



2017/0358(COD)

12.7.2018

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council
on the prudential supervision of investment firms and amending Directives
2013/36/EU and 2014/65/EU
(COM(2017)0791 – C8-0452/2017 – 2017/0358(COD))

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PA_Legam

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of investment firms. The specific vulnerabilities and risks inherent to investment firms should therefore be further addressed by means of appropriate and proportionate prudential arrangements at Union level.

Amendment

(2) The existing prudential regimes under Regulation (EU) No 575/2013 and Directive 2013/36/EU are largely based on successive iterations of the international regulatory standards set for large banking groups by the Basel Committee on Banking Supervision and only partially address the specific risks inherent to the diverse activities of investment firms. The specific vulnerabilities and risks inherent to investment firms should therefore be further addressed by means of ***effective, appropriate and proportionate prudential arrangements at Union level, helping to provide a level playing field across the EU and guaranteeing effective prudential supervision, while keeping compliance costs in check and ensuring sufficient capital for the risks of most investment firms.***

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Sound prudential supervision should ensure that investment firms are managed in an orderly way and in the best interests of their clients. They should take into account the potential for investment firms and their clients to engage in excessive risk-taking and the different

Amendment

(3) Sound prudential supervision should ensure that investment firms are managed in an orderly way and in the best interests of their clients. They should take into account the potential for investment firms and their clients to engage in excessive risk-taking and the different

degrees of risk assumed and posed by investment firms. Equally, such prudential supervision should aim to avoid *undue* administrative burden on investment firms.

degrees of risk assumed and posed by investment firms. Equally, such prudential supervision should aim to avoid *disproportionate* administrative burden on investment firms. *At the same time, these requirements should make it possible to strike a balance between ensuring the safety and soundness of different investment companies and avoiding excessive costs that might undermine the viability of their business activity.*

Amendment 3

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Many of the requirements that stem from Regulation (EU) No 575/2013 and Directive 2013/36/EU framework are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address the different risk-profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have detrimental impacts for overall financial stability is lower than in the case of credit institutions. The risks faced and posed by investment firms are thus substantially different to the risks faced and posed by credit institutions and such difference should be clearly reflected in the prudential framework of the Union.

Amendment

(4) Many of the requirements that stem from Regulation (EU) No 575/2013 and Directive 2013/36/EU framework are designed to address common risks faced by credit institutions. Accordingly, the existing requirements are largely calibrated to preserve the lending capacity of credit institutions through economic cycles and to protect depositors and taxpayers from possible failure, and are not designed to address the different risk-profiles of investment firms. Investment firms do not have large portfolios of retail and corporate loans and do not take deposits. The likelihood that their failure can have detrimental impacts for overall financial stability is lower than in the case of credit institutions, *but they still pose a risk which has to be addressed through a robust framework.* The risks faced and posed by investment firms are thus substantially different to the risks faced and posed by credit institutions and such difference should be clearly reflected in the prudential framework of the Union.

Amendment 4

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Differences in the application of the existing framework in different Member States threaten the level playing-field for investment firms within the Union. Those differences stem from the overall complexity of the application of the framework to different investment firms based on the services they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add-ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure harmonised prudential supervision of investment firms across the Union.

Amendment 5

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) There may be Member States in which the authorities competent for the prudential supervision of investment firms are different from the authorities that are competent for the supervision of market conduct. It is therefore necessary to create a mechanism of cooperation and exchange of information between those authorities.

Amendment

(5) Differences in the application of the existing framework in different Member States threaten the level playing-field for investment firms within the Union, ***hampering investors' access to new opportunities and better ways of managing their risks***. Those differences stem from the overall complexity of the application of the framework to different investment firms based on the services they provide, where some national authorities adjust or streamline such application in national law or practice. Given that the existing prudential framework does not address all the risks faced and posed by some types of investment firms, large capital add-ons have been applied to certain investment firms in some Member States. Uniform provisions addressing those risks should be established in order to ensure ***clear*** harmonised prudential supervision of investment firms across the Union.

Amendment

(7) There may be Member States in which the authorities competent for the prudential supervision of investment firms are different from the authorities that are competent for the supervision of market conduct. It is therefore necessary to create a mechanism of cooperation and exchange of information between those authorities ***in order to ensure harmonised prudential supervision of investment firms across the Union functioning promptly and***

efficiently.

