competence and experience, including knowledge of trading and the functioning of distributed ledger technology (“DLT”).		
Where a competent authority grants the exemption referred to in the first subparagraph, it may impose additional investor protection measures for the protection of natural persons admitted as members or participants to the DLT multilateral trading facility. Such measures shall be proportionate to	Where a competent authority grants the exemption referred to in the first subparagraph, it may impose additional investor protection measures for the protection of natural persons admitted as members or participants to the DLT multilateral trading facility. Such measures shall be proportionate to		



Commission proposal	PCY amendment	PCY comment	MS comment/drafting
the risk profile of the participants or members.”	the risk profile of the participants or members.”		
(5) in Article 47, paragraph 1 is amended as follows:	(5) in Article 47, paragraph 1 is amended as follows:		
(a) point (b) is replaced by the following:	(a) point (b) is replaced by the following:		
‘(b) to be adequately equipped to manage the risks to which it is exposed, including to manage risks to the ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA]*, to implement appropriate arrangements and systems for identifying all significant risks to its operation, and to put in place effective measures to mitigate those risks.’;	‘(b) to be adequately equipped to manage the risks to which it is exposed, including to manage risks to the ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA]*, to implement appropriate arrangements and systems for identifying all significant risks to its operation, and to put in place effective measures to mitigate those risks.’;		
(b) point (c) is deleted;	(b) point (c) is deleted;		
(6) Article 48 is amended as follows:	(6) Article 48 is amended as follows:		
(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
‘1. Member States shall require a regulated market to build its operational resilience in accordance with the requirements laid down in Chapter II of Regulation (EU) 2021/xx [DORA] to ensure its trading systems are resilient, have sufficient capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of severe market stress, are fully tested to ensure such conditions are met and are subject to effective business continuity arrangements to ensure continuity of its services if there is any failure of its trading systems].’;	‘1. Member States shall require a regulated market to build its operational resilience in accordance with the requirements laid down in Chapter II of Regulation (EU) 2021/xx [DORA] to ensure its trading systems are resilient, have sufficient capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of severe market stress, are fully tested to ensure such conditions are met and are subject to effective business continuity arrangements to ensure continuity of its services if there is any failure of its trading systems].’;		
(b) paragraph 6 is replaced by the following:	(b) paragraph 6 is replaced by the following:		
‘6. Member States shall require a regulated market to have in place effective systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such	‘6. Member States shall require a regulated market to have in place effective systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
testing in accordance with the requirements laid down in Chapters II and IV of Regulation (EU) 2021/xx [DORA], to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit and enforce the minimum tick size that may be executed on the market.’;	testing in accordance with the requirements laid down in Chapters II and IV of Regulation (EU) 2021/xx [DORA], to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit and enforce the minimum tick size that may be executed on the market.’;		
(c) paragraph 12 is amended as follows:	(c) paragraph 12 is amended as follows:		
(i) point (a) is replaced by the following	(i) point (a) is replaced by the following		
‘(a) the requirements to ensure trading systems of regulated markets are resilient and have	‘(a) the requirements to ensure trading systems of regulated markets are resilient and have		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
adequate capacity, except the requirements related to digital operational resilience;’;	adequate capacity, except the requirements related to digital operational resilience;’;		
(ii) point (g) is replaced by the following:	(ii) point (g) is replaced by the following:		
‘(g) the requirements to ensure appropriate testing of algorithms, other than digital operational resilience testing, so as to ensure that algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market.’;	‘(g) the requirements to ensure appropriate testing of algorithms, other than digital operational resilience testing, so as to ensure that algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market.’;		
Article 7 Amendments to Directive (EU) 2015/2366	Article 7 Amendments to Directive (EU) 2015/2366		
Directive (EU) 2015/2366 is amended as follows:	Directive (EU) 2015/2366 is amended as follows:		
(7) In Article 5(1), in the third subparagraph, the first sentence is replaced by the following:	(7) In Article 5(1), in the third subparagraph, the first sentence is replaced by the following:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
‘The security control and mitigation measures referred to in point (j) of the first subparagraph shall indicate how they ensure a high level of technical security and data protection, including for the software and IT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations, in accordance with Chapter II of Regulation (EU) 2021/xx of the European Parliament and of the Council * [DORA]. Those measures shall also include the security measures laid down in Article 95(1). Those measures shall take into account EBA’s guidelines on security measures as referred to in Article 95(3) when in place.’;	‘The security control and mitigation measures referred to in point (j) of the first subparagraph shall indicate how they ensure a high level of technical security and data protection, including for the software and IT systems used by the applicant or the undertakings to which it outsources the whole or part of its operations, in accordance with Chapter II of Regulation (EU) 2021/xx of the European Parliament and of the Council * [DORA]. Those measures shall also include the security measures laid down in Article 95(1). Those measures shall take into account EBA’s guidelines on security measures as referred to in Article 95(3) when in place.’;		
* [full title] (OJ L [...], [...], p. [...]).	* [full title] (OJ L [...], [...], p. [...]).		
(8) Article 95 is amended as follows:	(8) Article 95 is amended as follows:		
(a) paragraph 1 is replaced by the following:	(a) paragraph 1 is replaced by the following:		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
‘1. Member States shall ensure that payment service providers establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide and, as part of that framework, payment service providers shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents, while addressing risks to information communication technology in accordance with Chapter II of Regulation (EU) 2021/xx [DORA].’;	<u>‘1. Without prejudice to the application of Chapter II of Regulation (EU) 2021/xx [DORA] for payment service providers referred to in points (a), (b) and (d) of Article 1(1),</u> Member States shall ensure that payment service providers establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide and, as part of that framework, payment service providers shall establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents, <del>while addressing risks to information communication technology in accordance with Chapter II of Regulation (EU) 2021/xx [DORA].’;</del> ’;	Amended in order to make clear that this paragraph applies to all PSPs under PSD2 without prejudice of the application of Chapter II of DORA for PSPs under DORA.	
(b) paragraph 4 is deleted;	(b) <del>paragraph 4 is deleted;</del>	Not deleted since it will still apply to PSPs not covered by DORA.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(c) paragraph 5 is replaced by the following:	(c) <del>paragraph 5 is replaced by the following:</del>		
‘5. EBA shall promote cooperation, including the sharing of information, in the area of operational risks associated with payment services among the competent authorities, and between the competent authorities and the ECB.’;	‘5. <del>EBA shall promote cooperation, including the sharing of information, in the area of operational risks associated with payment services among the competent authorities, and between the competent authorities and the ECB.’;</del>	Not deleted since it will still apply to PSPs not covered by DORA.	
(9) Article 96 is amended as follows:	(9) Article 96 is amended as follows:		
(a) paragraph 1 is replaced by the following:	(a) <del>paragraph 1 is replaced by the following:</del>		
‘1. In case of a major operational or security incident that is not an ICT-related incident as defined in Article 3(6) of Regulation (EU) xx/20xx [DORA], the payment service provider shall, without undue delay, notify the competent authority in its home Member State.’;	‘1. <del>In case of a major operational or security incident that is not an ICT-related incident as defined in Article 3(6) of Regulation (EU) xx/20xx [DORA], the payment service provider shall, without undue delay, notify the competent authority in its home Member State.’;</del>	Deleted in order to allow the inclusion of PSD2 reporting in DORA for entities subject to both legal acts, as preferred by the majority of MS.	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
(b) paragraph 5 is deleted;	(b) <del>paragraph 5 is deleted;</del>	Not deleted since it will still apply to PSPs not covered by DORA.	
	<u>(NEW) (ba) paragraph 6a is added as follows:</u>		
	<u>(NEW) 6a. Payment services providers referred to in points (a), (b) and (d) of Article 1 (1) shall be exempted from the application of paragraphs 1 to 5 of this Article.</u>	Added in order to allow the inclusion of PSD2 reporting in DORA for entities subject to both legal acts, as preferred by the majority of MS. A recital may refer that these entities should comply with Chapter III of DORA instead.	
(10) in Article 98, paragraph 5 is replaced by the following:	(10) in Article 98, paragraph 5 is replaced by the following:		
‘5. In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and, if appropriate, update the regulatory technical standards on a regular basis in order, inter alia, to take account of innovation and technological developments, and of the provisions of Chapter II of	‘5. In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and, if appropriate, update the regulatory technical standards on a regular basis in order, inter alia, to take account of innovation and technological developments, and of the provisions of Chapter II of		



