**European Parliament**
2014-2019

*Committee on Economic and Monetary Affairs*

**2017/0359(COD)**

11.4.2018

# ***I
# DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010 (COM(2017)0790 – C8-0453/2017 – 2017/0359 (COD))

Committee on Economic and Monetary Affairs

Rapporteur: Markus Ferber

## *Symbols for procedures*

| | |
|---|---|
| * | Consultation procedure |
| *** | Consent procedure |
| ***I | Ordinary legislative procedure (first reading) |
| ***II | Ordinary legislative procedure (second reading) |
| ***III | Ordinary legislative procedure (third reading) |

(The type of procedure depends on the legal basis proposed by the draft act.)

## *Amendments to a draft act*

**Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

**Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010**
**(COM(2017)0790 – C8-0453/2017 – 2017/0359(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament*,

– having regard to the Commission proposal to Parliament and the Council (COM(2017)0790),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0453/2017),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Central Bank of ...[1],

– having regard to the opinion of the European Economic and Social Committee of ...[2],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Amendment 1**

**Proposal for a regulation**
**Recital 14**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (14) In order to ensure a simple application of the minimum capital requirement for small and non- | (14) In order to ensure a simple application of the minimum capital requirement for small and non- |

[1] [OJ C 0, 0.0.0000, p. 0. / Not yet published in the Official Journal].
[2] [OJ C 0, 0.0.0000, p. 0. / Not yet published in the Official Journal].

| | |
|---|---|
| interconnected investment firms, they should have capital equal to the higher of their permanent minimum capital requirement or a quarter of their fixed overheads measured on the basis of their activity of the preceding year in accordance with Commission Delegated Regulation (EU) 2015/488[29] . | interconnected investment firms, they should have capital equal to the higher of their permanent minimum capital requirement or a quarter of their fixed overheads measured on the basis of their activity of the preceding year in accordance with Commission Delegated Regulation (EU) 2015/488[29]. ***Small and non-interconnected investment firms that prefer to exercise further regulatory caution and avoid reclassification should not be prevented from holding own funds in excess of, or applying measures stricter than, those required by this Regulation.*** |
| [29] Commission Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads (OJ L 78, 24.3.2015, p. 1 | [29] Commission Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads (OJ L 78, 24.3.2015, p. 1 |

Or. en

*Justification*

*This recital explains the objective of Article 3 to ensure that firms at the cliff edge between class 3 and class 2 can have regulatory certainty by complying upfront with requirements applicable to class 2.*

**Amendment 2**

**Proposal for a regulation**
**Recital 16**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (16) Investment firms should be considered small and non-interconnected for the purposes of the specific prudential requirements for investment firms where they do not conduct investment services which carry a high risk for clients, markets or themselves and whose size means they are less likely to cause widespread negative impacts for clients and markets in case | (16) Investment firms should be considered small and non-interconnected for the purposes of the specific prudential requirements for investment firms where they do not conduct investment services which carry a high risk for clients, markets or themselves and whose size means they are less likely to cause widespread negative impacts for clients and markets in case |

| | |
|---|---|
| risks inherent in their business materialise or in case they fail. Accordingly, small and non-interconnected investment firms should be defined as those that do not deal on own account or incur risk from trading financial instruments, have ***no*** client assets or money under their control, have assets under ***both*** discretionary portfolio management ***and non-discretionary (advisory) arrangements*** of less than EUR 1.2 billion, handle fewer than EUR 100 million per day of client orders in cash trades or EUR 1 billion per day in derivatives, and have a balance sheet smaller than EUR 100 million and total gross annual revenues from the performance of their investment services of less than EUR 30 million. | risks inherent in their business materialise or in case they fail. Accordingly, small and non-interconnected investment firms should be defined as those that do not deal on own account or incur risk from trading financial instruments, have ***limited*** client assets or money under their control, have assets under discretionary portfolio management of less than EUR 1.2 billion, handle fewer than EUR 100 million per day of client orders in cash trades or EUR 1 billion per day in derivatives, and have a balance sheet smaller than EUR 100 million and total gross annual revenues from the performance of their investment services of less than EUR 30 million. |

Or. en

*Justification*

*1) The zero threshold for ASA and CMH is too restrictive. It should be possible for class 3 firms to hold some client money or safeguard or administer assets for a low amount.*