Amendment 6

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) The required level of initial capital of an investment firm should be based on the services and activities which that investment firm is authorised to provide, and respectively perform, according to Directive 2004/39/EC. The possibility for Member States to lower the required level of initial capital in specific situations, as provided for in Directive 2013/36/EU, on the one hand, and the situation of uneven implementation of that Directive, on the other hand, have led to a situation where the required level of initial capital diverges across the Union. To end that fragmentation, the required level of initial capital should be harmonised.

Amendment

(9) The required level of initial capital of an investment firm should be based on the services and activities which that investment firm is authorised to provide, and respectively perform, according to Directive 2004/39/EC. The possibility for Member States to lower the required level of initial capital in specific situations, as provided for in Directive 2013/36/EU, on the one hand, and the situation of uneven implementation of that Directive, on the other hand, have led to a situation where the required level of initial capital diverges across the Union. To end that fragmentation, the required level of initial capital should be harmonised ***accordingly for all investment firms in the Union.***

Amendment 7

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) The proper functioning of the internal market requires that the responsibility for supervising the financial soundness of an investment firm, and in particular its solvency, lies with the competent authority of its home Member State. To achieve an effective supervision of investment firms also in other Member States where they provide services or have a branch, close cooperation with the competent authorities of these Member States should be ensured.

Amendment

(11) The proper functioning of the internal market requires that the responsibility for supervising the financial soundness of an investment firm, and in particular its solvency, lies with the competent authority of its home Member State. To achieve an effective supervision of investment firms also in other Member States where they provide services or have a branch, close cooperation ***and exchange of information*** with the competent authorities of these Member States should

be ensured.

Amendment 8

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) For informational and supervisory purposes, and in particular to ensure the stability of the financial system, competent authorities of host Member States should be able to carry out, on a case-by-case basis, on-the-spot checks, inspect the activities of branches of investment firms on their territory and require information about the activities of those branches. Supervisory measures for those branches should however remain the responsibility of the home Member State.

Amendment

(12) For informational and supervisory purposes, and in particular to ensure the stability **and security** of the financial system, competent authorities of host Member States should be able to carry out, on a case-by-case basis, on-the-spot checks, inspect the activities of branches of investment firms on their territory and require information about the activities of those branches. Supervisory measures for those branches should however remain the responsibility of the home Member State.

Amendment 9

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) To safeguard compliance with the obligations laid down in this Directive and [Regulation (EU) ---/---[IFR], Member States should provide for administrative penalties and other administrative measures which are effective, proportionate and dissuasive. In order to ensure that administrative penalties have a dissuasive effect they should be published ***except in certain well-defined circumstances***. To enable clients and investors to make an informed decision about their investment options, those clients and investors should have access to information on administrative penalties and measures imposed on investment firms.

Amendment

(16) To safeguard compliance with the obligations laid down in this Directive and [Regulation (EU) ---/---[IFR], Member States should provide for administrative penalties and other administrative measures which are effective, proportionate and dissuasive. In order to ensure that administrative penalties have a dissuasive effect they should be published. To enable clients and investors to make an informed decision about their investment options, those clients and investors should have access to information on administrative penalties and measures imposed on investment firms.

Amendment 10

Proposal for a directive Recital 17

Text proposed by the Commission

(17) To detect breaches of national provisions transposing this Directive and breaches of [Regulation (EU)---/----[IFR], Member States should have the necessary investigatory powers and should establish effective mechanisms to report potential or actual breaches.

Amendment

(17) To detect breaches of national provisions transposing this Directive and breaches of [Regulation (EU)---/----[IFR], Member States should have the necessary investigatory powers and should establish effective **and rapid** mechanisms to report potential or actual breaches.

Amendment 11

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Investment firms should have internal capital which is adequate in quantity, quality and distribution to cover the specific risks to which they are or may be exposed. Competent authorities should ensure that investment firms have the adequate strategies and processes in place to **asses** and maintain the adequacy of their internal capital.

Amendment

(18) Investment firms should have internal capital **available**, which is adequate in quantity, quality and distribution to cover the specific risks to which they are or may be exposed. Competent authorities should ensure that investment firms have the adequate strategies and processes in place to **assess** and maintain the adequacy of their internal capital.

