Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2017/0359(COD)
Prudential requirements of investment firms Amending Regulation (EU) No 1093/2010 2009/0142(COD) Amending Regulation (EU) No 575/2013 2011/0202(COD) Amending Regulation (EU) No 600/2014 2011/0296(COD) Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.08 Financial services, financial reporting and auditing	Procedure completed

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs		23/01/2018
	FERBER Markus	
	Shadow rapporteur	
	DELVAUX Mady	
	LUCKE Bernd	
	TORVALDS Nils	
	GIEGOLD Sven	
	KAPPEL Barbara	

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

Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3725	08/11/2019
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis	
European Economic and Social Committee			

Key events

20/12/2017	Legislative proposal published	COM(2017)0790	Summary
18/01/2018	Committee referral announced in Parliament, 1st reading		
24/09/2018	Vote in committee, 1st reading		
24/09/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
27/09/2018	Committee report tabled for plenary, 1st reading	A8-0296/2018	Summary
01/10/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
03/10/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
01/04/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE637.299 GEDA/A/(2019)002699	
15/04/2019	Debate in Parliament		
16/04/2019	Results of vote in Parliament		
16/04/2019	Decision by Parliament, 1st reading	T8-0378/2019	Summary
08/11/2019	Act adopted by Council after Parliament's 1st reading		
25/11/2019	End of procedure in Parliament		
27/11/2019	Final act signed		
05/12/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0359(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EU) No 1093/2010 2009/0142(COD) Amending Regulation (EU) No 575/2013 2011/0202(COD) Amending Regulation (EU) No 600/2014 2011/0296(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114

Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/11920

Documentation gateway

Legislative proposal		COM(2017)0790	20/12/2017	EC	Summary
Follow-up document		SWD(2017)0481	21/12/2017	EC	
Committee draft report		PE619.410	11/04/2018	EP	
Amendments tabled in committee		PE623.596	05/06/2018	EP	
Amendments tabled in committee		PE623.631	05/06/2018	EP	
European Central Bank: opinion, guideline, report		CON/2018/0036 OJ C 378 19.10.2018, p. 0005	22/08/2018	ECB	Summary
Committee report tabled for plenary, 1st reading/single reading		A8-0296/2018	27/09/2018	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2019)002699	20/03/2019	CSL	
Text agreed during interinstitutional negotiations		PE637.299	20/03/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0378/2019	16/04/2019	EP	Summary
Commission response to text adopted in plenary		SP(2019)440	08/08/2019	EC	
Draft final act		00080/2019/LEX	27/11/2019	CSL	

Additional information

Research document	Briefing	15/01/2020

Final act

Regulation 2019/2033
OJ L 314 05.12.2019, p. 0001 Summary

Corrigendum to final act 32019R2033R(02)
OJ L 020 24.01.2020, p. 0026

Corrigendum to final act 32019R2033R(05)
OJ L 405 02.12.2020, p. 0079

Delegated acts

2021/2896(DEA)	Examination of delegated act
2022/2639(DEA)	Examination of delegated act
2021/2893(DEA)	Examination of delegated act
2021/2892(DEA)	Examination of delegated act
2021/2897(DEA)	Examination of delegated act
2022/2598(DEA)	Examination of delegated act

Prudential requirements of investment firms

PURPOSE: to establish a proportionate and risk-based European prudential framework for investment firms.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: investment firms play an important role in facilitating savings and investment flows across the EU. They offer investors (retail, professional, corporate) various services that give them access to the securities and derivatives markets (investment advice, portfolio management, brokerage, execution of orders, etc.). Unlike credit institutions, investment firms do not take deposits or make loans. This means that they are a lot less exposed to credit risk and the risk of depositors withdrawing their money at short notice.

There were 6 051 investment firms in the European Economic Area (EEA) at the end of 2015. Most EEA investment firms are small or medium-sized enterprises. At present, these companies are concentrated in the United Kingdom, but considering relocating part of their operations in the EU-27, particularly to the Member States participating in the banking union. The UK decision to leave the EU highlights the need to modernise the EU's regulatory architecture.

As one of the new priority actions to strengthen capital markets, the Commission announced in its mid-term review of the Capital Markets Union action plan, that it would propose a more effective prudential and supervisory framework, calibrated to the size and nature of investment firms.