*2) The risks posed by advice activities are not clearly apprehended yet. Incorporating this risk under the risk related to Asset Under Management may ultimately undermine the measurement of the risk related to asset under management. It is therefore appropriate to carve it out at this stage.*

**Amendment 3**

**Proposal for a regulation**
**Recital 19**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (19) All investment firms should calculate their capital requirement with reference to a set of K-factors which capture Risk-To-Customer ('RtC'), Risk-to-Market ('RtM') and Risk-to-Firm ('RtF'). The K-factors under RtC capture client assets under management ***and ongoing advice*** (K-AUM), assets safeguarded and administered (K-ASA), | (19) All investment firms should calculate their capital requirement with reference to a set of K-factors which capture Risk-To-Customer ('RtC'), Risk-to-Market ('RtM') and Risk-to-Firm ('RtF'). The K-factors under RtC capture client assets under management (K-AUM), assets safeguarded and administered (K-ASA), client money held (K-CMH), and |

| | |
|---|---|
| client money held (K-CMH), and customer orders handled (K-COH). | customer orders handled (K-COH). |

Or. en

*Justification*

*The risks posed by advice activities are not clearly apprehended yet. Incorporating this risk under the risk related to Asset Under Management may ultimately undermine the measurement of the risk related to asset under management. It is therefore appropriate to carve it out at this stage.*

**Amendment 4**

**Proposal for a regulation**
**Recital 22**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (22) The overall capital requirement under the K-factors is the sum of the requirements of the K-factors under RtC, RtM and RtF. K-AUM, K-ASA, K-CMH, K-COH and K-DTF relate to the volume of activity referred to by each K-factor. The volumes for ***K-CMH,*** K-ASA, K-COH, and K-DTF are calculated on the basis of a rolling average from the previous three months, while for K-AUM it is based on the previous year. The volumes are multiplied by the corresponding coefficients set out in this Regulation in order to determine the capital requirement. The capital requirements for K-NPR is derived from CRR, while the capital requirements for K-CON and K-TCD use a simplified application of the corresponding requirements under CRR for, respectively, the treatment of large exposures in the trading book and of counterparty credit risk. The amount of a K-factor is zero if a firm does not undertake the relevant activity. | (22) The overall capital requirement under the K-factors is the sum of the requirements of the K-factors under RtC, RtM and RtF. K-AUM, K-ASA, K-CMH, K-COH and K-DTF relate to the volume of activity referred to by each K-factor. The ***volume for K-CMH is calculated on the basis of a rolling average from the previous 12 months. The*** volumes for K-ASA, K-COH, and K-DTF are calculated on the basis of a rolling average from the previous three months, while for K-AUM it is based on the previous year. The volumes are multiplied by the corresponding coefficients set out in this Regulation in order to determine the capital requirement. The capital requirements for K-NPR is derived from CRR, while the capital requirements for K-CON and K-TCD use a simplified application of the corresponding requirements under CRR for, respectively, the treatment of large exposures in the trading book and of counterparty credit risk. The amount of a K-factor is zero if a firm does not undertake the relevant activity. |

Or. en

*Justification*

*The period of calculation should be extended to 12 months to avoid that the measurement of the client money held factor is too responsive to artificial and temporary spikes.*

**Amendment 5**

**Proposal for a regulation**
**Recital 23**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (23) The K-factors under RtC are proxies covering the business areas of investment firms from which harm to clients can conceivably be generated in case of problems. K-AUM captures the risk of harm to clients from an incorrect discretionary management of customer portfolios or poor execution and provides reassurance and customer benefits in terms of the continuity of service of ongoing portfolio management ***and advice***. K-ASA captures the risk of safeguarding and administering customer assets, and ensures that investment firms hold capital in proportion to such balances, regardless of whether they are on its own balance sheet or segregated in other accounts. K-CMH captures the risk of potential for harm where an investment firm holds the money of its customers, ***regardless of*** whether they are on its own balance sheet or segregated in other accounts. K-COH captures the potential risk to clients of a firm which executes its orders (in the name of the client, and not in the name of the firm itself), for example as part of execution-only services to clients or when a firm is part of a chain for client orders. | (23) The K-factors under RtC are proxies covering the business areas of investment firms from which harm to clients can conceivably be generated in case of problems. K-AUM captures the risk of harm to clients from an incorrect discretionary management of customer portfolios or poor execution and provides reassurance and customer benefits in terms of the continuity of service of ongoing portfolio management. K-ASA captures the risk of safeguarding and administering customer assets, and ensures that investment firms hold capital in proportion to such balances, regardless of whether they are on its own balance sheet or segregated in other accounts. K-CMH captures the risk of potential for harm where an investment firm holds the money of its customers, ***taking into account*** whether they are on its own balance sheet or segregated in other accounts. K-COH captures the potential risk to clients of a firm which executes its orders (in the name of the client, and not in the name of the firm itself), for example as part of execution-only services to clients or when a firm is part of a chain for client orders. |