Amendment 12

Proposal for a directive Recital 20

Text proposed by the Commission

(20) To align remuneration with the risk profile of investment firms and to guarantee a level-playing field, investment firms should be subject to clear principles on corporate governance arrangements and rules on remuneration that take into account the differences between credit

Amendment

(20) To align remuneration with the risk profile of investment firms and to guarantee a level-playing field, investment firms should be subject to clear principles on corporate governance arrangements and rules on remuneration **that are gender neutral and** that take into account the

institutions and investment firms. Small and non-interconnected investment firms should however be exempted from those rules because the provisions on remuneration and corporate governance under Directive 2014/65/EU are sufficiently comprehensive for those types of firms.

differences between credit institutions and investment firms. Small and non-interconnected investment firms should however be exempted from those rules because the provisions on remuneration and corporate governance under Directive 2014/65/EU *of the European Parliament and of the Council*^{1a} are sufficiently comprehensive for those types of firms.

^{1a} *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).*

Amendment 13

Proposal for a directive Recital 24

Text proposed by the Commission

(24) In response to the growing public demand for tax transparency and to promote investment firms' corporate responsibility, it is appropriate to require that investment firms disclose certain information, including information on profits made, taxes paid and any public subsidies received.

Amendment

(24) In response to the growing public demand for tax transparency and to promote investment firms' corporate responsibility, it is appropriate to require that investment firms disclose *on a yearly basis* certain information, including information on profits made, taxes paid and any public subsidies received.

Amendment 14

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall designate one or more competent authorities that carry out the functions and duties provided for in this Directive. The Member States shall inform the Commission *and EBA* of that designation, and where there is more than

Amendment

1. Member States shall designate one or more competent authorities that carry out the functions and duties provided for in this Directive. The Member States shall inform the Commission, *EBA and ESMA* of that designation, and where there

one competent authority, of the functions and duties of each competent authority.

is more than one competent authority, of the functions and duties of each competent authority.

Amendment 15

Proposal for a directive

Article 6 – paragraph 2 – point a

Text proposed by the Commission

(a) competent authorities, as parties to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate **and** reliable information between them and other parties to the ESFS;

Amendment

(a) competent authorities, as parties to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate, reliable **and exhaustive** information between them and other parties to the ESFS;

Amendment 16

Proposal for a directive

Article 6 – paragraph 2 – point c

Text proposed by the Commission

(c) competent authorities make every effort to **comply** with the guidelines and recommendations issued by EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council³⁸ and to respond to the warnings and recommendations issued by the European Systemic Risk Board (ESRB) pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council³⁹ ;

Amendment

(c) competent authorities make every effort to **ensure compliance** with the guidelines and recommendations issued by EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council³⁸ and to respond to the warnings and recommendations issued by the European Systemic Risk Board (ESRB) pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council³⁹ ;

³⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L

³⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L

331, 15.12.2010, p. 12).

³⁹ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

331, 15.12.2010, p. 12).

³⁹ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

Amendment 17

Proposal for a directive Article 8 – paragraph 4

Text proposed by the Commission

4. The Commission *shall* update, *by means of implementing acts*, the amount of initial capital referred to in paragraphs 1 to 3 of this Article to take account of developments in the economic and monetary field. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).*

Amendment

4. The Commission *is empowered to adopt delegated acts in accordance with Article 54 in order to* update the amount of initial capital referred to in paragraphs 1 to 3 of this Article to take account of developments in the economic and monetary field.

Amendment 18

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. The competent authorities of the home Member State shall immediately provide the competent authorities of the host Member State with any information and findings about any potential problems and risks posed by an investment firm to the protection of clients or the stability of the financial system in the host Member State which they have identified when supervising the activities of an investment firm.

Amendment

2. The competent authorities of the home Member State shall immediately provide the competent authorities of the host Member State with any information and findings about any potential problems and risks posed by an investment firm to the protection of clients or the stability *or security* of the financial system in the host Member State which they have identified when supervising the activities of an investment firm.

