



2017/0358(COD)

11.4.2018

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DRAFT REPORT

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))

Committee on Economic and Monetary Affairs

Rapporteur: Markus Ferber

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a 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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0791),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0452/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of ...¹,
 - having regard to the opinion of the European Economic and Social Committee of ...²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 10 – subparagraph 2

Text proposed by the Commission

Amendment

As far as references to the amount of initial capital are concerned, the following correlation shall apply. Levels *deleted*

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

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

of initial capital set by Article 8 of this Directive should, as of the date of application of this Directive, be construed to replace references to levels of initial capital set by Directive 2013/36/EU as follows: the initial capital of investment firms referred to in Article 28 of Directive 2013/36/EU should be construed to refer to Article 8(1); the initial capital of investment firms referred to in Articles 29 or 31 of Directive 2013/36/EU should be construed to refer to Article 8(2) or (3), depending on the type of investment services and activities of an investment firm; the initial capital referred to in Article 30 of Directive 2013/36/EU should be construed to refer to Article 8(1).

Or. en

Justification

For the purpose of legal certainty, the second part of this recital is moved into an operative article.

Amendment 2

Proposal for a directive Recital 23

Text proposed by the Commission

(23) The revenues of investment firms in the form of fees, commissions and other revenues in relation to the provision of different investment services are highly volatile. Limiting the variable component of remuneration to a portion of the fixed component of remuneration would affect the firm's ability to reduce remuneration at times of reduced revenues and could lead to an increase of the firm's fixed cost base, leading in turn to risks for the firm's ability to withstand times of economic downturn or reduced revenues. To avoid those risks, a single maximum ratio between the variable and the fixed elements of

Amendment

(23) The revenues of investment firms in the form of fees, commissions and other revenues in relation to the provision of different investment services are highly volatile. Limiting the variable component of remuneration to a portion of the fixed component of remuneration would affect the firm's ability to reduce remuneration at times of reduced revenues and could lead to an increase of the firm's fixed cost base, leading in turn to risks for the firm's ability to withstand times of economic downturn or reduced revenues. To avoid those risks, a single maximum ratio between the variable and the fixed elements of

remuneration should not be imposed on non-systemic investment firms. ***Instead, those investment firms should set appropriate ratios themselves.***

remuneration should not be imposed on non-systemic investment firms.

Or. en

Justification

In line with the policy reasoning that non-systemic investment firms have a different risk profile than banks, investment firms should not be obliged to set a ratio between the variable and fixed element of remuneration. The general principles on remuneration are sufficient.

Amendment 3

Proposal for a directive Recital 24

Text proposed by the Commission

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 certain information, including information on profits made, taxes paid and any public subsidies received.

deleted

Or. en

Justification

This is a too burdensome and time-consuming exercise for firms. These efforts and time should better be devoted to increase the quality of services.

Amendment 4

Proposal for a directive Recital 28

Text proposed by the Commission

Amendment

(28) It is necessary to specify the steps that undertakings need to take to verify whether they fall under the definition of a

(28) It is necessary to specify the steps that undertakings need to take to verify whether they fall under the definition of a

credit institution as set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and therefore need to obtain authorisation as a credit institution. Because certain investment firms already carry out the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, it is also necessary to ensure clarity about the continuity of any authorisation granted for those activities.

credit institution as set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and therefore need to obtain authorisation as a credit institution. Because certain investment firms already carry out the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, it is also necessary to ensure clarity about the continuity of any authorisation granted for those activities.

In particular, it is essential that competent authorities ensure that the transition from the current framework to the new one offers sufficient regulatory certainty for investment firms and does not deprive them of substantive rights from which they had benefitted under the current framework.

Or. en

Justification

Competent authorities should ensure that class 3 investment firms that are already subject to CRD/CRR requirements are not deprived from their rights (including, for example, exemptions or waivers) when re-applying for the under new Article 8a of Regulation 575/2013.

Amendment 5

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

References to initial capital in Directive 2013/36/EU

The levels of initial capital set by Article 8 of this Directive shall, as of the date of application of this Directive, be construed to replace references to the levels of initial capital set by Directive 2013/36/EU in respect of the following:

(a) the initial capital of investment firms referred to in Article 28 of Directive 2013/36/EU shall be construed to refer to Article 8(1) of this Directive;

(b) the initial capital of investment firms referred to in Articles 29 or 31 of Directive 2013/36/EU shall be construed to refer to Article 8(2) or (3) of this Directive, depending on the type of investment services and activities of the investment firm;

(c) the initial capital referred to in Article 30 of Directive 2013/36/EU shall be construed to refer to Article 8(1) of this Directive.

Or. en

Justification

This article comes from a recital in the Commission proposal but contains substantive issues that should be dealt with in an article.

Amendment 6

Proposal for a directive Article 25

Text proposed by the Commission

Amendment

Article 25

deleted

Country-by-country reporting

1. Member States shall require investment firms to disclose by Member State and by third country in which the investment firm has a branch or a subsidiary that is a financial institution as defined in Article 4(1)(26) of Regulation (EU) No 575/2013, the following information on an annual basis:

- (a) the name, nature of activities and location of any subsidiaries and branches;**
- (b) the turnover;**
- (c) the number of employees on a full**

time equivalent basis;

(d) the profit or loss before tax;

(e) the tax on profit or loss;

(f) the public subsidies received.

2. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and, where possible, shall be annexed to the annual financial statements or, where applicable, to the consolidated financial statements of that investment firm.