Or. en

*Justification*

*1) The risks posed by advice activities are not clearly apprehended yet. Incorporating this risk under the risk related to Asset Under Management may ultimately undermine the*

*measurement of the risk related to asset under management. It is therefore appropriate to carve it out at this stage.*

*2) The K-Factor shall precisely reflect the actual risks. For example in view of insolvency, segregated money does not bear the same risk as non-segregated money.*

**Amendment 6**

**Proposal for a regulation**
**Article 4 – paragraph 1 – point 25**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (25) 'K-AUM' or 'K-factor in relation to assets under management (AUM)' means the capital requirement relative to the value of assets that an investment firm manages for its clients under ***both*** discretionary portfolio management ***and non-discretionary arrangements constituting investment advice***, including assets delegated to another undertaking and excluding assets that another undertaking has delegated to the investment firm; | (25) 'K-AUM' or 'K-factor in relation to assets under management (AUM)' means the capital requirement relative to the value of assets that an investment firm manages for its clients under discretionary portfolio management, including assets delegated to another undertaking and excluding assets that another undertaking has delegated to the investment firm; |

Or. en

*Justification*

*The risks posed by advice activities are not clearly apprehended yet. Incorporating this risk under the risk related to Asset Under Management may ultimately undermine the measurement of the risk related to asset under management. It is therefore appropriate to carve it out at this stage.*

**Amendment 7**

**Proposal for a regulation**
**Article 4 – paragraph 1 – point 26**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (26) 'K-CMH' or 'K-factor in relation to client money held (CMH)' means the capital requirement relative to the amount of client money that an investment firm holds ***or controls, regardless of any*** legal arrangements in relation to asset | (26) 'K-CMH' or 'K-factor in relation to client money held (CMH)' means the capital requirement relative to the amount of client money that an investment firm holds***, taking into account the*** legal arrangements in relation to asset |

| | |
|---|---|
| segregation and ***irrespective of*** the national accounting regime applicable to client money held by the investment firm; | segregation and the national accounting regime applicable to client money held by the investment firm; |

Or. en

*Justification*

*1) Client money parked at a bank should not count towards the K-CMH definition.*

*2) The K-Factor shall precisely reflect the actual risks. For example in view of insolvency, segregated money does not bear the same risk as non-segregated money. The concept of "segregated accounts" diverges between Member States and needs to be commonly defined in order to ensure a common calculation of the K-CMH. This could be done in accordance with Article 4(2) of the Proposal, which empowers the Commission to adopt delegated acts "in order to clarify the definition set out in paragraph 1 to ensure uniform application of this Regulation".*

**Amendment 8**

**Proposal for a regulation**
**Article 4 – paragraph 1 – point 31**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (31) 'K-DTF' or 'K-factor in relation to daily trading flow (DTF)' means the capital requirement relative to the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its own name; | (31) 'K-DTF' or 'K-factor in relation to daily trading flow (DTF)' means the capital requirement relative to the daily value of transactions that an investment firm enters through dealing on own account or the execution of orders on behalf of clients in its own name***, excluding the value of orders that an investment firm handles for clients through the reception and transmission of client orders and through the execution of orders on behalf of clients as already reflected in COH***; |

Or. en

*Justification*

*To avoid duplication, it should be clear that K-DTF does not include K-COH.*

**Amendment 9**

**Proposal for a regulation**
**Article 9 – paragraph 3 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***3a. By way of derogation from paragraphs 1, 2 and 3 of this Article, competent authorities may allow investment firms that meet the conditions set out in Article 12(1) to fulfil own funds requirement with eligible instruments other than those listed in Regulation (EU) No 575/2013.*** |