Amendment 19

Proposal for a directive Article 11 – paragraph 4

Text proposed by the Commission

4. Where, following the communication of the information and findings referred to in paragraph 2, the competent authorities of the host Member State consider that the competent authorities of the home Member State have not taken the necessary measures referred to in paragraph 3, the competent authorities of the host Member State may, after having informed the competent authorities of the home Member State and EBA, take appropriate measures to protect clients to whom services are provided and to protect the stability of the financial system.

Amendment

4. Where, following the communication of the information and findings referred to in paragraph 2, the competent authorities of the host Member State consider that the competent authorities of the home Member State have not taken the necessary measures referred to in paragraph 3, the competent authorities of the host Member State may, after having informed ***without delay*** the competent authorities of the home Member State and EBA, take appropriate measures to protect clients to whom services are provided and to protect the stability ***and security*** of the financial system.

Amendment 20

Proposal for a directive Article 11 – paragraph 5

Text proposed by the Commission

5. Competent authorities of the home Member State that disagree with the measures of the competent authorities of the host Member State may refer the matter to EBA, which shall act in accordance with the procedure laid down in Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall adopt its decision ***within*** one month.

Amendment

5. Competent authorities of the home Member State that disagree with the measures of the competent authorities of the host Member State may refer the matter to EBA, which shall act in accordance with the procedure laid down in Article 19 of Regulation (EU) No 1093/2010. Where EBA acts in accordance with that Article, it shall adopt its decision ***as quickly as possible and no later than*** one month.

Amendment 21

Proposal for a directive Article 11 – paragraph 8

Text proposed by the Commission

8. EBA shall submit the draft technical standards referred to in paragraphs 6 and 7 to the Commission by [**nine** months from the date of entry into force of this Directive].

Amendment

8. EBA shall submit the draft technical standards referred to in paragraphs 6 and 7 to the Commission by [**six** months from the date of entry into force of this Directive].

Amendment 22

Proposal for a directive

Article 12 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The competent authorities of the host Member State shall, for supervisory purposes and where they consider it relevant for reasons of stability of the financial system in the host Member State, have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of investment firms on their territory and require information from a branch about its activities.

Amendment

The competent authorities of the host Member State shall, for supervisory purposes and where they consider it relevant for reasons of stability **or security** of the financial system in the host Member State, have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of investment firms on their territory and require information from a branch about its activities.

Amendment 23

Proposal for a directive

Article 12 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Before carrying out those checks and inspections, the competent authorities of the host Member State shall consult the competent authorities of the home Member State.

Amendment

Before carrying out those checks and inspections, the competent authorities of the host Member State shall, **without delay**, consult the competent authorities of the home Member State.

Amendment 24

Proposal for a directive

Article 12 – paragraph 2 – subparagraph 3

Text proposed by the Commission

After the completion of those checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information that is relevant for the risk assessment of the investment firm concerned.

Amendment

As soon as possible following completion of those checks and inspections, the competent authorities of the host Member State shall communicate to the competent authorities of the home Member State the information that is relevant for the risk assessment of the investment firm concerned.

Amendment 25

Proposal for a directive

Article 13 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Confidential information which such authorities and persons receive in the course of their duties may be disclosed **only** in summary or aggregate form provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law.

Amendment

Confidential information which such authorities and persons receive in the course of their duties may be disclosed in summary or aggregate form provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law.

Amendment 26

Proposal for a directive

Article 13 – paragraph 4

Text proposed by the Commission

4. Competent authorities may exchange confidential information for the purposes of paragraph 2, may expressly state how that information is to be treated **and may expressly restrict any further transmission of that information.**

Amendment

4. Competent authorities may exchange confidential information for the purposes of paragraph 2 **and** may expressly state how that information is to be treated.

Amendment 27

Proposal for a directive

Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall provide that any person authorised in accordance with Directive 2006/43/EC⁴⁰ and performing in an investment firm the tasks described in Article 73 of Directive 2009/65/EC⁴¹ or Article 34 of Directive 2013/34/EU or any other statutory task, has a duty to report promptly to the competent authorities any fact or decision concerning that investment firm, or concerning an undertaking that has close links with that investment firm which:

⁴⁰ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

⁴¹ 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) (OJ L 302 17.11.2009, p. 32).