This proposal for a regulation and the accompanying proposal for a directive aim to ensure that investment firms that are not systemically important (the majority of them) are subject to capital and liquidity requirements and other key prudential requirements and supervisory measures that are tailored to their activities, but sufficiently stringent not to jeopardize the stability of the EU's financial markets.

The proposals are the outcome of a review mandated by Regulation (EU) No 575/2013 (Capital Requirements Regulation, or CRR) which, together with Directive 2013/36/EU (Capital Requirements Directive IV, or CRD IV), constitutes the current prudential framework for investment firms. The prudential framework applicable to investment firms set out in CRR / CRD IV works in conjunction with the MiFID II Directive / MiFIR Regulation on markets for financial instruments.

Systemically important investment firms, some of which qualify as globally important companies, would remain subject to the existing framework set out in CRR / CRD IV.

IMPACT ASSESSMENT: the review of the prudential framework for investment firms was carried out in consultation with the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the competent national authorities represented in these European Supervisory Authorities.

A working document accompanying the proposal concludes that, overall, the EBA recommendations represent a step towards a prudential framework for investment firms, which ensures that they operate on a sound financial basis, without hindering their commercial prospects.

CONTENT : the proposal for a regulation lays down requirements in terms of own funds, levels of minimum capital, concentration risk, liquidity, reporting and public disclosure for all investment firms that are not systemic.

Level of application: the prudential regime for investment firms that are not considered to be systemically important should apply on an individual basis to each investment firm. A derogation is provided for small and non-interconnected firms within banking groups subject to consolidated application and supervision under the CRR/CRD IV.

Own funds: the capital instruments which qualify as own funds for investment firms to meet their capital requirements under this Regulation consist of the same items as under CRR/CRD IV. For this purpose, Common Equity Tier 1 (CET1) capital should constitute at least 56 % of regulatory capital, with Additional Tier 1 (AT1) capital eligible for up to 44 % and Tier 2 capital eligible for up to 25 % of regulatory capital.

Capital requirements: all investment firms must maintain an amount equal to the initial capital required for their authorisation as permanent minimum capital at all times.

For the smaller ones, the capital requirements would be set more simply. The latter should have a capital equal to the highest of the following requirements: their requirement of permanent minimum capital, or a quarter of their fixed overheads measured on the basis of their activity of the previous year.

Concentration risk: investment firms should monitor and control their concentration risk, including in respect of their customers. Only firms that are not considered small and non-interconnected should report to competent authorities on their concentration risks. For investment firms specialised in commodity derivatives or emission allowances, which can have large concentrated exposures to the non-financial groups they belong to, these limits may be exceeded without additional capital as long as they serve group-wide liquidity or risk management purposes.

Liquidity: investment firms should have internal procedures to monitor and manage their liquidity needs and be required to hold a minimum of one third of their fixed overheads requirements in liquid assets.

Supervisory reporting and public disclosure: investment firms shall publicly disclose their levels of capital, their capital requirements, remuneration policies and practices, and their governance arrangements. However, small and non-interconnected firms shall not be subject to public disclosure requirements.

Systemic investment firms: the proposal amends the definition of credit institutions in CRR.

The status of credit institutions will be granted to large investment firms that have assets above EUR 30 billion. Large investment firms of systemic importance will continue applying CRR/CRD IV and will be fully subject to the prudential and supervisory requirements applicable to credit institutions. The European Central Bank (ECB), in the exercise of its supervisory function (single supervisory mechanism), will monitor these systemically important investment firms within the banking union.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Prudential requirements of investment firms

Opinion of the European Central Bank of 22 August 2018 on the review of prudential treatment of investment firms.

The ECB supports the objective of the proposed regulation and the proposed directive in setting out a prudential framework that is better adapted to the risks and business models of different types of investment firms.

Whilst the ECB generally supports the purpose of subjecting systemically important investment firms to the same prudential rules as credit institutions, the proposed acts should be carefully assessed in order to avoid unintended consequences for other Union legal acts due to the change in the definition of credit institutions.

In particular, the ECB wishes to assess the possible consequences of including Class 1 companies (those whose business consists of own account dealing, underwriting of financial instruments, or placing of financial instruments on a firm commitment basis and whose total assets exceed EUR 30 billion) in the definition of credit institution.