Or. en

*Justification*

*Competent authorities should be able to allow class 3 firms to use different instruments than those listed in CRR to fulfil their own funds requirements. CRR requirements might be quite burdensome for certain types of legal business entities (such as partnerships).*

**Amendment 10**

**Proposal for a regulation**
**Article 12 – paragraph 1 – subparagraph 1 – point c**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (c) ASA (or assets safeguarded and administered) calculated in accordance with Article 19 is ***zero***; | (c) ASA (or assets safeguarded and administered) calculated in accordance with Article 19 is ***EUR 100 million***; |

Or. en

*Justification*

*The zero threshold for ASA and CMH is too restrictive. It should be possible for class 3 firms to hold some client money or safeguard or administer assets for a low amount. In order to mitigate the risks, the amounts suggested are fairly prudent and well below the 90th percentile (the assumption being, as per EBA, that a high percentile will be a good approximation to capture those investment firms that can have a greater impact on customers and markets).*

**Amendment 11**

**Proposal for a regulation**
**Article 12 – paragraph 1 – subparagraph 1 – point d**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (d) CMH (or client money held) calculated in accordance with Article 18 is ***zero***; | (d) CMH (or client money held) calculated in accordance with Article 18 is ***EUR 10 million***; |

Or. en

*Justification*

*The zero threshold for ASA and CMH is too restrictive. It should be possible for class 3 firms to hold some client money or safeguard or administer assets for a low amount. In order to mitigate the risks, the amounts suggested are fairly prudent and well below the 90th percentile (the assumption being, as per EBA, that a high percentile will be a good approximation to capture those investment firms that can have a greater impact on customers and markets).*

**Amendment 12**

**Proposal for a regulation**
**Article 12 – paragraph 2 – subparagraph 3**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| ***Where an investment firm no longer meets all the conditions set out in paragraph 1, it shall not be considered a small and non-interconnected investment firm with immediate effect.*** | ***deleted*** |

Or. en

**Amendment 13**

**Proposal for a regulation**
**Article 12 – paragraph 2 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***2a. For the purposes of points (a) to (d) of paragraph 1, an investment firm*** |

***shall not be considered to be a small and non-interconnected investment firm in the event that the investment firm exceeds, on an average rolling basis, the applicable threshold during the preceding 24 month period.***

Or. en

*Justification*

*It is important to offer clarity and predictability to firms on the cliff edge between class 2 and 3. Therefore, it is necessary to clarify between different situations:*

*- where the threshold is 0, class 3 firms should move to class 2 only 3 months after the 0 threshold is exceeded, so as to give sufficient time to adapt to the class 2 requirements.*

*- where the threshold is above 0 and is measured on a permanent basis, class 3 firms should move to class 2 only after a period of 24 months during which the thresholds have been exceeded on average.*

*- where the threshold is above 0 and is measured on an annual basis, class 3 firms should move to class 2 only after the thresholds have been exceeded two years consecutively.*

**Amendment 14**

**Proposal for a regulation**
**Article 12 – paragraph 2 b (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***2b. For the purposes of points (e), (f) and (g) of paragraph 1, an investment firm shall not be considered to be a small and non-interconnected investment firm after a period of three months from the date on which the threshold was not met.*** |

Or. en

*Justification*

*It is important to offer clarity and predictability to firms on the cliff edge between class 2 and 3. Therefore, it is necessary to clarify between different situations:*

*- where the threshold is 0, class 3 firms should move to class 2 only 3 months after the 0 threshold is exceeded, so as to give sufficient time to adapt to the class 2 requirements.*

*- where the threshold is above 0 and is measured on a permanent basis, class 3 firms should move to class 2 only after a period of 24 months during which the thresholds have been exceeded on average.*

*- where the threshold is above 0 and is measured on an annual basis, class 3 firms should move to class 2 only after the thresholds have been exceeded two years consecutively.*

**Amendment 15**

**Proposal for a regulation**
**Article 12 – paragraph 3**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 3. ***Where an investment firm no longer meets the conditions set out in*** points ***(a) or (b)*** of paragraph 1 ***but continues to meet the conditions set out in points (c) to (i) of paragraph 1, it*** shall not be considered a small and non-interconnected investment firm after ***a period of 3 months, calculated from the date when the*** threshold has been exceeded. | 3. ***For the purposes of*** points ***(h) and*** (i) of paragraph 1, ***an investment firm*** shall not be considered ***to be*** a small and non-interconnected investment firm ***in the event that the relevant*** threshold ***is*** exceeded ***for two consecutive years***. |