Amendment

Member States shall provide that any person authorised in accordance with Directive 2006/43/EC⁴⁰ and performing in an investment firm the tasks described in Article 73 of Directive 2009/65/EC⁴¹ or Article 34 of Directive 2013/34/EU or any other statutory task, has a duty to report **as promptly as possible** to the competent authorities any fact or decision concerning that investment firm, or concerning an undertaking that has close links with that investment firm which:

⁴⁰ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

⁴¹ 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) (OJ L 302 17.11.2009, p. 32).

Amendment 28

Proposal for a directive

Article 16 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) in case of a legal person, administrative pecuniary penalties of up to **10%** of the total annual net turnover, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding

Amendment

(d) in case of a legal person, administrative pecuniary penalties of up to **15%** of the total annual net turnover, including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees of the undertaking in the preceding

business year;

business year;

Amendment 29

Proposal for a directive

Article 17 – paragraph 1 – point b – point iv

Text proposed by the Commission

(iv) to interview any other person **who consents to be interviewed** for the purposes of collecting information on the subject matter of an investigation;

Amendment

(iv) to interview any other **relevant** person for the purposes of collecting information on the subject matter of an investigation;

Amendment 30

Proposal for a directive

Article 18

Text proposed by the Commission

Article 18

Publication of administrative penalties and measures

1. Member States shall ensure that competent authorities publish on their official website any administrative penalties and measures imposed in accordance with Article 16 and which has not been appealed or can no longer be appealed, without undue delay. That publication shall include information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed or against whom the measure is taken. The information shall only be published after that person has been informed of those penalties or measures and to the extent the publication is necessary and proportionate.

2. Where Member States permit the

Amendment

Article 18

Publication of administrative penalties and measures

1. Member States shall ensure that competent authorities publish on their official website any administrative penalties and measures imposed in accordance with Article 16 and which has not been appealed or can no longer be appealed, without undue delay. That publication shall include information on the type and nature of the breach and the identity of the natural or legal person on whom the penalty is imposed or against whom the measure is taken. The information shall only be published after that person has been informed of those penalties or measures and to the extent the publication is necessary and proportionate. ***Competent authorities shall ensure that the same information is published on the official website of the investment firm concerned.***

2. Where Member States permit the

publication of administrative penalties or measures imposed in accordance with Article 16 against which there has been an appeal, competent authorities shall also publish on their official website information on the appeal status and on the outcome of the appeal.

3. Competent authorities shall publish the administrative penalties or measures imposed in accordance with Article 16 on an anonymous basis in any of the following cases:

- (a) the penalty has been imposed on a natural person and publication of that person's personal data is found to be disproportionate;
- (b) the publication would jeopardise an ongoing criminal investigation or the stability of financial markets;
- (c) the publication would cause disproportionate damage to the investment firms or natural persons involved.

4. Competent authorities shall ensure that information published pursuant to this Article remains on their official website for at least five years. Personal data may only be retained on the official website of the competent authority where permitted by the applicable data protection rules.

Amendment 31

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

Competent authorities shall inform EBA of administrative penalties and measures imposed pursuant to Article 16, of any appeal against those penalties and measures and of the outcome thereof. EBA shall maintain a central database of

publication of administrative penalties or measures imposed in accordance with Article 16 against which there has been an appeal, competent authorities shall also publish on their official website information on the appeal status and on the outcome of the appeal. ***Competent authorities shall ensure that the same information is published on the official website of the investment firm concerned.***

3. Competent authorities shall publish the administrative penalties or measures imposed in accordance with Article 16 on an anonymous basis in any of the following cases:

- (a) the penalty has been imposed on a natural person and publication of that person's personal data is found to be disproportionate;
- (b) the publication would jeopardise an ongoing criminal investigation or the stability of financial markets;
- (c) the publication would cause disproportionate damage to the investment firms or natural persons involved.

4. Competent authorities shall ensure that information published pursuant to this Article remains on their official website for at least five years. Personal data may only be retained on the official website of the competent authority where permitted by the applicable data protection rules.

Amendment

Competent authorities shall inform EBA of administrative penalties and measures imposed pursuant to Article 16, of any appeal against those penalties and measures and of the outcome thereof. EBA shall maintain a central database of

administrative penalties and measures communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible to competent authorities *only* and it shall be updated regularly.

administrative penalties and measures communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible to competent authorities *and ESMA*, and it shall be updated regularly, *at least on a quarterly basis*.