Classification of investment firms as credit institutions

Under the proposed regulation the criteria according to which an investment firm is to be considered a credit institution within the meaning of Regulation (EU) No 575/2013 (Regulation on prudential requirements for credit institutions and investment firms, Capital Requirement Regulation CRR) aim to capture systemic investment firms with total assets above certain thresholds.

The ECB welcomes this proposal given that firms which meet these criteria can pose increased financial stability risks.

Directive 2013/36/EU (Directive on own funds, Capital Requirements Directive IV, CRD IV) requires Member States to ensure that the competent authority for the authorisation of credit institutions consults the competent authorities for the supervision of investment firms if the relevant investment firm is controlled by the same natural or legal persons as those who control the credit institution. The ECB considers that the proposed directive should, therefore, clarify that such a consultation is also required where an investment firm is reclassified as a credit institution.

Authorisation of certain investment firms as credit institutions

Under the proposed directive responsibility for the authorisation of an investment firm that falls within the definition of a credit institution is assigned to the competent authority for the authorisation of credit institutions under Directive 2013/36/EU.

Whilst the proposed directive stipulates that those investment firms that can be classified as credit institutions must obtain authorisation as a credit institution, the ECB is of the view that clarification is needed as to what happens once authorisation as a credit institution is granted

The proposed directive should also:

- clarify the consequences for an investment firm which has reached the threshold but operates without the relevant authorisation for an extended period of time and whose application for authorisation is subsequently rejected by the competent authority;
- specify that investment firms that fulfil the definition of credit institutions, irrespective of which part of the definition their activities fall under, are only permitted to perform the traditional banking activities (for example, receiving deposits from the public or granting loans).

Statistical implications

The ECB notes the importance of ensuring a high degree of consistency and harmonised methodologies for statistical concepts and definitions in Union legislation and between Union statistical legislation and international statistical standards, in particular the System of National Accounts adopted by the United Nations Statistical Commission.

If Class 1 firms are classified as credit institutions, there would be inconsistencies in the common standards, definitions and classifications of relevance for the statistical treatment of financial corporations set out in Union legislation that would need to be remedied.

Macro-prudential perspective on investment firms

The proposed acts do not take on board the EBA recommendations on the need for a macro-prudential perspective on investment firms. A possible future review of the criteria for determining systemic investment firms may also consider whether certain macro-prudential tools could be developed to address specific risks that smaller investment firms could pose to financial stability.

Provision of services by third-country firms

Regarding the Commissions proposal to strengthen and further harmonise the Unionlegislation applicable to branches of third country investment firms, the ECB considers that the Union legislator might wish to give further consideration to the possibility of applying the harmonised rules to all branches, even those that provide services to professional clients and eligible counterparties, in order to ensure that material risks are addressed consistently across the Union and to avoid regulatory arbitrage.

Furthermore, in order to ensure a level playing field, the ECB suggests ensuring that such non-equivalent third-country firms are required over time to establish a branch (or a subsidiary) in the Union in order to provide any investment services in the Union.

Alignment

The ECB recommends that the interplay between the proposed acts and Directive 2013/36/EU and Regulation (EU) No 575/2013 should be carefully assessed in order to avoid unintended consequences due to the change in the definition of credit institutions. The proposals should, for example, aim to align the wording in the different sectoral acts of Union law so as to harmonise, where appropriate, the scope of professional secrecy obligations.

Prudential requirements of investment firms

The Committee on Economic and Monetary Affairs adopted the report by Markus FERBER (EPP, DE) 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.

As a reminder, the draft Regulation aims to establish an effective and proportionate prudential framework to ensure that investment firms authorised to operate in the Union operate on a sound financial basis and are managed in an orderly way, in the best interests of their clients. To this end, it establishes capital requirements, minimum capital levels, concentration risk, liquidity, reporting and publication.

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

Exemptions: under the proposal, the specific prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered systemic should address the specific business practices of different types of investment firms. The amended text specifies that where they are a part of an insurance group, those small and non-interconnected investment firms should also be allowed to avail themselves of an exemption from concentration, disclosure and reporting requirements.

Capital requirements: according to the proposal, the definition and composition of own funds should be aligned with Regulation (EU) No 575/2013 (Own Funds Regulation, or CRR). In order to do so, at least 56% of the capital requirement should be met by investment firms with Common Equity Tier 1 items, while Additional Tier 1 and Tier 2 items could be eligible up to 44% and 25% of regulatory capital, respectively.