Or. en

Justification

This is a too burdensome and time-consuming exercise for firms. These efforts and time should better be devoted to increase the quality of services.

Amendment 7

Proposal for a directive Article 26 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall determine which investment firms are considered significant in terms of their size, internal organisation and the nature, scope and complexity of their activities. Member States shall require those firms to establish a risk committee composed of members of the management body who do not perform any executive function in the investment firm concerned.

deleted

Members of the risk committee referred to in the first subparagraph shall have appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the investment firm. They shall ensure that the risk committee advises the management body on the investment firm's overall current and future risk

appetite and strategy and assists the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for the firm's risk strategies and policies.

Competent authorities may allow an investment firm which is not considered to be significant as referred to in the first subparagraph to allow the audit committee as referred to in Article 39 of Directive 2006/43/EC, where one has been established, to perform the function of the risk committee referred to in the first subparagraph. Members of that committee shall have the knowledge, skills and expertise referred to in the second subparagraph.

Or. en

Justification

The creation of a risk committee and of an additional subcategory of investment firms is not justified. In particular, adding a sub-category of investment firms contradicts the aim of the Directive to simplify and streamline the categorisation of investment firms.

Amendment 8

Proposal for a directive Article 28 – paragraph 2

Text proposed by the Commission

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.*

deleted

Justification

In line with the policy reasoning that non-systemic investment firms have a different risk profile than banks, investment firms should not be obliged to set a ratio between the variable and fixed element of remuneration. The general principles on remuneration are sufficient.

Amendment 9**Proposal for a directive****Article 30 – paragraph 1 – introductory part***Text proposed by the Commission*

1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm complies with all of the following requirements:

Amendment

1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm ***to senior management, risk takers, staff engaged in control functions and for any employee receiving overall remuneration equal to at least the lowest remuneration received by senior management or risk takers and whose professional activities have a material impact on the risk profile of the investment firm***, complies with all of the following requirements:

Or. en

Justification

Consistent with Article 28 on the general remuneration principles, the rules on variable remuneration should also only apply to certain categories of staff.

Amendment 10**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 **25%** of the variable remuneration shall consist of any of the following instruments:

Justification

A 50% rule is overly prescriptive and may be difficult to implement for certain investment firms. A lower threshold, together with the full exemption for small and non-interconnected firms under paragraph 30(4), should offer an appropriate framework.

Amendment 11**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 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.

Or. en

Justification

The creation of an additional sub-category of investment firms is not necessary and has been deleted in Article 26(4). Moreover, it does not seem disproportionate that all class 2 investment firms need to establish a remuneration committee.

Amendment 12**Proposal for a directive
Article 57 – paragraph 1 – point 7 a (new)**
Directive 2013/36/EU
Article 20 – paragraph 2*Present text**Amendment*

(7a) in Article 20, paragraph 2 is replaced by the following:

"2. EBA shall publish on its website, and shall update **regularly**, a list of the names of all credit institutions that have been granted authorisation."

"2. EBA shall publish on its website, and shall update **at least annually**, a list of the names of all credit institutions that have been granted authorisation."

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013L0036-20180113&qid=1523366720537&from=EN>)

Justification

It is necessary to have a clear view of which firms operate as class 1 investment firms and to give more certainty about when this list is published.

Amendment 13

Proposal for a directive

Article 57 – paragraph 1 – point 7 b (new)

Directive 2013/36/EU

Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(7b) in Article 20, the following paragraph 3a is inserted:

"3a. The list referred to in paragraph 2 of this Article shall include the names of undertakings referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and shall identify those credit institutions as such. That list shall also outline any changes in comparison with the previous version of the list."

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02013L0036-20180113&qid=1523366720537&from=EN>)

Justification

It is necessary to have a clear view of which firms operate as class 1 investment firms and which do not any more.

EXPLANATORY STATEMENT

Introduction

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

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

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

- The largest and most systemic investment firms would remain under the prudential and supervisory regime of banks as set out in the CRR/CRD. This would be achieved by treating these large and systemic investment firms as credit institutions.
- All other investment firms in the EU would no longer be subject to CRR/CRD rules but would enjoy a new bespoke regime with dedicated prudential and supervisory requirements.

Position of the rapporteur

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

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

In broad lines, the rapporteur suggests the following changes:

- Own funds requirements: Competent authorities should be able to allow class 3 firms to use different instruments than those listed in CRR to fulfil their own funds requirements. CRR requirements might be burdensome for certain types of legal business entities (such as partnerships).
- Movements between Class 2 and Class 3: It is crucial that the movements between Class 2 and Class 3 happen as easily as possible for investment firms. A number of changes increase

the possibility for the firms have sufficient clarity and time to adapt to new requirements where applicable.

- Capital and liquidity requirements and K Factors: a revised and clarified definition of certain activities ensures that the risks covered correspond to the fullest extent possible to the actual risks. Moreover, a number of suggested changes smoothen the calculation of K-Factors.
- Reporting, governance and remuneration: Rules on reporting, governance and remuneration are significantly simplified. These rules create too much burden for firms and are not justified in light of the nature of the firms concerned.
- Third-country regime and equivalence: As it stands, the proposal does not sufficiently address this important issue for EU investment firms. The draft report aims at ensuring a more robust and adapted equivalence regime, avoiding that EU banks be potentially placed in a less favourable position than third country investment firms. Such a policy choice is also justified because the activities of investment firms do not require complex infrastructure. Third country investment firms willing to provide all services (including bank-like services) in the EU can set up their activities in the EU without significant harm.

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