Amendment 32

Proposal for a directive

Article 23 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Member States shall ensure that investment firms subject to this Section implement the requirements of this Section in their subsidiaries that are financial institutions as defined in Article 4(13) of [Regulation (EU) ---/---[IFR], including those established in third countries, unless the parent undertaking in the Union *can demonstrate* to the competent authorities that the application of this Section is unlawful under the laws of the third country where those subsidiaries are established.

Amendment

Member States shall ensure that investment firms subject to this Section implement the requirements of this Section in their subsidiaries that are financial institutions as defined in Article 4(13) of [Regulation (EU) ---/---[IFR], including those established in third countries, unless the parent undertaking in the Union *demonstrates* to the competent authorities that the application of this Section is unlawful under the laws of the third country where those subsidiaries are established.

Amendment 33

Proposal for a directive

Article 28 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that investment firms apply the principles referred to in paragraph 1 in a manner that is appropriate to their size *and* internal organisation and to the nature, the scope and complexity of their activities.

Amendment

3. Member States shall ensure that investment firms apply the principles referred to in paragraph 1 in a manner that is *proportionate and* appropriate to their size, internal organisation and to the nature, the scope and complexity of their activities.

Amendment 34

Proposal for a directive Article 29 – paragraph 1

Text proposed by the Commission

Member States shall ensure that where an investment firm benefits from extraordinary public financial support as defined *to* in Article 2(1)(28) of Directive 2014/59/EU, *the following requirements apply:*

- (a) where variable remuneration would be inconsistent with the maintenance of a sound capital base of an investment firm and its timely exit from extraordinary public financial support, variable remuneration of all staff shall be limited to a portion of net revenue;*
- (b) investment firms shall establish limits to the remuneration of the members of the management body of the investment firm;*
- (c) the investment firm shall only pay variable remuneration to members of the management body of the investment firm where such remuneration has been approved by the competent authority.*

Amendment 35

Proposal for a directive Article 30 – paragraph 1 – point a

Text proposed by the Commission

(a) where variable remuneration is performance related, the total amount of variable remuneration shall be based on a combination of the assessment of the performance of the individual, of the business unit concerned and of the overall results of the investment firm;

Amendment

Member States shall ensure that where an investment firm benefits from extraordinary public financial support as defined in *point (28) of* Article 2(1) of Directive 2014/59/EU, *it does not pay any variable remuneration.*

(a) where variable remuneration is performance related, the total amount of variable remuneration shall be based on a combination of the assessment of the performance of the individual, *regardless the gender*, of the business unit concerned and of the overall results of the investment firm;

Amendment 36

Proposal for a directive

Article 30 – paragraph 1 – point j – introductory part

Text proposed by the Commission

(j) at least **50%** of the variable remuneration shall consist of any of the following instruments:

Amendment

(j) at least **60%** of the variable remuneration shall consist of any of the following instruments:

Amendment 37

Proposal for a directive

Article 30 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) by way of derogation from point (j), in case an investment firm does not issue any of those instruments, national competent authorities can approve the use of alternative arrangements fulfilling the same objectives;

Amendment 38

Proposal for a directive

Article 30 – paragraph 1 – point k

Text proposed by the Commission

(k) at least **40%** of the variable remuneration shall be deferred over a three to five year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of a variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least **60%**;

Amendment

(k) at least **50%** of the variable remuneration shall be deferred over a three to five year period as appropriate, depending on the business cycle of the investment firm, the nature of its business, its risks and the activities of the individual in question, except in the case of a variable remuneration of a particularly high amount where the proportion of the variable remuneration deferred is at least **70%**;

Amendment 39

Proposal for a directive

Article 30 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

(1) **up to** 100% of the variable remuneration shall be contracted where the financial performance of the investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question:

Amendment

(1) 100% of the variable remuneration shall be contracted where the financial performance of the investment firm is subdued or negative, including through malus or clawback arrangements subject to criteria set by investment firms which in particular cover situations where the individual in question:

Amendment 40

Proposal for a directive

Article 30 – paragraph 4 – subparagraph 1 – point a

Text proposed by the Commission

(a) an investment firm, the asset value of which is on average equal to or less than EUR **100** million over the four-year period immediately preceding the given financial year;

Amendment

(a) an investment firm, the asset value of which is on average equal to or less than EUR **50** million over the four-year period immediately preceding the given financial year;

Amendment 41

Proposal for a directive

Article 31 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that competent authorities have the necessary powers to guarantee that investment firms which **are determined as significant in accordance with** Article 26(4) establish a remuneration committee. That remuneration committee shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

Amendment

1. Member States shall ensure that competent authorities have the necessary powers to guarantee that investment firms which **do not comply with the criteria in point (a) of the first subparagraph of** Article 30(4) establish a remuneration committee. That remuneration committee shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

Within a group, the remuneration committee can also be a group-wide remuneration committee.

Justification

This amendment intends to simplify the framework: if this amendment is accepted, there is only 1 possible subdivision of class 2 (threshold of EUR 100 million balance sheet). Furthermore, it should limit the discretion of national authorities and thereby guarantee a level playing field and legal certainty.

Amendment 42

**Proposal for a directive
Article 31 – paragraph 2**

Text proposed by the Commission

2. Member States shall ensure that competent authorities have the necessary powers to guarantee that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the investment firm concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm concerned. Where employee representation in the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.

Amendment

2. Member States shall ensure that competent authorities have the necessary powers to guarantee that the remuneration committee is responsible for the preparation of decisions regarding remuneration, including decisions which have implications for the risk and risk management of the investment firm concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm concerned. Where employee representation in the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. ***Investment firms shall aim at a gender balance in their remuneration committee.***

Amendment 43

**Proposal for a directive
Article 32 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that

Amendment

1. Member States shall ensure that

competent authorities collect the information disclosed in accordance with points (c), (d) and (f) of Article 51 of [Regulation (EU) ---/---[IFR] and use that information to benchmark remuneration trends and practices. Competent authorities shall provide that information to **EBA**.

competent authorities collect the information disclosed in accordance with points **(a), (b), (ba)**, (c), (d) and (f) of Article 51 of [Regulation (EU) ---/---[IFR] and use that information to benchmark remuneration trends and practices. Competent authorities shall provide that information to **EBA and ESMA**. **EBA shall publish an annual report on those trends and practices**.

Amendment 44

Proposal for a directive Article 32 – paragraph 3

Text proposed by the Commission

3. EBA, in consultation with ESMA, shall issue guidelines on the application of sound remuneration policies. Those guidelines shall take into account at least the requirements referred to in Articles 28 to 31 and principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC⁴³.

⁴³ Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

Amendment

3. EBA, in consultation with ESMA, shall issue guidelines on the application of sound **and gender neutral** remuneration policies. Those guidelines shall take into account at least the requirements referred to in Articles 28 to 31 and principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC⁴³.

⁴³ Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

Amendment 45

Proposal for a directive Article 32 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that investment firms provide competent authorities, where requested, with information on the number of natural persons per investment firm that are

Amendment

4. Member States shall ensure that investment firms provide competent authorities, where requested, with information on the number of natural persons per investment firm that are

remunerated EUR **1 million or** more per financial year, in pay brackets of **EUR 1 million**, including information on their job responsibilities, the business area involved and the **main elements of** salary, bonus, long-term award and pension contribution. Competent authorities shall forward that information to EBA, which shall publish it on **an aggregate home** Member State basis in a common reporting format. EBA, in consultation with ESMA, **may** elaborate guidelines to facilitate the implementation of this paragraph and to ensure the consistency of the information collected.

remunerated EUR **500 000 or** more per financial year, in pay brackets of **EUR 500 000**, including information on their job responsibilities, the business area involved and the salary, bonus, long-term award and pension contribution. Competent authorities shall forward that information to EBA, which shall publish it on **a disaggregated home/host** Member State basis in a common reporting format. EBA, in consultation with ESMA, **shall** elaborate guidelines to facilitate the implementation of this paragraph and to ensure the consistency of the information collected.

Amendment 46

Proposal for a directive

Article 33 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the inclusive consideration of risks related to environmental, social and governance (ESG) factors in the risk-mitigating arrangements of the investment firms.