Or. en

*Justification*

*It is important to offer clarity and predictability to firms on the cliff edge between class 2 and 3. Therefore, it is necessary to clarify between different situations:*

*- where the threshold is 0, class 3 firms should move to class 2 only 3 months after the 0 threshold is exceeded, so as to give sufficient time to adapt to the class 2 requirements.*

*- where the threshold is above 0 and is measured on a permanent basis, class 3 firms should move to class 2 only after a period of 24 months during which the thresholds have been exceeded on average.*

*- where the threshold is above 0 and is measured on an annual basis, class 3 firms should move to class 2 only after the thresholds have been exceeded two years consecutively.*

**Amendment 16**

**Proposal for a regulation**
**Article 12 – paragraph 5**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| ***5. In order to take account of developments in financial markets, the Commission shall be empowered to adopt delegated acts in accordance with Article 54 in order to adjust the conditions for investment firms to qualify as small and non-interconnected firms in accordance with this Article.*** | ***deleted*** |

Or. en

*Justification*

*Any modification of the conditions for investment firms to qualify as small and non-interconnected should be adopted via the ordinary legislative procedure, and not via a delegated act. This is consistent with the Commission proposal itself, which lists these conditions as a topic for review in Article 59 (1) (a).*

**Amendment 17**

**Proposal for a regulation**
**Article 15 – paragraph 2 – table 1 – column K-Factors – first cell**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| Assets under management under ***both*** discretionary portfolio management ***and non-discretionary (advisory) arrangements*** | Assets under management under discretionary portfolio management |

Or. en

*Justification*

*The risks posed by advice activities are not clearly apprehended yet. Incorporating this risk under the risk related to Asset Under Management may ultimately undermine the measurement of the risk related to asset under management. It is therefore appropriate to carve it out at this stage.*

**Amendment 18**

**Proposal for a regulation**
**Article 15 – paragraph 2 – table 1 – second row Client money held**

| *Text proposed by the Commission* | | *Amendment* | |
|---|---|---|---|
| K-CMH | 0.45% | K-CMH ***(on segregated accounts)*** | ***0.2%*** |
| | | ***K-CMH (on non-segregated accounts)*** | 0.45% |

Or. en

*Justification*

*The K-Factor shall precisely reflect the actual risks. For example in view of insolvency, segregated money does not bear the same risk as non-segregated money. This should be reflected in the coefficient.*

**Amendment 19**

**Proposal for a regulation**
**Article 18 – paragraph 1 – subparagraph 1**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| For the purposes of calculating K-CMH, CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous ***3*** calendar months. | For the purposes of calculating K-CMH, CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous ***12*** calendar months. |

Or. en

*Justification*

*The period of calculation should be extended to 12 months to avoid that the measurement of the Client Money Held factor is too responsive to artificial and temporary spikes.*

**Amendment 20**

**Proposal for a regulation**
**Article 18 – paragraph 1 – subparagraph 2**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| CMH shall be the average or simple arithmetic mean of the daily measurements in the ***3*** calendar months. | CMH shall be the average or simple arithmetic mean of the daily measurements in the ***12*** calendar months. |

Or. en

*Justification*

*The period of calculation should be extended to 12 months to avoid that the measurement of the client money held factor is too responsive to artificial and temporary spikes.*

**Amendment 21**

**Proposal for a regulation**
**Article 18 – paragraph 2 – introductory part**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 2. Where an investment firm has been holding client money for less than ***3*** months, it may use business projections to calculate K-CMH, subject to the following cumulative requirements: | 2. Where an investment firm has been holding client money for less than ***12*** months, it may use business projections to calculate K-CMH, subject to the following cumulative requirements: |

Or. en

*Justification*

*The period of calculation should be extended to 12 months to avoid that the measurement of the client money held factor is too responsive to artificial and temporary spikes.*

**Amendment 22**

**Proposal for a regulation**
**Article 32 – paragraph 1 – subparagraph 2**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| DTF shall be the average or simple arithmetic mean of the daily measurements for the remaining 3 calendar months | DTF shall be the average or simple arithmetic mean of the daily measurements for the remaining 3 calendar months***, excluding the five days with the lowest trading flow and the five days with the highest trading flow.*** |