By way of derogation, investment firms should be able to exempt non-significant holdings of capital instruments in financial sector entities from deductions if held for trading purposes in order to support market-making in these instruments.

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.

An investment firm shall be deemed a small and non-interconnected investment firm where it meets all of the following conditions:

- AUM (or assets under management) is less than EUR 1.2 billion;
- COH (or client orders handled) is less than either: (i) EUR 100 million/day for cash trades or (ii) EUR 1 billion/day for derivatives;
- ASA (or assets safeguarded and administered) calculated in accordance with Article 19 is EUR 50 million;
- CMH (or client money held) is EUR 5 million;
- DTF (daily trading flow) is zero;
- NPR (net position risk) or CMG (clearing member guarantee) is zero;
- TCD (trading counterparty default) is zero;
- the balance sheet total of the investment firm is less than EUR 100 million;
- the total annual gross revenue from investment services and activities of by the investment firm is less than EUR 30 million.

If the applicable thresholds are exceeded, an investment firm shall no longer be considered as a small non-interconnected investment firm.

Prudential treatment of assets exposed to activities associated with environmental or social objectives: after consultation with the European Systemic Risk Board (ESRB), the European Banking Authority (EBA) shall assess on the basis of available data and the findings of the Commissions High-Level Expert Group on Sustainable Finance, whether a dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted k-factors or adjusted k-factor coefficients, would be justified from a prudential perspective.

The EBA shall submit a report on its conclusions to the Commission, the European Parliament and the Council no later than two years after the date of entry into force of the Regulation.

Remuneration policy and practices: the proposed Regulation provides that investment firms shall disclose the following information regarding their remuneration policy and practices, including aspects related to gender neutrality, for those categories of staff whose professional activities have a material impact on investment firm's risk profile.

At the request of the competent authority, an investment firm shall declare to that authority the total remuneration of each member of its management body or senior management.

Investment policy: investment firms shall disclose information regarding their investment policy such as: (i) the participation rate for all direct and indirect holdings where beneficial ownership exceeds 5% of any class of voting equity securities, broken down by Member State and sector; (ii) the complete voting behaviour at shareholders meetings.

Lastly, companies shall only receive deposits or other repayable funds from the public and grant credits for their own account once they have obtained authorisation for these activities in accordance with Directive 2013/36/EU (Capital Requirements Directive IV, or CRD IV).

Prudential requirements of investment firms

The European Parliament adopted by 534 votes to 70, with 45 abstentions, a 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.

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

Subject matter

As a reminder, the draft Regulation aims to establish an effective and proportionate prudential framework to ensure that investment firms authorised to operate in the Union operate on a sound financial basis and are managed in an orderly way, in the best interests of their clients. To this end, it establishes capital requirements, minimum capital levels, concentration risk, liquidity, reporting and publication.

Under the amended text:

- investment firms that provides "bank-like" services, such as dealing on own account or underwriting financial instruments, and whose consolidated assets exceed EUR 15 billion would automatically be subject to CRR/CRD4;

- investment firms engaged in "bank-like" activities with consolidated assets between EUR 5 and 15 billion could be requested to apply CRR/CRD4 by their supervisory authority, in particular if the firm's size or activities would involve risks to financial stability;

- competent authorities could allow to continue applying banking requirements to certain firms, on a case by case basis, to avoid disrupting their business models. Such an option will be framed with a safeguard preventing regulatory arbitrage, in particular through the application of lower capital requirements under CRR/CRD4 as compared to IFR in a disproportionate manner.

When part of an insurance group, small non-interconnected investment firms - whose total balance sheet and off-balance sheet items of the firm are less than EUR 100 million - could benefit from an exemption from the concentration, publication and reporting requirements. They would only be required to provide information on liquidity requirements where applicable.

Remuneration policy and practices

The proposed Regulation requires investment firms to disclose the following information regarding their remuneration policy and practices, including aspects related to gender neutrality and the gender pay gap, for those categories of staff whose professional activities have a material impact on investment firm's risk profile.

Investment policy

Member States shall ensure that investment firms disclose: (i) the proportion of voting rights attached to the shares held directly or indirectly by the investment firm, broken down by Member State and sector; (ii) the complete description of voting behaviour in the general meetings of companies the shares of which are held.

Third countries

The amended text strengthens the equivalence regime that would apply to third country investment firms. It sets out in greater detail some of the requirements for giving them access to the single market and grants additional powers to the Commission.