Amendment 47

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 1 – point g

Text proposed by the Commission

Amendment

(g) to require investment firms to **limit** variable remuneration **as a percentage of net revenues** where that remuneration is inconsistent with the maintenance of a sound capital base;

(g) to require investment firms to **suspend** variable remuneration where that remuneration is inconsistent with the maintenance of a sound capital base;

Amendment 48

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 1 – point l a (new)

(la) to require investment firms to reduce risks posed to the security of their network and information systems to ensure confidentiality, integrity and availability of the processes and data.

Amendment 49

Proposal for a directive Article 37 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the investment firm is exposed to risks or elements of risks that are not covered or not sufficiently covered by the capital requirement set out in Part Three of [Regulation (EU) ---/----[IFR];

(a) the investment firm is exposed to risks or elements of risks that are not covered or not sufficiently covered by the capital requirement set out in Part Three of [Regulation (EU) ---/----[IFR], **especially taking into account risks in relation to environmental, social and governance (ESG) factors;**

Amendment 50

Proposal for a directive Article 43 – paragraph 1

Text proposed by the Commission

Amendment

Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or adverse developments in markets, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of an investment firm group have been authorised the group supervisor determined pursuant to Article 42 shall, subject to Section 2, Chapter 1 of this Title, alert as soon as practicable, EBA, ESRB and any relevant competent authorities and shall communicate all information essential for the pursuance of their tasks.

Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or adverse developments in markets, which potentially jeopardises the market liquidity and the stability **or security** of the financial system in any of the Member States where entities of an investment firm group have been authorised the group supervisor determined pursuant to Article 42 shall, subject to Section 2, Chapter 1 of this Title, alert as soon as practicable, EBA, ESRB and any relevant competent authorities and shall communicate all information essential for the pursuance of their tasks.

Amendment 51

Proposal for a directive

Article 54

Text proposed by the Commission

Article 54

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 3(2), 27(3) and 33(6) shall be conferred on the Commission for *an indeterminate* period of *time* from [date of entry into force of this Directive].
3. The delegation of power referred to in Articles 3(2), 27(3) and 33(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 3(2), 27(3) and 33(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the

Amendment

Article 54

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 3(2), **8(4)**, 27(3) and 33(6) shall be conferred on the Commission for **a** period of **5 years** from [date of entry into force of this Directive].
3. The delegation of power referred to in Articles 3(2), **8(4)**, 27(3) and 33(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 3(2), **8(4)**, 27(3) and 33(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the

Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Amendment 52

Proposal for a directive

Article 58 a (new)

Directive 2014/59/EU

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

Article 58 a

Amendment to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

in Article 2(1), point (3) is replaced by the following:

“(3) ‘investment firm’ means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 that is subject to the initial capital requirement laid down in Article 8(1) of [Directive (EU) ---/---- [IFD]]”.

Justification

This amendment is necessary to change the reference used in the BRRD to define the scope of investment firms subject to the Directive, because the reference to the CRD used at the moment will be deleted by the IFD.

Amendment 53

Proposal for a directive

Article 60 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By [5 years from the date of application of

this Directive] and subsequently every 3 years, the Commission shall submit to the European Parliament and the Council a report on the application of this Directive and its impact.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Prudential supervision of investment firms
References	COM(2017)0791 – C8-0452/2017 – 2017/0358(COD)
Committee responsible Date announced in plenary	ECON 18.1.2018
Opinion by Date announced in plenary	JURI 18.1.2018
Rapporteur Date appointed	Kostas Chrysogonos 24.1.2018
Discussed in committee	15.5.2018
Date adopted	10.7.2018
Result of final vote	+: 18 –: 1 0: 0
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Rosa Estaràs Ferragut, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Pavel Svoboda, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
Substitutes present for the final vote	Pascal Durand, Angel Dzhambazki, Evelyne Gebhardt, Răzvan Popa

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

18	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
PPE	Rosa Estaràs Ferragut, Emil Radev, Pavel Svoboda, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Evelyne Gebhardt, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Razvan Popa
VERTS/ALE	Max Andersson, Pascal Durand

1	-
ECR	Angel Dzhambazki

0	0

Key to symbols:

- + : in favour
- : against
- 0 : abstention