Or. en

*Justification*

*This exclusion is necessary to smooth out the calculation of the K-DTF.*

**Amendment 23**

**Proposal for a regulation**
**Article 42 – paragraph 1 – subparagraph 2 – point a**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (a) the assets referred to in Articles 10 to 13 of Commission Delegated Regulation (EU) 2015/61; | (a) the assets referred to in Articles 10 to 13***, and 15*** of Commission Delegated Regulation (EU) 2015/61; |

Or. en

*Justification*

*Article 15 of Commission Delegated Regulation (EU) 2015/61 also defines shares in certain collective investment undertakings as liquid assets eligible for the liquidity coverage ratio. This should be reflected in this article.*

**Amendment 24**

**Proposal for a regulation**
**Article 51 – paragraph 1 – point b**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| ***(b) the ratios between fixed and variable remuneration set in accordance with Article 28(2) of Directive (EU) ----/-- [IFD];*** | ***deleted*** |

Or. en

*Justification*

*In line with the policy understanding that non-systemic investment firms have a different risk profile than banks, investment firms should not be obliged to set a ratio between the variable and fixed element of remuneration.*

**Amendment 25**

**Proposal for a regulation**
**Article 51 – paragraph 2 a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***EBA, in cooperation with ESMA, shall issue guidelines to ensure consistent application of this Article and ensure that investment firms are not required to comply with any diverging or overlapping disclosure requirements contained in Union law.*** |

Or. en

*Justification*

*There is currently a lack of legal certainty on whether firms are subject to one or several regimes (AIFMD, UCITS, MIFID) for the disclosure of remuneration. Ultimately, it should be clear that firms should not be subject to several regimes and shall have the possibility to comply once for all to the strictest regime.*

**Amendment 26**

**Proposal for a regulation**
**Article 59 – paragraph 1 – point b a (new)**

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***(ba) the inclusion of a dedicated K-factor for advice activities;*** |

Or. en

*Justification*

*The risks posed by advice activities are not clearly apprehended yet. It is therefore appropriate to carve it out at this stage and ask the Commission to include this element in its review of the application of the Regulation.*

**Amendment 27**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point -1 (new)**

Regulation (EU) No 600/2014
Article 17 a (new)

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***(-1) The following new Article 17a is inserted:*** |
| | ***"Article 17a*** |
| | ***Tick sizes*** |
| | ***Systematic internalisers' quotes, and price improvements on those quotes, shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU."*** |

Or. en

*Justification*

*In order to ensure a level playing field and promote a transparent European market structure, systematic internalisers should be subject to the tick size regime when dealing in all sizes.*

**Amendment 28**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 1 – point -a (new)**
Regulation (EU) No 600/2014
Article 46 – paragraph 1

| *Present text* | *Amendment* |
|---|---|
| | ***(-a) paragraph 1 is replaced by the following:*** |
| "1. A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47." | "1. A third-country firm may provide investment services or perform investment activities ***listed in points (1), (2), (4), (5), (7), (8) or (9) of Section A of Annex I to Directive 2014/65/EU*** with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with |

Article 47."

Or. en

*(https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014R0600-20160701&qid=1523373825902&from=EN)*

*Justification*

*Typical banking services such as "dealing on own account in financial instruments" or "underwriting financial instruments or placing financial instruments on a firm commitment basis" should not be subject to an equivalence decision. This would potentially put third country investment firms in a more favourable situation than EU banks to provide bank services to EU professional clients. Moreover, the nature of the activities carried out by investments firms does not require complex infrastructure. It therefore does not make it too burdensome for third country firms to move these activities in the EU if necessary.*

**Amendment 29**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point a**
Regulation (EU) No 600/2014
Article 47 – paragraph 1 –subparagraph 1 – introductory part

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| The Commission may adopt a decision in accordance with the ***examination*** procedure referred to in Article ***51(2)*** in relation to a third country stating that the legal and supervisory arrangements of that third country ensure all of the following: | The Commission may adopt a decision in accordance with the procedure referred to in Article ***50*** in relation to a third country stating that the legal and supervisory arrangements of that third country ensure all of the following: |

Or. en

*Justification*

*The process for granting equivalence to a third country in the area of financial services should always be scrutinised by the European Parliament. Owing to their political nature, and for the purposes of greater transparency, these decisions should be taken by means of delegated acts.*

