



2017/0358(COD)

27.4.2018

DRAFT 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))

Rapporteur for opinion: Kostas Chrysogonos

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

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.

Or. en

Amendment 2

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***

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

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.

informed decision about their investment options, those clients and investors should have access to information on administrative penalties and measures imposed on investment firms.

Or. en

Amendment 3

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 and reliable **and exhaustive** information between them and other parties to the ESFS;

Or. en

Amendment 4

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 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 ;

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).

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).

Or. en

Amendment 5

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 shall update, by means of **delegated** 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.

Or. en

Amendment 6

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

The initial capital of an investment firm

Amendment

The initial capital of an investment firm

shall consist of **one or more** of the items referred to in Article 9 of [Regulation (EU) ---/---[IFR].

shall consist of **at least two** of the items referred to in Article 9 of [Regulation (EU) ---/---[IFR].

Or. en

Amendment 7

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.

Or. en

Amendment 8

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].

Or. en

Amendment 9

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.

Or. en

Amendment 10

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, may expressly state how that information is to be treated.

Or. en

Amendment 11

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

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 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).

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).

Or. en

Amendment 12

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 business year;

Amendment

(d) in case of a legal person, administrative pecuniary penalties of up to **20%** 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;

Or. en

Amendment 13

Proposal for a directive

Article 16 – paragraph 2 – subparagraph 1 – point e

Text proposed by the Commission

(e) in the case of a legal person, administrative pecuniary penalties of up to **twice** the amount of the profits gained or losses avoided due to the breach where those profits or losses can be determined;

Amendment

(e) in the case of a legal person, administrative pecuniary penalties of up to **five times** the amount of the profits gained or losses avoided due to the breach where those profits or losses can be determined;

Or. en

Amendment 14

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 who for the purposes of collecting information on the subject matter of an investigation;

Or. en

Amendment 15

Proposal for a directive

Article 18 – paragraph 3 – point c

Text proposed by the Commission

(c) the publication would cause disproportionate damage to the **investment firms or** natural persons involved.

Amendment

(c) the publication would cause disproportionate damage to the natural persons involved.

Or. en

Amendment 16

Proposal for a directive Article 18 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Member States and competent authorities shall ensure that administrative penalties and measures imposed in accordance with Article 16 are published on the website of the investment firm on whom the penalty is imposed.

Or. en

Amendment 17

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

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.

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, ***and in no instance less than two times per year.***

Or. en

Amendment 18

Proposal for a directive Article 20 – paragraph 1 – point d

Text proposed by the Commission

(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the investment firm, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

Amendment

(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the investment firm, unless disclosure is required by national law ***and strictly necessary*** in the context of further investigations or subsequent judicial proceedings.

Or. en

Amendment 19

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.

Or. en

Amendment 20

Proposal for a directive

Article 28 – paragraph 1 – point c

Text proposed by the Commission

(c) the remuneration policy contains

Amendment

(c) the remuneration policy contains

measures to *avoid* conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;

measures to *forbid* conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;

Or. en

Amendment 21

Proposal for a directive Article 28 – paragraph 2

Text proposed by the Commission

2. For the purposes of point (i) of paragraph 1, Member States shall ensure that investment firms set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the investment firm and associated risks, as well as the impact that different categories of individuals referred to in paragraph 1 have on the risk profile of the investment firm.

Amendment

2. For the purposes of point (i) of paragraph 1, Member States shall ensure that investment firms set the appropriate ratios between the variable and the fixed component of the total remuneration in their remuneration policies, taking into account the business activities of the investment firm and associated risks, as well as the impact that different categories of individuals referred to in paragraph 1 have on the risk profile of the investment firm. ***The variable component of the remuneration shall not exceed 50% of the fixed component.***

Or. en

Amendment 22

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***

Amendment

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 ***payment of any kind of variable remuneration is forbidden.***

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.

Or. en

Amendment 23

Proposal for a directive Article 29 – paragraph 2

Text proposed by the Commission

Amendment

For the purposes of point (c), competent authorities shall only approve payment of variable remuneration to members of the management body of the investment firm in exceptional circumstances.

deleted

Or. en

Amendment 24

Proposal for a directive Article 30 – paragraph 1 – point j – introductory part

Text proposed by the Commission

Amendment

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

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

Amendment 25

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 **60%** of the variable remuneration shall be deferred over a five year period except in the case of a variable remuneration **reaching the maximum level allowed according to Article 28(2)** where the proportion of the variable remuneration deferred is at least **70%**;

Or. en

Amendment 26

Proposal for a directive Article 30 – paragraph 1 – point l – introductory part

Text proposed by the Commission

(l) **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

(l) 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:

Or. en

Amendment 27

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;

Or. en

Amendment 28

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 **several** employee representatives.

Or. en

Amendment 29

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 *define binding draft regulatory technical standards* on the application of sound remuneration policies. Those *standards* 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).

Or. en

Amendment 30

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 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

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 **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

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.

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.

Or. en

Amendment 31

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 1 – point g

Text proposed by the Commission

(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;

Amendment

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

Or. en

Amendment 32

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 2

Text proposed by the Commission

For the purposes of point (j), competent authorities may only impose additional or more frequent reporting requirements on investment firms where the information to be reported is not duplicative and one of the following conditions is met:

(a) either of the conditions referred to in points (a) or (b) of Article 35 has been met;

(b) the competent authority considers it necessary to gather the evidence referred to in Article 35(b).

Amendment

deleted

Or. en

Amendment 33

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

Information shall be deemed as duplicative where the competent authority already has the same or substantially the same information, where that information may be produced by the competent authority or may be obtained by the same competent authority through other means than a requirement on the investment firm to report it. A competent authority shall not require additional information where the information is available to the competent authority in a different format or level of granularity than the additional information to be reported and that different format or granularity does not prevent it from producing substantially similar information.

deleted

Or. en

Amendment 34

Proposal for a directive

Article 40 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) require parent undertakings to publish annually, ***either in full or by way of references to equivalent information***, a description of their legal structure and governance and organisational structure of the group of investment firms in accordance with Article 24(1) of this Directive and Article 10 of Directive 2014/65/EU.

(c) require parent undertakings to publish annually a ***full*** description of their legal structure and governance and organisational structure of the group of investment firms in accordance with Article 24(1) of this Directive and Article 10 of Directive 2014/65/EU.

Or. en

Amendment 35

Proposal for a directive Article 54 – paragraph 2

Text proposed by the Commission

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].

Amendment

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 ***a*** period of ***5 years*** from [date of entry into force of this Directive].

Or. en

Amendment 36

Proposal for a directive Article 55 – paragraph 1

Text proposed by the Commission

The alteration of the amount of initial capital prescribed in Articles ***8 and*** 11(7) to take account of developments in the economic and monetary field shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 56(2).

Amendment

The alteration of the amount of initial capital prescribed in Articles 11(7) to take account of developments in the economic and monetary field shall be adopted as implementing acts in accordance with the examination procedure referred to in Article 56(2).

Or. en