Commission proposal	PCY amendment	PCY comment	MS comment/drafting
Regulation (EU) 2021/xx [DORA].’.	Regulation (EU) 2021/xx [DORA].’.		
Article 8 Amendment to Directive (EU) 2016/2341	Article 8 Amendment to Directive (EU) 2016/2341		
In Article 21(5) of Directive (EU) 2016/2341, the second sentence is replaced by the following:	In Article 21(5) of Directive (EU) 2016/2341, the second sentence is replaced by the following:		
‘To that end, IORPs shall employ appropriate and proportionate systems, resources and procedures and shall set up ICT systems and tools and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA].	‘To that end, IORPs shall employ appropriate and proportionate systems, resources and procedures and shall set up ICT systems and tools and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA].		
* [full title] (OJ L [...], [...], p. [...]).’.	* [full title] (OJ L [...], [...], p. [...]).’.		
Article 9 <i>Transposition</i>	Article 9 <i>Transposition</i>		
1. Member States shall adopt and publish, by [one year after	1. Member States shall adopt and publish, by <del>one year</del> <b>18 or</b>	To be aligned with the outcome of the discussion “1.Entry into Force	

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	<b>24  months</b> after adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	and application of DORA (Article 56)” presented in the wk04527.en21.	
They shall apply those provisions from [date of entry into force of DORA/its date of application, if different].	They shall apply those provisions from [date of entry into force of DORA/its date of application, if different].		
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.	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.	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 10 <i>Entry into force</i>	Article 10 <i>Entry into force</i>		

Commission proposal	PCY amendment	PCY comment	MS comment/drafting
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .		
Article 11 <i>Addressees</i>	Article 11 <i>Addressees</i>		
This Directive is addressed to the Member States.	This Directive is addressed to the Member States.		
Done at Brussels,	Done at Brussels,		
For the European Parliament For the Council	For the European Parliament For the Council		
The President The President	The President The President		
<b>End</b>	<b>End</b>	End	<b>End</b>



Council of the European Union  
General Secretariat

Brussels, 14 April 2021

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**Interinstitutional files:**

2020/0268(COD)

2020/0266(COD)

2020/0265(COD)

2020/0267(COD)

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**WORKING PAPER**

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From:	Presidency
To:	Working Party on Financial Services (Digital Operational Resilience)
Subject:	Amending directive accompanying Dora and Crypto proposals – Presidency compromise proposal I

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