**Amendment 30**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point a**

Regulation (EU) No 600/2014
Article 47 – paragraph 1 – subparagraph 1 – point a

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (a) that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU, in Regulation (EU) No 575/2013, in Directive (EU) ----/--[IFD] and in Regulation (EU)----/---[IFR] and in Directive 2014/65/EU and in the implementing measures adopted under those Regulations and Directives; | (a) that firms authorised in that third country comply with legally binding prudential***, organisational, internal control*** and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in Directive 2013/36/EU, in Regulation (EU) No 575/2013, in Directive (EU) ----/--[IFD] and in Regulation (EU)----/---[IFR] and in Directive 2014/65/EU and in the implementing measures adopted under those Regulations and Directives; |

Or. en

*Justification*

*It is necessary to extend the scope of requirements third country firms have to comply with. Equivalence should be based on the full spectrum of requirements applicable to investment firms in the EU, and not only selected ones.*

**Amendment 31**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point a**
Regulation (EU) No 600/2014
Article 47 – paragraph 1 – subparagraph 1 – point b

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| (b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential and business conduct requirements; and | (b) that firms authorised in that third country are subject to effective supervision and enforcement ensuring compliance with the applicable legally binding prudential**,** ***organisational, internal control*** and business conduct requirements; and |

Or. en

**Amendment 32**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point a**
Regulation (EU) No 600/2014
Article 47 – paragraph 1 – subparagraph 1 – subparagraph 2

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| Where the services provided and the activities performed by third-country firms in the Union following the adoption of the decision referred to in the first subparagraph are likely to be of systemic importance for the Union, the ***legally binding prudential and business conduct*** requirements referred to in the first subparagraph may only be considered to have equivalent effect to the requirements set out in the acts referred to in that subparagraph after a detailed and granular assessment. ***For these purposes,*** the Commission shall ***also*** assess and take into account the supervisory convergence between the third country concerned and the Union. | Where the services provided and the activities performed by third-country firms in the Union following the adoption of the decision referred to in the first subparagraph are likely to be of systemic importance for the Union, the requirements referred to in the first subparagraph may only be considered to have equivalent effect to the requirements set out in the acts referred to in that subparagraph after a detailed and granular assessment. The Commission shall assess and take into account the supervisory convergence between the third country concerned and the Union. |

Or. en

**Amendment 33**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point a**
Regulation (EU) No 600/2014
Article 47 – paragraph 1 – subparagraph 1 – subparagraph 3 a (new)

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***The Commission is empowered to adopt delegated acts in accordance with Article 50 clarifying the conditions that the provision of services or performance of activities are required to fulfil in order to be considered as likely to be of systemic importance for the Union.*** |

Or. en

*Justification*

*The concept of "likely to be of systemic importance for the EU" is too vague and needs at a minimum to be further clarified in a delegated act.*

**Amendment 34**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point b a (new)**
Regulation (EU) No 600/2014
Article 47 – paragraph 4

| *Present text* | *Amendment* |
|---|---|
| | ***(ba) paragraph 4 is replaced by the following:*** |
| "4. A third-country firm may no longer use the rights under Article 46(1) where the Commission adopts a decision in accordance with the ***examination*** procedure referred to in Article ***51(2)*** withdrawing its decision under paragraph 1 of this Article in relation to that third country." | "4. A third-country firm may no longer use the rights under Article 46(1) where the Commission adopts a decision in accordance with the procedure referred to in Article ***50*** withdrawing its decision under paragraph 1 of this Article in relation to that third country." |

Or. en

*(https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014R0600-20160701&qid=1523373825902&from=EN)*

*Justification*

*Parallelism with the form to grant an equivalence decision is needed. Hence, the withdrawal of the Commission equivalence decision should also be done via delegated act, and not implementing act.*

**Amendment 35**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point c**
Regulation (EU) No 600/2014
Article 47 – paragraph 5

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| 5. ESMA shall monitor the regulatory and supervisory developments, the | 5. ESMA shall monitor the regulatory and supervisory developments, the |

| | |
|---|---|
| enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to paragraph 1 in order to verify whether the conditions on the basis of which those decisions have been taken are still fulfilled. The Authority shall submit a ***confidential*** report on its findings to the Commission on an annual basis.''. | enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission pursuant to paragraph 1 in order to verify whether the conditions on the basis of which those decisions have been taken are still fulfilled. The Authority shall submit a report on its findings to the Commission***, the European Parliament and the Council*** on an annual basis.''. |