In particular, the Commission is charged with assessing capital requirements applicable to firms providing bank-like services to make sure that those are equivalent to those applicable in the EU.

ESMA may temporarily prohibit or restrict a third-country firm from providing investment services or performing investment activities with or without any ancillary services where the third country firm has failed to comply with any prohibition or restriction imposed by ESMA or EBA or by a competent authority or with a request from ESMA in due time and manner, or where the third country firm does not cooperate with an investigation or an on-site inspection carried.

Prudential requirements of investment firms

PURPOSE: to establish a proportionate and risk-based European prudential framework for investment firms.

LEGISLATIVE ACT: Regulation (EU) 2019/2033 of the European Parliament and of the Council on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

CONTENT: the Regulation is part of a package of measures (comprising a Regulation and a Directive) establishing a new regulatory framework for investment firms.

Investment firms are financial institutions whose main business is to hold and manage securities and derivatives for investment purposes on behalf of their clients. Until now all investment firms have been subject to the same capital, liquidity and risk management rules as banks. However, the Capital Requirements Regulation and Directive (CRR/CRD IV) do not take full account of the specificities of investment firms.

Harmonised prudential requirements

The Regulation lays down uniform prudential requirements and supervisory measures adapted to the risk profile and business model of investment firms, while ensuring financial stability. To this end, the Regulation establishes:

- own fund requirements relating to quantifiable, uniform and standardised elements of risk-to-firm, risk-to-client and risk-to-market;

- requirements limiting concentration risk;

- liquidity requirements relating to quantifiable, uniform and standardised elements of liquidity risk;

- public disclosure requirements.

An effective and proportionate prudential framework

The requirements that investment firms shall be required to apply will vary according to their size, nature and complexity:

- investment firms providing bank-type services, such as proprietary trading, with consolidated assets exceeding EUR 15 billion shall automatically fall under CRR/CRD IV;

- however, competent authorities may decide to apply the requirements of the Regulation and the Capital Requirements Directive (CRR/CRD IV) to investment firms which provide bank-like activities and whose total consolidated assets exceed EUR 5 billion, in particular where the size of the firm or its activities is likely to give rise to systemic risk;

- small firms which are not considered systemic shall benefit from a new adapted regime with specific prudential requirements. Non-connected small investment firms are defined as those which (i) do not deal on own account, (ii) do not hold assets or client funds, (iii) have assets under discretionary or non-discretionary management (advisory services) of less than EUR 1.2 billion, (iv) handle daily client orders of less than EUR 100 million for cash transactions or less than EUR 1 billion for derivatives, (v) have a balance sheet of less than EUR 100 million, including off-balance sheet items, and (vi) have total annual gross revenues from their investment activities of less than EUR 30 million.

Competent authorities may allow banking requirements to continue to apply to certain undertakings on a case-by-case basis in order to avoid disrupting their business model. This option shall be accompanied by a safeguard measure to prevent regulatory arbitrage.

In addition, it provides for a transitional period of 5 years in order to give companies sufficient time to adapt to the new regime.

Remuneration policies

The Regulation requires investment firms to publish a range of information about their remuneration policy and practices, including elements relating to non-discrimination between women and men, for those categories of staff whose professional activities have a significant impact on the risk profile of the investment firm.

Environmental and social risks

The European Banking Authority (EBA), after consulting the European Systemic Risk Board, shall assess whether a specific prudential treatment of assets exposed to activities closely related to environmental or social objectives would be justified from a prudential point of view.

The EBA shall submit a report on its findings to the European Parliament, the Council and the Commission by 26 December 2021 at the latest. On the basis of this report, the Commission shall, if appropriate, present a legislative proposal to the European Parliament and the Council.

Third countries

The Regulation strengthens the equivalence regime that shall apply to third country investment firms. It sets out some of the requirements for them to access the single market and confers additional powers on the Commission. In particular, the Commission shall be responsible for assessing the capital requirements applicable to firms providing bank-like services to ensure that they are equivalent to those applicable in the EU.

ESMA shall temporarily prohibit or restrict the provision of investment services or the exercise of investment activities where the third country firm has failed to comply with any of the prohibitions or restrictions imposed by ESMA or EBA or to cooperate with an investigation or on-site inspection.

ENTRY INTO FORCE: 25.12.2019.

APPLICATION: from 26.6.2021.