Or. en

*Justification*

*This report is an important piece of information and should neither be confidential nor delivered to the Commission only.*

**Amendment 36**

**Proposal for a regulation**
**Article 61 – paragraph 1 – point 2 – point c a (new)**
Regulation (EU) No 600/2014
Article 47 – paragraph 5 a (new)

| *Text proposed by the Commission* | *Amendment* |
|---|---|
| | ***(ca) the following paragraph is added:*** |
| | ***"5a. The Commission shall regularly review the decisions adopted pursuant to paragraph 1 of this Article and, where appropriate, withdraw a decision in accordance with the procedure referred to in Article 50.*** |
| | ***For the purpose of the first subparagraph, the Commission shall in particular take into account the report referred to in paragraph 5 of this Article."*** |

Or. en

*Justification*

*It is necessary to foresee a follow-up action to the ESMA report by the European Commission. Otherwise, the added value of such a report is doubtful.*

## EXPLANATORY STATEMENT

### Introduction

The Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD IV) currently provide the prudential regime for both credit institutions and investment firms. The CRR requires the review of this regime for investment firms.

The Investments Firms Package -- composed of one proposal for a Directive on prudential supervision of investment firms and one proposal for a Regulation on prudential requirements of investment firms -- was designed with the assumption that this prudential regime is more designed for risk of credit institutions and does not take sufficiently into account the different business profiles and risks of investment firms.

Therefore, the proposals aim to differentiate the prudential regime according to the size, nature and complexity of investment firms:

- The largest and most systemic investment firms would remain under the prudential and supervisory regime of banks as set out in the CRR/CRD. This would be achieved by treating these large and systemic investment firms as credit institutions.

- All other investment firms in the EU would no longer be subject to CRR/CRD rules but would enjoy a new bespoke regime with dedicated prudential and supervisory requirements.

### Position of the rapporteur

Overall, the Rapporteur broadly supports the above-mentioned objectives pursued in these two proposals to create a dedicated, tailor-made, regime for investment firms in the EU. In particular, the Rapporteur supports the path used to achieve this objective, i.e. to treat large and systemic investment firms as credit institutions. More specifically, the rapporteur broadly supports the policy choices made in the Directive (including rules for prudential supervision of investment firms by the competent authorities, initial capital, and internal capital adequacy) and, to a less extent, the Regulation.

Nevertheless, the Rapporteur believes that a number of changes are necessary to improve the proposals. The threefold need to increase regulatory certainty, introduce more flexibility, and provide a fair level playing field towards third-country firms, underpin the changes suggested.

In broad lines, the rapporteur suggests the following changes:

- Own funds requirements: Competent authorities should be able to allow class 3 firms to use different instruments than those listed in CRR to fulfil their own funds requirements. CRR requirements might be burdensome for certain types of legal business entities (such as partnerships).

- Movements between Class 2 and Class 3: It is crucial that the movements between Class 2 and Class 3 happen as easily as possible for investment firms. A number of changes increase the possibility for the firms have sufficient clarity and time to adapt to new requirements where applicable.

- Capital and liquidity requirements and K Factors: a revised and clarified definition of certain activities ensures that the risks covered correspond to the fullest extent possible to the actual risks. Moreover, a number of suggested changes smoothen the calculation of K-Factors.

- Reporting, governance and remuneration: Rules on reporting, governance and remuneration are significantly simplified. These rules create too much burden for firms and are not justified in light of the nature of the firms concerned.

- Third-country regime and equivalence: As it stands, the proposal does not sufficiently address this important issue for EU investment firms. The draft report aims at ensuring a more robust and adapted equivalence regime, avoiding that EU banks be potentially placed in a less favourable position than third country investment firms. Such a policy choice is also justified because the activities of investment firms do not require complex infrastructure. Third country investment firms willing to provide all services (including bank-like services) in the EU can set up their activities in the EU without significant harm.

Further clarifications strengthen the equivalence assessment. Finally, the draft report insists that the equivalence decision shall be granted and withdrawn in accordance with the procedure of delegated act. It is necessary to ensure that the European Parliament has a say on these important decisions.